

(2010) 12 GUJ CK 0138
In the Gujarat High Court
Case No : Criminal Appeal No. 2519 of 2005

Bhaljibhai Jayrambhai Rathva

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 302, 504

Citation : (2011) CriLJ 2267

Hon'ble Judges : Vijay Manohar Sahai, J; A.M. Kapadia, J

Bench : Division Bench

Advocate : Pratik B. Barot, for the Appellant; L.B. Dabhi, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—Challenge in this Appeal filed u/s 374 of the Code of Criminal Procedure, 1973 ("the Code" for short) is to the correctness of the judgment and order dated 21.11.2005 rendered in Sessions Case No. 3 of 2004 by the learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 3, Chota Udepur, District Baroda, by which the sole Appellant ("the accused" for short) has been convicted for commission of the offence punishable u/s 302 of the Indian Penal Code ("IPC" for short) and sentenced to suffer RI for life and fine of Rs. 200/- i.d. RI for a further period of one month, whereas he has been acquitted of the offence u/s 504 of IPC.

2. The prosecution case in nutshell as disclosed from the FIR and unfolded during trial is as under:

2.1 PW-1 Guliben Narsinhbhai, the complainant has lodged the complaint before PW-11 Jethabhai Dhulabhai Parmar, PSO, Rangpur Police Station, wherein, inter alia, it is stated that she is residing at Jamfaliyu Lehvati, Taluka Chhota Udepur with her family and doing household work and agricultural labour work. She has one daughter and one son. Marriage of her daughter had taken place before

three years in the village Kheda in M.P. and her daughter is residing with her in laws. Her Son's name is Dalsingh, who has three children. She further stated that they have a dispute regarding a land for last one year with Bhalji Jayram Rathva of their village. On 6.10.2003, at about four o'clock in the afternoon, Bhalji Jayram came to their house with a knife in his hand saying, "come out Narsingh". On being told so, when her husband came out, Bhalji Jayram Rathva took her husband up to some distance ahead, Vestiya Chhitu, Chimaliya Sengala, her son Dalsing, Bhodarbhai Hatubhai Rathva and she herself were going after her husband. In the meantime, after having abused her husband, Bhalji Jayram caused injuries by giving blows on neck part and shoulder of her husband with the knife in his hand and her husband fell down. As they shouted loudly, Bhalji Jayram ran away with knife. On looking her husband, it was found that he was dead.

2.2 As per the further case of the prosecution, the motive for crime was that, Fuliyo is the youngest brother of Bhaljibhai and he has gone for labour work in Morbi for last one year. The land of his part has been given to her husband in partnership, and for the last one year, the waste land has not been in the outskirts of their village but in the area of their village. After making it cultivable, her husband was doing agriculture. As Bhalji wanted to cultivate it, he, having kept this animosity, caused the death of her husband by giving knife blows.

2.3 The complaint for the aforesaid incident was lodged at Rangpur Police Station vide I-CR No. 72 / 2003 against the accused for commission of the offence punishable under Sections 302 and 504 IPC and beneath the said complaint, signature of the complainant was obtained and PW-11 PSO has also put his endorsement and thereafter offence punishable under Sections 302 and 504 IPC was registered. The said complaint is at Exh.37.

2.4 After registering the complaint, the investigation was carried out by PW-10 Akasmatbhai Bhatubhai Damor, Investigating Officer. During the course of investigation, he has recorded further statement of Guliben. Thereafter, he has held inquest on the dead body of the deceased in presence of Executive Magistrate and drawn inquest panchnama in presence of two panchas, and thereafter, dead body of the deceased was sent for autopsy. He has thereafter drawn the panchnama of the scene of offence in presence of two panchas. He has also collected sample soil as well as blood stained soil from the scene of offence by drawing panchnama. He has recorded the statements of witnesses. He has also recovered clothes of the deceased in the presence of panchas. The accused has surrendered before him. Therefore, he has arrested the accused after drawing the panchnama of the person of the accused in presence of panchas. The accused has voluntarily shown his willingness to find out the sickle used for commission of the offence, which was hidden by him. Therefore, discovery panchnama was made in presence of two panchas and in the presence of two panchas, the accused has shown the place where he has hidden the sickle, which was recovered from the said place. All the muddamal articles

recovered by the I.O. was sent to FSL for chemical analysis.

2.5 On receipt of the report of FSL and the PM report of the deceased, as sufficient incriminating evidence was found against the accused, he has filed charge sheet against the accused in the Court of learned Judicial Magistrate First Class, Chota Udepur, where it was registered as Criminal Case No. 2328 of 2003.

2.6 As the offence u/s 302 IPC is exclusively triable by the Court of Sessions, the learned JMFC, Chota Udepur committed the case to the Sessions Court, Chota Udepur at Baroda, where it was registered as Sessions Case No. 3 of 2004.

