

2014 (0) AIJEL-HC 231486

GUJARAT HIGH COURT

Hon'ble Judges:K.S.Jhaveri and A.G.Uraizee JJ.

Imtiyas Majidbhai Chhavad (Aada) Meman Versus State Of Gujarat

CRIMINAL APPEAL No. 1031 of 2009 ; \*J.Date :- JULY 3, 2014

- INDIAN PENAL CODE, 1860 Section - 302 , 114 , 324 , 325 , 188

**Indian Penal Code, 1860 - S. 302, 114, 324, 325 and 188 - appeal against conviction - assault - murder - testimony of independent witnesses - appreciation of evidence - appellant no. 1 alleged to have gave knife blow, appellant no. 2 gave blow by thick wooden log and appellant no .3 hit up soda bottle on the head of the victim - deceased died due to injuries suffered by him in abdomen - eye witnesses to the incident - consistencies in the versions of witnesses and supported the case of prosecution - deceased sustained seven injuries - intention on the part of the accused established as they were dealing in liquor and said fact spread by the victim - individual role of the accused discussed - appellants have helped each other in commission of crime - no interference - appeal dismissed.**

**Imp.Para:** [ 11 ] [ 12 ] [ 13 ]

**Equivalent Citation(s):**

2014 JX(Guj) 506 : 2014 AIJEL\_HC 231486

**JUDGMENT :-**

**A.G.URAIZEE, J.**

**1** The appellants have challenged the judgment and order dated 16.05.2009, passed by the Additional Sessions Judge and Presiding Officer, 3rd Fast Track Court, Junagadh, in Sessions Case No.34 of 2008, whereby they were convicted for the offences punishable under Sections 302 read with Section 114, 324, 325 and 188 of the Indian Penal Code (for short "the IPC").

For conviction under Section 302 read with 114 of the IPC, the appellants have been sentenced to undergo life imprisonment and fine of Rs.2,000/- each. For conviction under Section 324 of the IPC, the appellant Nos.2 and 3 have been sentenced to undergo rigorous imprisonment for six months. For conviction under Section 325 of

the IPC, the appellant No.1 has been sentenced to undergo rigorous imprisonment for one year and fine of Rs.500/-, in default of payment of fine, he shall undergo further simple imprisonment for three months. For conviction under Section 188 of the IPC, the appellants have been sentenced to undergo rigorous imprisonment for three months.

**2** The case of the prosecution as disclosed during the trial is that on 21.12.2007 the appellants gave filthy abuses to one Imran, who is the brother of the complainant-Samir @ Javid by telling that "why you are spreading the word that we are selling liquor" and so saying they started running after imran. Yusufbhai Nasruddin Shaikh, who is the father of Imran came to pacify the appellants at about 1:30 pm. near Kalyan Sweet shop and asked the appellants not to give abuses, whereupon the appellants got angry and started give filthy abuses to the deceased-Yusufbhai Nasruddinbhai. The complainant and other persons asked the appellants not to give filthy abuses, whereupon the deceased-Yusufbhai Nuruddinbhai was given knife blows. Samir Javid Yusufbhai and his brother intervened to save the deceased but they were also assaulted by appellants. The appellant No.1 gave knife blows in the chest of Samirbhai and appellant No.3 hit up Soda bottle on the head of Samirbhai and appellant No.2 gave blow by thick wooden log. The deceased- Yusufbhai died due to the injuries suffered by him in the abdomen. The complaint in respect of this incident was lodged by Samirbhai @ Javed. In pursuance of this complaint, FIR vide Junagadh City "A" Division Police Station I-CR No. 246 of 2007 came to be registered.

**3** The investigation was taken up and after usual investigation, charge-sheet came to be filed against the appellants. The offences committed by the appellants were exclusively triable by the Court of Sessions. Therefore, the learned Magistrate committed the case to the Sessions Court at Junagadh under Section 209 of the Code, where it was registered as Sessions case No.34 of 2008. Charge vide Exhibit-1 came to be framed against the appellants. They pleaded not guilty and claimed to be tried.

