

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 10 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

GOVINDBHAI JIVABHAI TADAVI

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Appellant
MR HL JANI, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The present appeal arises out of a judgment and order rendered in Sessions Case No.15 of 1993 by Additional Sessions Judge, Bharuch on December 1st, 1993 convicting the appellant for the offence of murder of his wife Babiben and sentencing him to undergo imprisonment for life and to pay a fine of Rs.100/- and, in default, to undergo R.I. for 15 days.

2. The facts of the case in brief are that on 16th June, 1992, the appellant was at his house in village Shamsherpura of Taluka Nandod. His wife deceased Babiben was also with him and his daughter Amba was sitting outside the house. At about 8.00 p.m., Amba heard a cry for rescue from her mother. She, therefore, rushed into the house to find that her mother was lying on the floor in an injured condition and her father, the appellant, was escaping therefrom with a blood-stained axe in his hand. She, therefore, cried for help from her uncle Laxman, brother of the accused appellant who stays nearby. He immediately came to the spot and found Babiben lying on the floor in an injured condition. He, therefore, went to Parshottam Laloobhai and informed him that the appellant had murdered his wife. On the basis of that information, Parshottam Laloo lodged a complaint with Garudeshwar Police. On the basis of that information, an offence was registered and investigation made. The police, having found sufficient evidence against the appellant, chargesheeted him in the Court of JMFC who, after following the procedure, committed the case to the Court of Sessions, Bharuch. The learned Additional Sessions Judge, while camping at Rajpipla, framed charge against the accused at Exh.3. The accused pleaded not guilty to the charge and claimed to be tried.

2.1 After considering the evidence led by the prosecution, learned Additional Sessions Judge found that the charge against the accused was duly proved. He, therefore, convicted and sentenced him, as stated above.

3. Aggrieved by the said judgment and order, the present appeal is preferred.

4. Learned advocate Mr. K.R. Raval appearing for the appellant submitted that the conviction is founded on the sole testimony of Amba, daughter of the accused appellant. She has not seen the incident. She reached the place of incident after the occurrence. As per her deposition, she admits that it was dark and, therefore, she could not have seen the incident. This aspect is overlooked and conviction is recorded. Mr. Raval

submitted that the appeal, therefore, may be allowed.

5. The appeal is opposed to by learned Additional PP Mr. Jani.

6. We have gone through the record and proceedings and have given a thoughtful consideration to the contentions raised by the learned advocate for the appellant.

7. The whole case depends on the deposition of Ambaben, daughter of the appellant (Exh.14). In her deposition, she states that on the fateful day, she was sitting outside the house on a cot. Her parents were inside the house. When she heard a cry from the house raised by her mother at about 8.00 p.m., she rushed into the house. She found her father running away with an axe in his hand. He went towards her uncle's house. She found that her mother was lying in an injured condition on the floor. The injuries were on head and she was bleeding heavily. She tried to make her mother talk but she could not speak. She, therefore, called her uncle Laxman who immediately came. She informed Laxman that her father had killed her mother. Laxman, therefore, went to Parshottambhai.

7.1 The witness is cross-examined but in substance, nothing turns on it. She admits that she had gone to work on that day and after returning, she had a bath but she denied that she was exhausted and, therefore, she was lying on the cot. She admits that when she went into the house, she found her mother lying. She admits that before the police, she had not stated that her mother raised a cry "I am being killed". She denies the suggestion that it was dark in the house.

8. Her version, therefore, remained as it is and she clearly implicates her father. There is nothing to doubt the veracity of this witness who deposes against her own father namely, the appellant. Besides this, her version of having immediately called her uncle Laxman and having informed him about the appellant having killed her mother gets corroborated through the deposition of Laxmanbhai Jivabhai (Exh.15). He says that he was called and informed by Ambaben.

8.1 The deposition of Laxmanbhai Jivabhai also gets corroborated by the deposition of Parshottam Laloo, the complainant, who says that Laxman came to him and informed him that his brother namely, the appellant had murdered his wife. Thus, the evidence is solid and

full-proof to implicate the appellant with the death of his wife.

9. The medical evidence indicates that there were three injuries found on the head of the deceased. Injury no.1 was possible with the sharp edge of an axe whereas the other two injuries were possible with the blunt portion of an axe. This could reflect that the injuries were caused by inflicting multiple blows. No justification or cause is indicated for causing such injuries. There is evidence that the injuries were sufficient in ordinary course of nature to cause death.

10. In our opinion, the evidence is sufficient to convict the appellant for the offence of murder as has been done by the learned Trial Judge. We do not find any error having been committed by the Trial Court and find no reason to interfere with the order. The appeal merits dismissal and is, therefore, dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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