
(2013) 12 GUJ CK 0044
In the Gujarat High Court
Case No : Criminal Appeal No. 40 of 2009

Ananda Raghu Bharwad and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2014) 2 GLR 931

Hon'ble Judges : Z.K. Saiyed, J; Akil Kureshi, J

Bench : Division Bench

Advocate : Pravin Gondaliya, s No. 1 - 6, for the Appellant; Vinod M. Gamara, Advocate and Mr. H.L. Jani, APP for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Appellants - original accused have challenged the judgment dated 20.12.2008 rendered by learned Additional Sessions Judge, Surendranagar, Camp at Limbdi, in Sessions Case No. 114 of 1997. They were charged with commission of offence punishable under Sections 302, 323, 324, 325, 147, 148 and 149 of Indian Penal Code. By impugned judgment accused Nos. 1 to 6 were convicted u/s 302 read with Section 149 of Indian Penal Code and sentenced for life imprisonment with fine of Rs. 500/- each and in default of payment of fine, they were sentenced to simple imprisonment of further three months. The appellants were also convicted u/s 326 read with Section 149 of Indian Penal Code and sentenced to ten Page 2 of years" rigorous imprisonment with fine of Rs. 500/- each and in default of payment of fine, they were sentenced to simple imprisonment of further two months. The sentences imposed upon the appellants - accused were directed to be undergone simultaneously. Briefly stated the prosecution version was that, on 4.7.2007 the complainant, Jala Uka with deceased Shri Kheta Raha had gone to the vid (land for grazing cattle) for supervision which was in the possession of the complainant and the deceased. The said vid was previously given to the accused which was with the deceased and complainant side. The accused came with lathis and hit

the complainant and the deceased causing grievous injuries to them. Shri Nathabhai took the injured to the Government Hospital in chhakdo rikshaw. Shri Kheta Raha was referred to the Gandhi Hospital, where he died of the injuries on the way to the Surendranagar. The cause of the offence is the vid which was possessed and used by the complainant and deceased side from the Thakor of Lakhatar which was previously possessed by the accused side.

2. As per the case of the prosecution, Dr. Panara of Thangadh Government Hospital had informed Thangadh Police Station that Bharvad of Navagam, namely, Shri Kheta Raha aged 50 years and Jala Uka aged 55 years are brought to the hospital for treatment in the case of fighting and if they were required to be transferred for further treatment, they would be sent to Surendranagar. On receiving the vardhi, Shri Mahendrasinh Kalubhai Rana, Head Constable had gone to Thangadh Government Hospital for inquiry whereby he found Shri Jalabhai Ukabhai was under treatment. On asking about the incident he had taken down complaint and sent it to PSO for registering the offence as FIR.

3. According to the prosecution case, Shri Kadarbhai Rasulbhai Mandali, P.S.O., Vadhvan had received a telephonic message from Dr. Parmar, Medical Officer, that Shri Kheta Raha died on the way to Gandhi Hospital, Surendranagar. The same was registered in diary at Entry No. 18 at 17:55 hours at Vadhvan Police Station. The duty police constable Shri L.D. Zala was sent for following further proceedings to the Government Hospital and had requested to the Executive Magistrate for inquest panchnama and informed the Thangadh Police Station on telephone.

4. A charge was framed against the accused at Ex.19 which they pleaded not guilty.

5. The prosecution examined the following witnesses to bring home the guilt of the accused:-

6. The prosecution in support of its case produced the following documents:-

7. The prosecution has examined witnesses, complainant, witnesses of panchnama of inquest, inquest, panchnama of place of offence, panchnama of discovery, panchnama of mudamal, medical expert opinion, as well as the Investigating Officer. Prosecution has also produced documentary evidence such as panchnama of place of offence, inquest panchnama, discovery panchnama, medical certificates of the injured witnesses and FSL report.

8. After the prosecution evidence was over, further statements of the accused were recorded u/s 313 of Criminal Procedure Code. The accused had also submitted written explanation.

9. Shri Jalabhai Ukabhai Bharvad P.W. No. 1, who is the complainant, in his oral evidence Ex.95 has deposed that he resides at Navagam with his family and doing cattle farming. He is the only son of his father. His cousin Kheta Raha was also residing in his village next to his house and was also dealing with cattle

