

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 9 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VANKAR BHARATBHAI BALVANTBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 9 of 1994
MR KR RAVAL for Petitioners No. 1-2
MR KG SHETH, Ld. APP for Respondent No. 1
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CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2002

ORAL JUDGEMENT

1. An incident occurred near Mira Gate in Patan City at about 1 p.m. on 7-1-1993 during the course of which the complainant Hareshkumar Parsotamdas Vankar received a simple injury on his head and Ranchhodbhai Sadabhai suffered a grievous injury and one Mukeshbhai Ranchhodbhai sustained a fatal injury. In respect of the said incident, the appellants, who are brothers, were charged with the offences punishable under Section 323 read with Section 34, Section 325 read with Section 34 and Section 302 read with Section 34 of IPC. The learned Additional Sessions Judge, Mehsana, who tried the appellants, by his judgement and order dated 15-12-1993, found them guilty of the offences which were charged to them and sentenced each of them for life-imprisonment for the offence punishable under Section 302 read with Section 34, two years' simple imprisonment and a fine of Rs.250, in default, one month simple imprisonment for the offence punishable under Section 325 read with Section 34 and three months' simple imprisonment for the offence punishable under Section 323.

2. The prosecution case rested mainly on three witnesses, namely Hareshkumar Parsotamdas Vankar (PW-1), who suffered an injury in the incident and who was the complainant, Ranchhodbhai Sadabhai (PW-3), who also sustained an injury in the incident and Ramilaben (PW-5), the wife of the complainant. The evidence of Hareshkumar Parsotamdas Vankar shows that he with his family was living near Mira Gate, Patan City. At the time of the incident, his wife had seated their son for defecation. At that time, the appellants came there and protested, asking why they had seated their son near their house to answer the call of nature. They started giving abuses. His wife told them not to give abuses. On hearing the uproar, Hareshkumar came out of his house and told the appellants to stop giving abuses. However, they got excited. They went back and appellant No.1, Bharatbhai Balvantbhai Vankar, came back with an iron pipe in his hand and appellant No.2, Dineshbhai Balvantbhai Vankar brought a crow-bar. Appellant No.1 gave him a blow with the pipe on his head. Just then, his elder brother, Mukeshbhai Ranchhodbhai came there to rescue them. Appellant No.2 gave two blows on the head of Mukeshbhai Ranchhodbhai with the crow-bar. At that time, Hareshkumar's uncle, Ranchhodbhai Sadabhai also came there and appellant No.2 gave blows on his left wrist and the head with the crow-bar. On hearing the uproar, Maganbhai Kodabhai, Pravinbhai Parsotamdas (PW-4), and Manubhai Mohanbhai also came there. All the injured

persons were taken to the Government Hospital, Patan. Mukeshbhai Ranchhodbhai and Ranchhodbhai Sadabhai were taken to Civil Hospital at Ahmedabad for further treatment. The police recorded the complaint of Hareshkumar in the Government Hospital at Patan.

3. The inquest panchnama shows that Mukeshbhai Ranchhodbhai had died at 23.20 hrs. on 8-1-1993 in the Civil Hospital.

4. The evidence of Ramilaben (PW-5), the wife of the complainant and Ranchhodbhai Sadabhai (PW-3) is more or less to the same effect. The evidence of the three witnesses is consistent and unimpeachable. The learned Advocate for the appellants could not advance any reason to discard or disbelieve their versions of the incident. Their evidence is also corroborated by the medical evidence on record. The evidence of Dr. Bhavnaben Janakbhai Soni (PW-2), who was the Medical Officer at Civil Hospital, Patan, shows that Ranchhodbhai Sadabhai had an injury on Fronto Parietal area (3 c.m. x 0.5 c.m. x scalp deep) and there was also a fracture in the left wrist. Her evidence also shows that Hareshkumar Parsotamdas Vankar had an injury on the Right Frontal area (6 c.m. x 0.5 c.m. x scalp deep) and there was DTS on the right shoulder anterior aspect as well as on the left knee. The evidence of Dr. V.R. Patil, who was the Tutor in Forensic Medicine, B.J. Medical College & New Civil Hospital, Ahmedabad, and who carried out the post-mortem examination of the deceased, shows that there were three injuries on the head and there was a crack fracture of occipital bone and, in his opinion, the cause of the death was due to shock as a result of head injury and that the two injuries on the occipital region were sufficient to cause death in the ordinary course of nature. Thus, the above evidence establishes that (1) appellant No.1, Bharatbhai Balvantbhai Vankar caused a simple injury to witness Hareshkumar; (2) appellant No.2, Dineshbhai Balvantbhai Vankar caused grievous hurt to Ranchhodbhai Sadabhai; and (3) appellant No.2 caused two injuries to Mukeshbhai Ranchhodbhai, which proved fatal.

5. The question is whether the learned Sessions Judge was right in convicting appellant No.1 of the offences punishable under Section 302 read with Section 34 and Section 325 read with Section 34. The evidence of Hareshkumar and other witnesses show that the quarrel started on a trivial incident. When the appellants protested against the complainant's son being seated near their house for answering the call of nature, Hareshkumar, the complainant, told them not to give

abuses. They got excited, went back to their house and came back armed with iron pipe and crow-bar. It is obvious that at that stage the common intention was only to give a beating to Hareshkumar Parsotamdas Vankar and appellant No.1 did cause simple injury to Hareshkumar. Ranchhodbhai Sadabhai and Mukeshbhai Ranchhodbhai came subsequently and it was appellant No.2, who caused grievous injury to Ranchhodbhai Sadabhai and fatal injuries to Mukeshbhai Ranchhodbhai. In the circumstances of the case, it cannot be said that the appellant No.1 shared with the appellant No.2 the intention of causing grievous hurt to Ranchhodbhai Sadabhai and causing the death of Mukeshbhai Ranchhodbhai. Hence his conviction of the offence under Sections 302 and 325 read with Section 34 is liable to be set aside and is, accordingly, set aside. Since it was the appellant No.2, who was responsible for causing grievous hurt to Ranchhodbhai Sadabhai and causing two injuries to Mukeshbhai Ranchhodbhai, which were sufficient to cause death in the ordinary course of nature, he is liable to be convicted for the offence punishable under Section 325 and Section 302 of IPC. Since both of the appellants had a common intention to give a beating to Hareshkumar Parsotamdas, their conviction of offence punishable under Section 323 read with Section 34 requires to be confirmed.

6. In the circumstances, the appeal is partly allowed. The appellant No.2, Dineshbhai Balvantbhai Vankar, is convicted of the offence punishable under Section 302 for causing the death of Mukeshbhai Ranchhodbhai and the offence punishable under Section 325 for causing grievous hurt to Ranchhodbhai Sadabhai and the sentence awarded to him by the Additional Sessions Judge for the said offences is hereby confirmed. The conviction of the appellant No.1, Bharatbhai Balvantbhai Vankar, of the offence punishable under Section 302 read with Section 34 for causing the death of Mukeshbhai Ranchhodbhai and the offence punishable under Section 325 read with Section 34 for causing grievous hurt to Ranchhodbhai Sadabhai is set aside. However, his conviction under Section 323 for causing injury to Hareshkumar Parsotamdas Vankar and the sentence of simple imprisonment for three months awarded for the same are confirmed.

28-3-2002 (M. C. Patel, J.)

(A. L. Dave, J.)

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