2.7 The learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 3, Chota Udepur, Baroda ("the trial Court" for short), to whom the case was made over for trial, framed charge against the accused for the offence punishable under Sections 302 and 504 IPC . The charges were read over and explained to the accused. The accused pleaded not guilty to the charges levelled against him and he claimed to be tried, and therefore, the accused was put to trial by the trial Court in Sessions Case No. 3 of 2004.

2.8 To prove the culpability of the accused, the prosecution has examined as many as 12 witnesses and relied upon their oral testimonies, details of which have been given in paragraph 8 of the impugned judgment and order. They are as under:

PW Name of the Witness Status Exhibit 1 Guliben Narsinghbhai Complainant - Eyewitness 12 2 Dalsingh Narsingh Eyewitness - son of deceased 14 3 Natubhai Fatubhai Rathwa Panch Witness 15 4 Meghajibhai Guliabhai Panch Witness 20 5 Chimadiyabhai Sengalbhai Rathwa Eyewitness 22 6 Naikabhai Bajubhai Rathwa Panch Witness 23 7 Versinghbhai Bajubhai Panch Witness 24 8 Purshottamdas Kanjibhai Doctor - who performed Vankar PM on the dead body of the deceased. 25 9 Jaysinghbhai Jalmabhai Circle Officer, who Rathwa prepared the map of the scene of offence 27 10 Akasmatbhai Bhatubhai Damor PSI - I.O. 30 11 Jethabhai Dhulabhai PSO, who recorded the Parmar complaint. 36 12 Chandubhai Raisinghbhai Parmar I.O. 39

2.9 To prove the culpability of the accused, the prosecution has also produced in all 13 documents like complaint, inquest report, panchnamas, PM report, FSL report, etc. and relied upon the contents of the same, details of which are mentioned in paragraph 8 of the impugned judgment and order. The relevant documents shall be discussed as and when required in this judgment.

2.10 After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required u/s 313 of the Code. In his further statement he denied the prosecution case in its entirety and stated that a false case has been filed against him. However, he did not lead any evidence nor did he examine any witness in support of his defence.

2.11 On appreciation, evaluation, and scrutiny of the evidence on record, the trial Court come to the conclusion that the deceased Narsingh Bhadubhai Rathava died a homicidal death. The trial Court also held that the accused was the author of the injuries caused to the deceased. The trial Court has also come to the conclusion that the prosecution has successfully established the complicity of the accused for committing murder of Narsingh Bhadubhai Rathava on the basis of the evidence of two eyewitnesses. Therefore, according to the trial Court, the offence against the accused punishable u/s 302 IPC is proved.

2.12 On the aforesaid finding, the trial Court convicted the accused for the offence punishable u/s 302 IPC and sentenced him to RI for life and fine of Rs. 200/- i.d. RI for a further period of one month, which has given rise to the instant Appeal at the instance of the accused.

3. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

4. So far as the homicidal death of the deceased Narsingh Bhadubhai Rathava is concerned, the same has not been disputed by the learned Advocate for the accused, hence, we need not discuss the same in detail. Suffice it to say that the prosecution has succeeded in establishing that the death of Narsingh Bhadubhai Rathava was a homicidal one through the evidence of PW-8 Dr. Purshottamdas Kanjibhai Vankar examined at Exh. 25, who has performed PM on the dead body of deceased Narsingh Bhadubhai Rathava and prepared PM, which is on record at Exh.26. On conjoint reading of the oral testimony of PW-8 Dr. Purshottamdas Kanjibhai Vankar as well as PM report at Exh.26, it is seen that the deceased has received three cut injuries on his neck, which is the vital part of the body. According to the Doctor, the cause of death is due to hypovolaemia shock on hypoxia shock or shock due to cut of both sides carotid vessels and nerves. Therefore, in view of the aforesaid evidence it has to be held that the deceased died a homicidal death and the trial Court has rightly come to the conclusion that the deceased died a homicidal death, and therefore, we confirm the said finding and hold that the deceased died a homicidal death.

5. Now, the next question which is to be answered by us is whether the accused is the author of the injuries caused to deceased Narsingh Bhadubhai Rathava.

6. To prove the aforesaid fact, the prosecution has mainly relied upon the oral testimony of three eyewitnesses, i.e. PW-1 Guliben Narsinghbhai - complainant

and wife of the deceased at Exh.12, PW-2 Dalsingh Narsingh - son of deceased Narsingh Bhadubhai Rathava at Exh.14 and PW-5 Chimadiyabhai Sengalbhai Rathwa - an eyewitness at Exh.22.

