

PETITIONER:
BHAGUBHAI MANILAL AND OTHERS

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 31/07/1996

BENCH:
FAIZAN UDDIN (J)
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FAIZAN UDDIN (J)
MAJMUDAR S.B. (J)

CITATION:
JT 1996 (7) 74 1996 SCALE (5)544

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Faizan Uddin, j.

1. These criminal Appeals by the three appellants, namely, Bhagubhai Manilal, Chinubhai Manilal and Rajnikant Chhaganbhai have been directed against the common judgment dated 30.4.1984 passed by the High Court of Gujarat dismissing the Criminal Appeal Nos. 906/81, 907/81 and 1072/81 preferred by the appellants against their convictions under Section 302/34 of the Penal Code for which they were sentenced to undergo life imprisonment by the additional City Sessions Judge, 7th Court at Ahmedabad in Session Case No. 116/81 decided on 31.8.1981.

2. The prosecution case was that the buffalo belonging to the acquitted accused Maheshbhai, Shivabhai was missing and he alongwith several other Patels of the village visited the Harijans Colony twice in search of the buffalo but the buffalo could not be traced out. According to the prosecution in the early house of 28.12.1980 about 10 Patels of the village went to the filed of Jaswant Singh and brought the deceased Shakrabhai Prembhai Harijan to the Panchayat Office on the allegation that he had committed theft of a wrist-watch and a blanket, where it is said, he admitted to have committed the theft of the wrist watch which he handed over to them. The further case of the prosecution was that out of those 10 Patels, 5 persons namely, the three appellants herein and the acquitted accused No. 8 Manubhai and Accused No. 9 Anilbhai entered the room where Shakrabhai was taken, poured Kerosene on his person and set him afire. Thereafter Shakrabhai was taken to the Osri of Panchayat Office where the fire was extinguished. Meanwhile Ramanbhai, PW 5 the brother of Shakrabhai arrived there and on his asking Shakrabhai told him that one of the 5 accused had poured kerosene on him and his clothes were set on fire by igniting two match - stick and then the appellant Bhagubhai dragged him out. Ranchhodbhai, PW. 12 gave message to the police and,

therefore, the police also arrived at the place of occurrence. The requisition was sent to the Executive Magistrate and the injured Shakrabhai was removed to the hospital by the police in an Ambulance. The Executive Magistrate arrived at the hospital and recorded the dying declaration Ext. 37 of the deceased Shakrabhai between 12.15 to 12.45 P.M. The statement Ext. 57 of Ramanbhai, PW 5 was recorded by the Police Inspector. PW 17 which was sent to the Police-Station for registration of offence.

3. Besides the three appellants named above, six other co-accused were also arrested and tried alongwith the appellants. At the trial the acquitted accused as well as the appellants denied their guilt and pleaded false implication. The appellant Bhagubhai in his written statement took the plea that the deceased was made to sit in the Panchayat Office at about 6.30 A.M. where on being questioned he admitted to have committed the theft and produced a wrist-watch which was seized under a Panchnama and when he was about to send the report thereof he heard the cry that something was burning in Panchayat Office and when one Somabhai opened the door of the record room, Shakrabhai came out running from said room in Osri in burnt condition and fell down in Osri. He brought a quilt and put it over the body of Shakrabhai in order to extinguish the fire. Thereafter, he being police Patel prepared a report stating that Shakrabhai had committed theft and had burnt himself and sent the same Narol. He further made the statement that he went to Radio-Station at 8.15 A.M. and telephoned for the Ambulance as a result of which the Ambulance came in which Shakrabhai was taken to the hospital.

4. The learned Session Judge on evaluation of the prosecution evidence and relying on the dying declaration Ext. 37 recorded by the Executive Magistrate convicted the three appellants under Section 902 read with Section 84 I.P.C. and sentenced them to undergo life imprisonment and acquitted rest of the six co-accused. As aside earlier the three appellants filed three separate appeals in the High Court against their conviction and sentence. The respondent State also filed an appeal against the acquittal of accused Nos. 8 and 9, namely, Manubhai and Anilbhai Popatlal. The High Court dismissed the said appeals upholding the conviction and sentence of the appellants and also dismissed the appeal filed by the State.

5. Shri Jethmalani, learned senior counsel appearing for the appellants strenuously urged that the two Courts below have committed serious error in accepting the dying declaration Ext. 37 in convicting the appellants and that in any case the appellant No. 1 Bhagubhai must be placed in the same position and should be given the same benefit as has been given to the acquitted accused Nos. 8 and 9, namely, Manubhai and Anilbhai Popatlal particularly because there is no allegation to the effect that the appellant No. 1 Bhagubhai had ignited the match-stick nor any overt act is attributed to him but the only allegation against him is that he poured kerosene oil which was an act attributed to the accused Nos. 8 and 9 who have been acquitted on benefit of doubt. He also submitted that the appellant No. 1 being a police Patel, had given information of the incident to the police and had also called the Ambulance and covered the body of Shakrabhai to extinguish fire which are facts consistent with his innocence and, therefore, he deserves acquittal.

