

2023 SCC OnLine Guj 2666

In the High Court of Gujarat at Ahmedabad
(BEFORE A.S. SUPEHIA AND M.R. MENGDEY, JJ.)

Nareshkumar Mangaji Khant

Versus

State of Gujarat

R/Criminal Appeal No. 14 of 2016

Decided on August 25, 2023

Advocates who appeared in this case :

HCLS Committee (4998) for the Appellant(s) No. 1

Mr. Hardik K. Raval (6366) for the Appellant(s) No. 1

Ms. Divyangna Jhala, App for the Opponent(s)/Respondent(s) No. 1

The Judgment of the Court was delivered by

M.R. MENGDEY, J.:— The present Appeal has been preferred by the Applicant - Convict under the provisions of Sections 374 of the Criminal Procedure Code, 1973 passed by the learned 6th (Ad hoc) Additional Sessions Judge, Sabarkantha at Modasa in Sessions Case No. 109 of 2013 [Old Sessions Case No. 83 of 2013], whereby the Appellant herein has been convicted for the offence punishable under Section 302 of the Penal Code, 1860 and is sentenced to undergo life imprisonment with fine of Rs. 1000/-.

2. The facts and circumstances giving rise to the filing of the present Appeal are such that the deceased Komal was married to the present Appellant one year prior to the incident. A week prior to the incident, deceased Komal had gone to her parental house for performing some post-marriage rituals. Couple of days prior to the incident, the Appellant had also gone to the place of the parental house of the deceased. On the fateful day, i.e. on 21.4.2013, deceased Komal, in the afternoon, had proceeded to the well of Prithvisinh Bhavansinh for washing the clothes. She was accompanied by the present Appellant. Since the deceased did not return after washing the clothes for sometime, her mother namely Taraben went to the place, where the deceased had gone to wash the clothes and saw the Appellant running from the place. She also saw her daughter Komal lying dead on the place of incident. She had informed her family members about the incident. She lodged the FIR with the aforesaid facts at Modasa Rural Police Station on 21.4.2013 itself. On the basis of the same, the offence in question came to be registered against the present Appellant.

3. The investigating agency, after conclusion of investigation, filed

chargesheet against the present Appellant for the offence punishable under Section 302 of the IPC. Since the offence alleged in the charge-sheet was exclusively triable by the Court of Sessions, the learned Magistrate committed the proceedings to the Court of Sessions under Section 209 of the Cr. P.C.

4. The learned Sessions Judge, vide Exh.4, framed charge against the present Appellant for the offence punishable under Section 302 of the IPC and Section 135 of the Bombay Police Act. Since the appellant pleaded not guilty, he was put to trial by the Sessions Court.

5. The prosecution had adduced oral as well as documentary evidence in support of its case against the present Appellant. The learned Sessions Judge, after considering the evidence adduced on record and hearing the learned Advocates for both the sides, was pleased to convict the present Appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo life imprisonment with fine of Rs. 1000/- vide impugned judgment and order. Being aggrieved by and dissatisfied with the same, the Appellant has preferred the present Appeal.

6. Heard learned Advocate Mr. Hardik K. Raval for the Appellant. He submitted that; in the present case, the case of prosecution is based upon circumstantial evidence and, as per the settled law, in case of circumstantial evidence, the prosecution is required to establish the entire chain of circumstances leading to the guilt of the accused. In the present case, the prosecution has miserably failed in establishing such chain against the present Appellant. He further submitted that the learned Sessions Judge, in convicting the present Appellant, has heavily relied upon the deposition of the first informant, Taraben Somaji Khat, who also happens to be the mother of the deceased. Upon perusal of the deposition of the said witness, it appears that there are several material contradictions and omissions in her deposition, which go to the root of the merits of the evidence of prosecution. Therefore, her deposition is not at all reliable. He further submitted that as per the case of prosecution, the Appellant doubted the character of the deceased, who was his wife. However, the prosecution has led no evidence on this aspect nor any investigation has gone into the said aspect. Thus, it is submitted that the motive itself for the Appellant to commit the offence in question is not proved since as per the settled legal position, in the case of circumstantial evidence, motive plays an important role and the prosecution is required to establish the motive beyond reasonable doubt, which has not been done in the present case. He therefore submitted to allow the present Appeal by quashing and setting aside the impugned judgment and order.