7. Now, we shall discuss their evidence. PW-1 Guliben Narsinghbhai in her oral testimony recorded at Exh.12 has inter alia testified that the name of her husband was Narsingh Bhadubhai Rathava and the name of her son is Dalsingh Narsingh. Her husband died prior to one year. At the time of incident, she was at her home. She, her son Dalsingh, Bhodar and Vaistio were at home, at that time, the accused Bhaljibhai called her husband Narsingh Bhadubhai Rathava to the field of Jayram Vaistio and he has inflicted six blows of sickle on the neck of her husband, therefore, her husband fell down. When the accused called her husband, she, her son Dalsingh, Bodar and Chimadiyabhai had followed him. At the time of incident, the accused came with sickle. She has also identified the accused in the Court. She has also testified that dispute with regard to land was going on between her husband and the accused. She has also stated that she lodged the complaint for the said incident in police station. Police has also obtained her thumb impression beneath the same. She has also identified the weapon (sickle) in the Court. It may be noted that she was cross-examined at length by the learned Advocate for the accused. However, she has successfully withstood the test of cross-examination and nothing fruitful could be brought out which would impeach the credibility of her evidence.

8. The prosecution has thereafter examined and relied upon the oral testimony of PW-2 Dalsingh Narsingh - the son of the deceased and an eyewitness at Exh.14. He has also testified the similar version which has been testified by PW-1 Guliben Narsinghbhai - his mother. He precisely stated that the accused has inflicted six blows with the weapon sickle on the neck of his father and thereafter the accused ran away with the same. He saw his father dead. He has also testified that the accused came with sickle at their residence. He has also testified that the complaint for the aforesaid incident was lodged by his mother. This witness is also cross-examined by the learned Advocate of the accused and he has also successfully withstood the test of cross-examination and nothing fruitful could be brought out which would impeach the credibility of his evidence.

9. The prosecution has thereafter examined and relied upon the oral testimony of PW-5 Chimadiyabhai Sengalbhai Rathawa, who is examined at Exh.22. He has testified that the incident has taken place prior to one year. There was a shout towards the wada of Vaistio and therefore, he went to the wada of Vaistio to see the incident. He saw that the accused inflicted sickle blows on the neck as well as on the shoulder of the deceased Narsinghbhai. Deceased Narsinghbhai therefore fell down. He has also testified that the dispute was going on between Narsinghbhai and the accused Bhaljibhai in connection with the land. He has also testified that at the place of incident, Narsinghbhai, accused Bhaljibhai, wife of the deceased Narsinghbhai and his son Dalsingh were present. He has also identified the weapon sickle in the Court. This witness was also cross-examined

at length by the learned Advocate of the accused and he has successfully withstood the test of cross-examination and nothing fruitful could be brought out which would impeach the credibility of his evidence.

10. On reappraisal of the evidence of the aforementioned three witnesses, there is no manner of doubt that all the three witnesses have seen the incident and their presence at the scene of offence was natural, as, in their presence, the accused has taken the deceased with him towards the field of Vaistio. They all chased the deceased, and in their presence, the accused inflicted six blows on the neck of the deceased with sickle.

11. It is true that both the eye witnesses, i.e. PW-1 Guliben Narsinghbhai and PW-2 Dalsingh Narsingh are the relatives of the deceased as PW-1 is the wife of the deceased and PW-2 is the son of the deceased, however, that fact itself is not sufficient to discard their oral testimonies. It is the settled principle of law by catena of decisions of the Supreme Court that if witnesses are near and dear relatives of the victim, that fact itself alone is not sufficient to discard their testimonies unless their evidence is impeachable and does not inspire confidence. It is also the settled principle of law by catena of decisions of the Supreme Court that even if there is only the evidence of sole eye witness, if it is of sterling quality and unimpeachable, the same can be relied upon and the conviction can be based on the basis of it.

See:

- (1) 1992 Supp (2) SCC 173 Sohrabkhan v. State of Madhya Pradesh
- (2) State of A.P. Vs. S. Rayappa and Others,
- (3) Vijaykumar Vs. State by Inspector of Police, Madras and Another,
- (4) (2010) 6 SCC 673 Balraje alias Trimbak v. State of Maharashtra
- (5) (2010) 7 SCC 759 Dharnidhar v. State of Uttar Pradesh and Ors.
- (6) Jai Prakash Vs. State (Delhi Administration),
- (7) Jayaram Shiva Tagore and others, Vs. State of Maharashtra,

12. In the instant case, the evidence of PW-1 Guliben Narsinghbhai, examined at Exhibit-12 as well as the evidence of PW-2 Dalsingh Narsingh, examined at Exhibit 14, are of sterling quality, unimpeachable, inspiring confidence and being trustworthy, reliance can be placed upon their oral testimonies to base conviction of the accused for commission of the offence of murder of Narsinghbhai. That apart, PW-5 - Chimadiyabhai Sengalbhai Rathwa is not a relative of the deceased, and therefore, he is an independent eyewitness and he has supported the prosecution case in unequivocal terms that he has seen the accused giving six blows on the neck of the deceased. Therefore, the evidence of two eyewitnesses gets the corroboration from the independent eyewitness.