**4** In order to bring home the charge against the appellants, the prosecution examined the following witnesses:-

Sl. No. Name of the Witness Ex. No. 1 Dr. Bhartiben Dharamvirsinh Yadav 11 2 Madhukarbhai Chatrabhujbhai Parakh 17 3 Dr. Kamuben Dayalal Sagathiya 23 4 Salimkhan Majidkhan Lasari 27 5 Kirit Nathabhai Rupareliya 35 6 Lalitkumar Parmanand 36 7 Jayesh Devabhai Adedara 38 8 Javid Abdeman Shaikh 40 9 Saiyed Mahebumiya Habibmian 42 10 Bipinbhai Ramnikbhai Thakor 43 11 Raju Mansurbhai 47 12 Parbat Savdas 48 13 Bheemabhai Gandabhai Daki 50 14 Samir @ Javid Yusufbhai Nuruddin 55 Shaikh 15 Hamidbhai Hasanbhai Shaikh 58 16 Imtiyaz Yusufbhai Nuruddin Shaikh 59 17 Imran Yusufbhai Shaikh 60 18 Rafiq @ Kaliyo Hasambhai Shaikh 61 19 Yunus Alarakha Bisti 62 20 Aasif Hanikbhai Bisti 63 21 Kasam Hasan Shaikh 64 22 Devayatbhai Kanabhai 65 23 Imrankhan Kadarkhan Lasari 66 24 Lalitkumar Brujlal Bhatt 68 25 Kiritkumar Karshanbhai Bhutaiya 69 26 Bhalchand Narmadashankar Joshi 95

**5** The prosecution also produced and relied upon the following documentary evidence during the course of the trial.

Sl.No. Particulars Exh. No. 1 Inquest Panchnama 29 2 Panchnama of the place of offence 28 3 Arrest Panchnama of the accused 37 4 Map of the place of offence 52 5 Original complainant 56 6 FSL report 81-84 7 Post mortem Note 14

**6** After conclusion of the trial, further statement under section 313 of the Code of the appellants came to be recorded. The defence in the further statement is of total denial. The learned trial Judge heard the arguments of learned APP and learned advocate for the appellants and after appreciating the evidence, recorded the judgment and order of conviction against the appellants as aforesaid. Therefore, the present appeal.

**7** We have been taken through the oral and documentary evidence by learned advocate Mr. Ansari for the appellants and learned APP Mr. Jani for the respondent-State. We have independently and dispassionately applied our mind to this evidence.

**8** We have heard learned advocate Mr. Ansari, learned advocate for the appellants and learned APP Mr. H.L. Jani for the respondent-State.

**9** Mr. Ansari, learned advocate for the appellants has vehemently contended that the injuries inflicted by the appellants were not sufficient to cause death of the deceased in routine course, as could be seen from the evidence of the doctor. It is further contention of learned advocate for the appellants that appellant No.2 has not played any role in the incident and he is wrongly roped in and he has urged that appellants be given the benefit of doubt.

**10** On the other hand learned APP Mr. Jani supported the impugned judgment and order of learned trial Judge and submitted that all the witnesses have supported the prosecution case in material particulars. The medical evidence is also consistent with the oral evidence and therefore, there is no germane reason to interfere with the impugned judgment and order.

**11** It appears that the genesis for the incident is the suspicion harboured by the appellants who were dealing with liquor and its talk was spread by the complainant side. The important witnesses namely P.W.17-Imran Yusuf, P.W.14-Samir @ Javid Yusufbhai Nurudin Shaikh, who is the complainant and also an injured witness, P.W.21-Kasam Hasan Shaikh, who is the independent witness and P.W.23-Imrankhan Kadarkhan. Besides, other eye-witnesses are consistent in their evidence and they have given the evidence supporting each other. All other witnesses were subjected to an excess cross-examination but nothing is elicited to dislodge or discredit their version. Moreover, if the Medical evidence is perused, it is very clear that the deceased had received as many as seven injuries and all these injuries were on vital part of the body. As per the evidence of the P.W.1-Doctor Bharti the cause of death as reflected in Exhibit-14(post mortem Note) is Hemorrhagic shock due to injury to multiple vital organs of body (lung, larynx intestine etc.)

**12** Thus the oral evidence as adduced during the trial makes it very clear that intention of all the accused persons was very clear that since the talk of their dealing in liquor was being spread by Imran they assaulted him and injured witnesses and in doing so they helped each other and thereby committed the offence.

**13** The contention of learned advocate Mr. Ansari that individual role of the accused persons needs to be examined and since the appellant-Irfan has not played any role in the incident, he should be acquitted. On the contrary, trial Judge has discussed all the evidence of the witnesses included the role played by the appellant-Irfan. Not only that, from the evidence we are of the opinion that all the appellants have helped each other in commission of crime therefore, Section 114 of the IPC is attracted in the present case. We are of the opinion that the learned Trial Judge has not committed any error whatsoever in convicting the appellants, as aforesaid, by the impugned judgment. We are in complete agreement with the findings recorded by the learned Trial Judge. The appeal lacks of merits.

**14** For the foregoing reasons, the present appeal is dismissed. The judgment and order of conviction and sentence dated 16.05.2009, passed by the Additional Sessions Judge and Presiding Officer, 3rd Fast Track Court, Junagadh, in Sessions Case No.34 of 2008 is hereby confirmed. However, life imprisonment shall not mean imprisonment till last breath and that the case of the appellants for remission may be considered by the appropriate authority at the appropriate time. R & P, be sent back to the trial court concerned forthwith.