7. The Appeal is opposed by learned APP Ms. Divyangna Jhala. She submitted that the deposition of the mother of the deceased is a

clinging evidence adduced on behalf of the prosecution against the present Appellant. It is contended that though she has been cross-examined in detail by defence, nothing contrary to what has been stated by her in her examination-in-chief has been elicited in cross-examination. Thus, it is urged by learned APP that the learned Sessions Judge does not appear to have committed any error in convicting the Appellant for the offence in question. She therefore submitted to dismiss the present Appeal.

8. Heard learned Advocates for the parties and perused the record.

9. In the present case, the mother of the deceased Taraben Somaji Khant, P.W.2, who also happens to be the first informant, is an important witness. She has been examined before the learned Sessions Judge vide Exh. 13. In her deposition, she has stated that her deceased daughter Komal was married to the present Appellant one year prior to the date of incident. She was brought to her parental house for performing *aanu* prior to one week of the incident. Three days prior to the incident, the Appellant had also come to the parental house of his deceased wife. The incident had taken place on 21.4.2013. Her daughter Komal had gone to the well of Prithvisinh Bhavansinh for washing clothes. Her son-in-law i.e. the present Appellant had also accompanied the deceased. Since her daughter Komal did not return for sometime, she had gone to the well of Prithvisinh Bhavansinh and she saw the present Appellant running from the place. Though she asked him to wait, he did not. She went to the well and saw that her daughter Komal was lying near the well. She also saw wooden log pierced through the neck. She was bleeding profusely. She subsequently gave the FIR in question with the aforesaid facts.

10. The FIR given by this witness is on record vide Exh.14. From the perusal of deposition of this witness as well as the FIR, the clear facts emerging from the same are such that the deceased had come to her parental house a week prior to the date of incident, and behind her, the present Appellant had also come to the parental house of the deceased. On the fateful day, the deceased had gone to the well of Prithvisinh Bhavansinh for washing the clothes, where also the Appellant had accompanied her. Though these facts have been clearly put to the present Appellant while recording his statement under Section 313 of the Cr. P.C., the Appellant has not given any plausible explanation for these facts. He has simply denied these facts. This conduct of the Appellant suggests premeditation on the part of the present Appellant to commit the present offence otherwise there was no reason for him to go to the parental house of the deceased and then to accompany her when she was going to wash the clothes. It further emerges on record that when the mother of the deceased Taraben went to the place where her deceased daughter had gone to wash the clothes, she saw the

present Appellant running from the place. She asked him to wait but he ran away. Thus, the conduct on part of the Appellant is also not explained by him in his statement under Section 313 of the Cr. P.C. Had he not committed the present offence, he would have certainly waited at the place alongside his deceased wife. Instead of that, the Appellant, upon seeing the mother of the deceased coming to the place fled from the place. This conduct is also indicative of guilt on the part of the Appellant. The fact that witness Taraben saw the present Appellant running from the place and the absence of any other person except the Appellant on the place leaves no doubt as regards the fact that it was the present Appellant who had done the deceased to death.

11. From the evidence adduced on record by prosecution, it is abundantly clear that when the deceased went to wash the clothes, she was accompanied by the present Appellant. From the facts emerging from the record, the deceased was with the present Appellant when she breathed her last. Under these circumstances, it was incumbent upon the present Appellant to explain as regards the circumstances under which the deceased died. No such explanation is coming forth from the present Appellant on this aspect.