farming. They had kept a vid (land for grazing cattle) on the east of Navagam. The incident took place about 8 to 9 years ago at about 1:30 p.m. in the afternoon. He and his cousin Kheta Raha had gone to pay formal visit. While he and his cousin Kheta Raha were sitting under the tree in his vid, at that time, accused persons, namely, Chhela Ragu, Anand Ragu, Raiya Rana, Bhima Mera, Chhela Mera, Mepa Maiya, had come there. They came together and asked them whether they had seen any motorcyclist? So they replied in negative. They also stated that the motorcyclist had run away causing accident. The complainant had stated that they had not seen them. Thereafter, they came near them and started inflicting blows of lathis at random. This witness has stated that all the seven accused had lathis with iron cap on the top as one side. They fell down as they were beaten. On specifically asking who had beaten to him and his brother, where and with what weapon, he stated that he was beaten by Chhela Ragu on his head with stick. He was beaten on his left shoulder on his arm between elbow and wrist and on fingers with the sticks by Anand Ragu. He was beaten on his pelvis of left leg with stick by Raiya Rana. He was beaten on his right leg bone with stick by Hima Mera. All the seven accused had beaten Shri Kheta Raha with sticks (lathis). They had fallen down. At that time Shri Nathabhai Rabari of Tarnetar was passing from there who had come there on looking them. They were asked about what happened so they said that the Bharvad of his village had beaten them. Shri Nathabhai had carried them to the Government Hospital at Than in the Chhakdo. Both were treated there. Firstly Kheta was treated and then he was treated. He had given all the seven names to the doctor on asking about the incident. Kheta Raha was taken to Gandhi Hospital for treatment. When he was in the hospital at Than, the police had come and taken his complaint. The complainant had stated that he had given his complaint before the police.

10. Dr. Lalit Maganlal Priyadarshi P.W. No. 3 in his oral evidence Ex.110 has deposed that on 4.7.1997 he was serving as a Medical officer in Gandhi Hospital, Surendranagar. On 4.7.1997 the dead body of Kheta Raha was brought to him with police yadi at Ex.111 by Police Constable Shri Gunvantbhai Ramajibhai with inquest panchnama, postmortem form for carrying out the postmortem to know the cause of death and also for medical opinion. The dead body was brought at 10:30 p.m. with Vadhvan Police Station diary Entry No. 18 of 1997. The inquest panchnama is produced at Ex.112 and postmortem form at Ex.113. He had started the postmortem on 5.7.1997 at 6:15 a.m and completed at 7:30 a.m.

11.1 This witness had found following external injuries on the dead body of Kheta Raha:-

- (1) A CLW 1.5 cm x 0.5 cm. on left eyebrow, bone deep, dried blood was present.
- (2) An abrasion of 2.5 cm x 20 cm. on left temporal region of scalp.
- (3) A diffuse haematoma of 4 cm in length on right parietal region of scalp.
- (4) An abrasion of 1 cm x 0.5 cm on upper part of left ear.

- (5) A bruise, 4 cm x 2.5 cm on anterior aspect of left shoulder joint purple in colour.
- (6) A CLW 2 cm x 0.5 cm on back of lower third of right upper arm, muscle deep dried blood was present.
- (7) A bruise 6 cm x 4 cm on lateral aspect of upper third of right upper arm purple in colour.
- (8) A bruise 10 cm x 8 cm on back of upper third of left leg purple in colour.
- (9) A bruise 6 cm x 4 cm on back of left knee joint purple in colour.
- (10) A bruise 4 cm x 3 cm on anterior aspect of upper third of left leg, purple in colour.
- (11) A bruise 4 cm x 3 cm on back of lower third of left chest, purple in colour.
- (12) A bruise 9 cm x 7 cm on back of middle third of right thigh purple in colour.
- (13) A bruise 4 cm x 2 cm on upper part of right gluteal region purple in colour.
- (14) A bruise, 4 cm x 2 cm on lower part of right gluteal region purple in colour.
- (15) A bruise, 2 cm x 1.5 cm on right iliac crest purple in colour.

Corresponding to such external injuries he had recorded the following internal injuries:-

- (1) There were corresponding injuries to external injuries Nos. 1, 2 and 3 of column No. 17. There was fracture of right parietal bone of linear type, 6 cm in length.
- (2) The cranial cavity contains full of dark fluid blood (extra-dural haemorrhage) middle meningeal vessels ruptured left of brain 1.4 kg.
- (3) There was no injury on the chest. No internal injury on abdomen. There was presence of undigested food in large intestine.

11.2 This witness has opined that the cause of death of Kheta Raha was due to the fracture on the right parietal bone of skull and due to shock of intra cranial haemorrhage.

11. Shri Balbhadrasinh Indrasinh Zala, P.W. No. 10 in his oral evidence Ex.132 has deposed that he is the owner of the vid. The said vid was rented to Shri Bharvad Maga Moti and Mera Maiya and others for grazing cattle. Shri Maga Moti was not giving him charges as decided with them and hence the same was denied to them and was leased on leave and license to deceased Kheta Raha Bharvad for eleven months. This witness has stated that Maga Moti and his companions were quarreling with deceased Kheta Raha and Kheta Lakha. He has stated that Maga Moti was stating that, "he will see to it that how he enters the vid".