13. The prosecution has successfully established the complicity of the accused for

commission of the offence of murder of Narsingh punishable u/s 302 IPC on the basis of the evidence of the three eyewitnesses, and therefore, according to us, their evidence do not require any corroboration.

14. However, the prosecution tried to get corroboration from the discovery panchnama of the weapon sickle used by the accused for commission of the offence which was found out on the voluntary statement made by the accused. To prove the said fact, the prosecution has examined and relied upon the oral testimony of PW-4 Meghjibhai Guliabhai at Exh.20. He is the witness of the discovery panchnama of the weapon which was recovered by the I.O. on the basis of the voluntary statement made by the accused. It may be noted that PW-4 Meghjibhai Guliabhai has not supported the contents of the panchnama. He has inter alia testified that he has put his thumb impression beneath the panchnama. He has resiled from the statement made by him in the panchnama, therefore, he was declared as hostile witness and he was cross examined at length. However, the said panchnama is proved by examining PW-10 Akasmatbhai Bhatubhai Damor, I.O., who has in terms testified that he has written the panchnama as per narration given by PW-10 Akasmatbhai and put his signature beneath the same. He has also testified that the accused has voluntarily made a statement in the presence of panchas to show the sickle which was hidden by him at a distant place and on the basis of his statement, he along with panch witnesses went to the said place shown by him and the accused himself has found out sickle which was recovered having blood stains. The said panchnama is on record at Exh.33. On the basis of the discovery panchnama, prosecution has successfully established the complicity of the accused for commission of the offence of murder of Narsinghbhai punishable u/s 302 IPC. It is required to be noted that as per FSL report, the blood group of blood stains found on the sickle were similar to the blood group of blood stains found on the clothes of the deceased, and therefore, the discovery panchnama gets corroboration from the FSL report.

15. The plea that panch witnesses have turned hostile and, therefore, the evidence adduced by the investigating officer regarding seizure of incriminating article, i.e sickle at the instance of the Accused should be disbelieved, is merely stated to be rejected. It is well settled that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It must be realised that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right of veto to the panchas so far as that question of culpability of the Accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable,

cannot be discarded by Court on the ground that he is a police officer. On the facts and in the circumstances of the case, this Court finds that testimony of PW-10 Aksmatbhai Bhatubhai Damor, IO is not only inspiring confidence, but, gets corroboration from the other evidence on record. From his evidence, contents of panchnama (Exh.33) have been duly proved and therefore, reliance can be placed on the said piece of evidence and as per the said piece of evidence the Accused has shown willingness to find out the muddamal weapon which he had hidden and it was found from the place which was shown by him.

16. On over all reappraisal and threadbare scrutiny of the evidence on record, according to us, the evidence of eyewitnesses are of sterling quality and though PW-1 Guliben and PW-2 Dalsingh are relatives of the deceased, there evidence cannot be discarded as their evidence is of sterling quality, unimpeachable and inspire confidence and same can be relied upon and conviction can be based on the basis of it. That apart, PW-5 - Chimadiyabhai Sengalbhai Rathwa, who is an independent eyewitness has supported the prosecution case, and in his presence, the accused gave six blows of sickle on the neck of the deceased. Besides this, their evidence also gets corroboration of the discovery panchnama of the weapon. Therefore, prosecution has successfully established the complicity of the accused for commission of the offence of murder of Narsinghbhai, therefore, it is clear that the complicity of the accused for commission of offence of murder of Narsinghbhai is duly established by the prosecution beyond reasonable doubt.

17. We find ourselves in complete agreement with the finding, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial Court and according to us no other finding or conclusion could have been reached by the trial Court except the one reached by it on the facts and circumstances of the case with which we agree and according to us it is required to be confirmed.

18. Seen in the above context, there is no reason to interfere with the impugned judgment and order of conviction and sentence passed by the trial Court, the Appeal lacks merit and deserves to be dismissed by confirming and maintaining the order of conviction and sentence passed by the trial Court.

19. For the foregoing reasons, the Appeal fails and accordingly, it is dismissed. The result of which is that the judgment and order dated 21.11.2005 passed by the learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 3, Chota Udepur, District Baroda, convicting the accused for committing murder of Narsingh Bhadubhai Rathava punishable u/s 302 of IPC and sentencing him to undergo imprisonment for life and fine of Rs. 200/-, i.d. RI for a further period of one month, is hereby confirmed and maintained.

20. Muddamal articles to be disposed of in terms of the directions contained in the impugned judgment and order of the trial Court.