6. We have given serious consideration to the submission made above and have perused the dying declaration Ext. 37,

other material on record and the judgments passed by the Trial Court and the High Court. So far as these three appellants are concerned we do not find any infirmity in the dying declaration Ext. 37 made by the deceased to the Executive Magistrate. The deceased had made a categorical statement that the three appellants and accused Nos. 8 and 9 had brought him to Gram Panchayat Office and poured Kerosene on his person. He further stated that appellant Nos. 2 and 3, namely, Rajnikant No. 1 threw him out. According to the prosecution before the dying declaration Ext. 37 was recorded by the Executive Magistrate, the deceased is said to have made oral dying declaration to his brother Ramanbhai. PW 5 but Ramanbhai did not depose that the deceased had given the names of accused Nos. 8 and 9 to be amongst the accused who had poured kerosene on his person. On the basis of this discrepancy the Trial Court and the High Court gave benefit of doubt to accused Nos. 8 and 9 and, therefore, maintained their acquittal. But the case of appellant No. 1 could not be and placed on the same footing as the case of the acquitted accused Nos. 8 and 9 for the simple reason that even according to the oral dying declaration made to Ramanbhai, the appellant No. 1 had poured kerosene oil and the appellants No 2 and 3 had ignited the match-stick to set fire to the clothes of the deceased and the same version finds place in the dying declaration recorded by the excutive Magistrate. There is, therefore, no question of any doubt with regard to the part played by the appellant No. 1. This apart, the deceased clearly stated in dying declaration Ext. 37 that it was appellant No. 1 Bhagubhai who threw him out.

7. As regards the submission made by the learned counsel for the appellants that the appellant No.1 had sent information of the occurrence to the police and had called the Ambulance which indicated his innocence, we find that this argument is wholly without any substance and contrary to the evidence on record. The evidence on record clearly goes to show that the information of the occurrence to the police was given by Ranohhodbhai, PW 12 and after the police arrived at the place of occurrence, the Police inspector Ram Asrey, PW 17 immediately sent message for the Ambulance van in pursuance of which the Ambulance arrived and the victim was sent to the hospital where his dying declaraiion was record. The fact that the appellant No. 1 brought the guilt in order to cover the body of the victim to extinguish fire is based on the statement of hostile witness, PW 10 whose evidence on proper scrutiny and evaluation has been rightly rejected by the two Courts. Thus the defence set up by appellant No. 1 and the written statement made by him in his defence is found to be wholly false.

8. Lastly, learned counsel for the appellants alternatively urged that having regard to the facts and circumstances of the case the appellants could not be attributed with any intention to commit the murder of Shakrabhai and, therefore, at best the offence would be one under Section 304 part I or II of the Penal Code. After due consideration of the evidence on record, particularly the medical evidence we are unable to persuade ourselves to concede to the submissions. We have already discussed the evidence as to how the deceased was forcibly taken away from the field and confined in the record room of Panchayat Office where kerosene was poured on his body and put to flames. After he was taken to the hospital he was first examined by Dr. D.N. Shah who was incharge of the Burns Wards of L.G. Hospital, Ahmedabad. Dr. Shah on examination of the victim found that he had deep burns on various parts

of his body including head, neck, chest-anterior and posterior, abdomen, genitals, right and left upper and lower limbs and his total burns were to the extent of 76 percent. Dr also found smell of kerosene. Similar is the evidence of Dr. S.N. Joshi who was serving as House Surgeon in the Burns Ward of L.G. Hospital Ahmedabad. He also found kerosene smell. After the death of Shakrabhai in the hospital Dr. Vaghela, Madical Officer performed and autopsy over the dead body and found the following external injuries:

1. A bruise on the front of the left thigh about 2 x 4 x 1 cm.
2. A bruise on the abdomen of right side on the upper part transversely about 2 x 223 cm.
3. Burns superficial and deep in front of both thighs, front of abdomen and on the whole both upper limbs, on face, on hand, on back and sole.

On internal examination Dr. found haemotoma on right Parietal region, haemotoma on occipital region, restrosternal haemotoma in the bone in the centre connecting ribs of both sides of the chest, haeomotoma on right side upper abdomen and blood of about 200 c.c. was found in peritoneal cavity and abrasion on the right lobe of the liver and there was bleeding from the liver. According to the opinion of the doctor, various injuries found on the perosn of the deceased were sufficient in the ordinary course of nature to cause his death. The cause of death was due to shock on account of burns and haemorrhage from various injuries. With this evidence it is difficult to conceive of a case under Section 304 Part I or II. The offence committed is nothing short of murder. The appellant No. 1 being a police Patel of the village acted in a most high handed manner and took the law into his hands which could not be viewed with any leniency. The Trial Court as well as the High Court have minutely scrutinised the evidence and have recorded the consistent finding with regard to the guilt of the three appellants and we find ourselves in agreement with the view taken by the two Court below. In the result the three appeals fail and are hereby dismissed. The appellants are on bail. Their bail bonds are cancelled and they are directed to surrender themselves to serve out the sentence awarded to them.