12. Heard the learned counsel for the appellants - accused Shri Pravin Gondaliya. He has contended that the deposition of the complainant being injured witness ought not to have been believed as the complainant has tried to implicate as many as 14 persons by way of giving further statement and then he stated before the Court that he is not knowing other accused and they have not played any role in the entire offence. He contended that there are number of contradictions in the deposition of the complainant who tried to implicate innocent persons in the serious offence. The story given by the complainant is not supported by the medical evidence.

13. He has contended that the deposition of the complainant Jala Uka P.W. No. 1 is not reliable and trustworthy. He has contended that this witness has admitted that the names given in the further statement are not known to him and have not played any role in the alleged offence nor they were present. He has contended that those accused are not even identified by the witness in the Court room.

14. He has contended that the first doctor of P.H.C. Center has not noticed injury on the head of the deceased and then such injury was found in P.M. Report.

15. He has contended that there is no evidence that who had inflicted the blow on which part on whom, and the evidence of Jala Uka P.W. No. 1 is not at all trustworthy as there is no corroborative evidence. He has contended that this witness has given only four names before the doctor as assailants. He has contended that not a single independent witness has supported the case of the prosecution. He has contended that panch witnesses have not supported the case of the prosecution.

16. He has contended that it has come on record from the deposition of the Investigating Officer that there was no evidence against accused till the arrest of the accused No. 2. He has prayed that the learned Judge has committed grave error and wrongly convicted the appellants - accused.

17. In support of his above submissions he relied on the following decisions:-

(1) Valkubhai Rambhai Kathi vs. The State of Gujarat, reported in 1998 (2) GLH 846

(2) Birappa and Another Vs. State of Karnataka,

(3) Jarnail Singh Vs. State of Punjab,

(4) Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another,

(5) B.N. Singh Etc. Vs. State Of Gujarat Etc.,

(6) Kanti Kumari Roy Vs. Suresh Kumar Roy and others,

(7) Dharam Singh and others Vs. State of Punjab,

(8) Keshu Badha and Others Vs. State of Gujarat, .

18. On the other hand, learned APP Shri H.L. Jani supported the judgment of the trial Court. He relied heavily on the oral evidence of the complainant and the injured witnesses as well as documentary evidence in the form of panchnama. He has contended that panchas are trustworthy and reliable and their evidence is also acceptable. He has contended that discovery of mudamal articles is also supported by FSL report. He has read the evidence of the witness and contended that presence and role of the present appellant at the scene of offence is proved beyond reasonable doubt. He has contended that when presence of the appellants is prima facie proved at the place of the offence, mudamal articles are discovered from the possession of the appellants - accused in terms of panchnama and their role is proved beyond reasonable doubt, which is fully supported by the FSL report as well as the version of the prosecution witnesses, then appeal of the present appellants deserves to be dismissed.

19. We have heard the learned counsel for the respective parties and perused the papers produced before us. We have also considered the submissions advanced by the learned counsel for the rival parties. We have gone through the impugned judgment and order passed by the learned Judge and oral as well as documentary evidence produced on the record.

20. We have perused the oral evidence of the injured witness complainant Jala Uka P.W. No. 1 Ex.95. We have minutely perused his oral version, as well as his cross-examination it prima facie appears from the cross-examination of this witness that the defence has failed to establish its defence. The complainant Jala Uka P.W. No. 1 has given the name of the accused person who was having iron ring coated stick which is usually a weapon of the sphered (Bharvad) community. Dr. Lalit Maganlal P.W. No. 3 is examined vide Ex.110. He was on duty 4.7.1997 and was serving as a Medical officer in Gandhi Hospital, Surendranagar. At around 10:30 night dead body of the deceased Kheta Raha was brought before him for postmortem and he had noticed the injuries which are discussed above and looking to the injuries found on the body of the deceased Kheta Raha and as per opinion of this medical expert as clarified by this witness the said injuries were possible by muddamal stick - iron ring coated stick which could be said to be deadly weapon. The injuries of the deceased as well as of the injured witnesses are fully supported by medical evidence. We are of the opinion that iron ring coated stick is a deadly weapon and it cause fatal injury.