12. It is sought to be canvassed on behalf of the Appellant that the motive for the present Appellant to commit the offence in question has not been duly proved by prosecution. It is also an argument on behalf of the Appellant that the present case pertains to circumstantial evidence. Having gone to the deposition of the mother of the deceased Taraben in detail, her evidence appears to be the direct evidence against the present Appellant. Her deposition is sufficient to prove the guilt of the present Appellant in the present offence. Therefore, the absence of motive would not make the case of prosecution weak. The motive would only provide corroboration to the evidence of Taraben. Considering the nature of deposition of the mother of the deceased Taraben, the same does not require any corroboration whatsoever. Therefore, the argument advanced on behalf of the Appellant as regards the motive having not been proved, does not stand its ground.

13. The PM Note of the deceased is on record vide Exh.11. In Column No. 17 of the PM Note, following injuries sustained by the deceased are mentioned:

Sr. No.	Body Part	Injury
	NECK	After removing piece of wood c is 23 cm long & 3 cm in diameter & blood stained.
i.		Laceration size of 3.5 × 2.5 cm on Right

		side of neck 6 cm about level of medial end of Right clavicle clotted blood staked around wound.
ii.		laceration size of 3 cm × 2.5 cm on left side of neck 5 cm above level of medial end of left clavicle.
iii.		Bruise size of 7.5 cm × 1.5 cm of dark red colour transverse Position 5 cm above level of supra sterna notch.
iv.		Bruise size of 2 × 0.8 cm size 2 cm above level of supra sterna notch, dark red in colour, oblique position near midline of neck.
i.	Face:	Bruise size of 2 × 1.2 cm dark brown in colour 2 cm away from lateral angle of right eye.
ii.		Bruise size of 4 × 2 cm on left forehead region dark red in colour 1.5 cm above left eyebrow.
	Thorax:	
i.		Bruise size of 4.5 × 1 cm dark red in colour 3 cm below supra sterna notch, transverse in position near midline.
	Right Side of Thorax:	
i.		Bruise size of 9 cm ×

		1 cm dark red in colour 7 cm from below right nipple transverse in position.
ii.		Bruise size of 8 cm × 1 cm dark red in colour in mid axillary line on Right side 13 cm below the int. angle of right scapula, oblique in position.
iii.		Bruise size of 4 × 1.5 cm appear immediately below & parallel to No. 2 which is dark red in colour.
iv.		Bruise size of 8 cm × 1 cm 15 below level of inferior angle of Right scapula near post axillary line in oblique position.
v.		Bruise 7 × 0.5 cm dark red in colour 22 cm below level of inferior angle of Right scapula near right post axillary line.
	Left Side of Thorax:	
i.		Bruise size of 2.5 cm × 1 cm distance of 1.5 cm from left nipple at left mid clavicular line oblique in position & dark red in colour
ii.		Bruise size of 3 cm × 1.2 cm at left ant. axillary line 4 cm away from left nipple

		oblique in position.
iii.		Bruise size of 10.5 cm × 0.5 cm in post axillary line 8.5 cm below level of inf. angle of left scapula, transverse in position & dark red in colour.
iv.		Bruise size of 1.5 cm × 1 cm dark red in colour near left posterior axillary line 11 cm below level of inferior angle of left scapula.

14. Therefore, considering the number as well as the nature of injuries, it can be said that the deceased was brutally murdered by the present Appellant only.

15. The FSL report Exh.58 also records that the blood of the deceased having blood Group 'AB' has been found on the clothes of the appellant. The blood group of the appellant is found to be 'B'.

16. The blood group of the deceased could not be determined by FSL, as the blood sample of the deceased got disintegrated. However, from the clothes of the deceased, the presence of blood of AB Group is found so also from the soil collected from the place of incident, blood of AB group is found. Therefore, there is a reason to believe that the blood group of deceased was AB.

17. Thus, the overall appreciation of the evidence establishes the complicity of the appellant in the offence. The Trial Court has not committed any error in convicting the appellant for the offence under Section 302 of the IPC.

18. Having regards to the aforesaid discussion, the present Appeal being devoid of any merit fails and hence the same is hereby dismissed. R&P be sent back to the concerned Trial Court.