21. The common object, as contemplated by Section 149 of the Indian Penal Code does not require prior concert or meeting of minds before the attack. Generally, no direct evidence is available regarding the existence of common object which, in each case has to be ascertained from the attending facts and circumstances. When a concerted attack is made on the victim by a large number of persons armed with deadly weapons, it is often difficult to determine the actual part played by each offender and easy to hold that such persons who attacked the victim, had the common object for an offence which was known to be likely to be committed in prosecution of such an object. There is

overwhelming evidence on the prosecution side to show that the appellants formed an unlawful assembly and caused various injuries to the deceased and the other witnesses. These witnesses were extensively cross-examined, but nothing could be brought out in their evidence to show that they were not present or that they had not seen the incident. Their evidence would also show that most of the accused were armed with various deadly weapons and that they had come to the scene of occurrence with the object of causing death of the deceased Kheta Raha and to cause injuries to others. It was proved beyond reasonable doubt that the appellants formed an unlawful assembly and assaulted the deceased as well as other witnesses which is discernible from the manner in which they caused the death of deceased - Kheta Raha and injuries to other witnesses.

22. From the evidence of the prosecution witnesses presence of the present appellants - accused at the place of offence is proved beyond reasonable doubt and from the act of the appellants - accused it is established that at the event of the incident there was common object of the present appellants - accused. In the present case presence of the appellants - accused and their overt act is proved beyond reasonable doubt through oral evidence of the witnesses as well as from recovery of the muddamal article as well as medical evidence.

23. It is submitted by the learned counsel for the appellants that witnesses are interse related and therefore, their evidence is not trustworthy, reliable and acceptable. It is further submitted that presence of the witnesses also create doubt. It is further submitted that present witnesses are solitary witnesses and their evidence cannot be considered in light of the established law by the Apex Court. It is further submitted that the evidence of the single witness cannot prove the role of the appellants - accused who were present at the place of offence and evidence of single witness is also doubtful and is not sufficient to convict present appellants - accused.

24. We have considered submissions of learned counsel for the appellants that the evidence of witnesses who are interse related, solitary witness and single witness cannot be considered in favour of the prosecution. But from perusal of the evidence of present witnesses we have found that said evidence is trustworthy, reliable and acceptable. Their presence at the place of offence is natural and it cannot be discarded.

25. In the case of Ballam Singh Vs. State of Haryana, , it is held that, there is nothing unusual if all the brothers who are agriculturists had gone together to prepare the fields. In the present case also facts of the case and circumstances show that deceased and injured person had gone for supervision of vid.

26. In the case of Prem Chand and another Vs. State of Uttar Pradesh, , no doubt witness in the said case was related to the deceased but that was not a ground to discard his evidence which was supported by the FIR, the medical evidence as well as other circumstantial evidence. Here, in the present case FIR,

the medical evidence as well as evidence of prosecution witnesses have fully supported the case of the prosecution beyond reasonable doubt.

27. In the case of R. Prakash Vs. State of Karnataka, , it is held that, it is a fairly well settled position in law that the evidence of a witness who is related to either the deceased or the injured is not to be automatically rejected, notwithstanding the fact that it is cogent, credible and trustworthy. As per argument for solitary witness, we have minutely considered the oral evidence and documentary evidence. As per legal system of India the Court should not insist plurality of the witnesses. Neither the legislature nor the judiciary mandate that there must be particular number of witnesses to record and order conviction against the accused. It is, therefore, open to the competent Court to fully and completely rely on solitary witness and record the conviction. It may acquit the accused in spite of testimony of several witnesses, if it is not satisfied about the quality of evidence. It is the quality of the evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability and if the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving the fact. In the present case looking to the allegations made against the appellants - accused persons who attacked the deceased and injured sole eyewitness with iron ring coated stick, the presence of sole injured eyewitness is not found doubtful. His testimony is also corroborated by medical evidence and therefore, we are of the opinion that conviction recorded on the evidence of sole eyewitness is required to be confirmed. In this case Dr. Madhavji Panara P.W. No. 2 Ex.105 who first examined the deceased - Kheta Raha and the injured witness and he found no injury on head of the deceased. He even in his evidence has stated that no injury on temporal region was found as he did not notice it. But after showing the muddamal sticks he stated that injuries were possible with the same. As against this, another doctor who performed postmortem on the dead body of the deceased found fracture injuries on the head of the deceased. He in his evidence on oath has also stated all these injuries. Thus, though there are some discrepancies in the evidence of these two medical experts the evidence of the doctor who performed the postmortem on the body of the deceased cannot be discarded as it is supported by the postmortem.

28. In the result, the appellants - accused have failed to establish their case. We, therefore, do not find any error in the judgment and order of the learned trial Judge and we are in agreement with the findings arrived at by the learned trial Judge. There is, therefore, no substance in the present appeal and the same is required to be dismissed. The appeal of the appellants - accused is hereby dismissed. The judgment and order dated 20.12.2008 passed by learned Additional Sessions Judge, Surendranagar, Camp at Limbdi, in Sessions Case No. 114 of 1997 is hereby confirmed. R & P to be transmitted to the trial Court. The bail bonds of the appellants - accused who are on bail, shall stand canceled and they are directed to surrender within three weeks from today.