

(2009) 03 GUJ CK 0041
In the Gujarat High Court
Case No : Criminal Appeal No. 253 of 2005

Chandubhai Naranbhai Makwana	Vs	APPELLANT
The State of Gujarat and Another		RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135, 135(1)
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 03 GUJ CK 0041

Hon'ble Judges : J.C. Upadhyaya, J; A.L. Dave, J

Bench : Division Bench

Advocate : Hina Desai, for the Appellant; M.R. Mengdey, APP, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant came to be tried and convicted by City Sessions Court No. 2 in Sessions Case No. 139 of 2002 for the offence of murder of one Lalabhai Manjibhai, punishable u/s 302 of the Indian Penal Code ("I.P.C." for short) and for carrying a deadly weapon in breach of notification under the Bombay Police Act, punishable u/s 135(i) of the Bombay Police Act. By the impugned judgment in the said Sessions Case dated 23rd April, 2003, the appellant came to be convicted for the offence of murder and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for six months. For the other offence, he came to be acquitted. Aggrieved by the said judgment and order, present appeal is preferred.

2. As per the prosecution case, deceased Lalabhai Manjibhai was engaged in retail sale of fruits in a handcart in Behrampura area. On 23rd December, 2001, around 2.00 P.M., the appellant, Chandubhai Naranbhai Makwana, approached him and asked an apple free of cost, which he refused. Therefore, the appellant went away and returned after a few minutes with a wooden log in his hand and hit the deceased on his head with that wooden log. That blow caused a

depressed fracture in the skull of the deceased and damage to the brain substance. Ultimately, the deceased succumbed to the injuries. An F. I. R. was lodged by one Laxmanbhai Harjibhai, sister's son of the deceased, with Gaekwad Haveli Police Station and offence came to be registered. The offence was investigated upon and, ultimately, charge sheet was filed in the Court of Metropolitan Magistrate, Court No. 12, who, in turn, committed the case to the Court of Sessions.

2.1 Charge was framed against the accused for offences punishable u/s 302 of the I.P.C. and Section 135 of the Bombay Police Act, at Exhibit 1. The accused pleaded not guilty to the charge and claimed to be tried. The Trial Court, after considering the evidence adduced by the prosecution, came to a conclusion that the prosecution was successful in proving the charge of murder against the accused-appellant and recorded his conviction therefor, as stated in the earlier part of this judgment. However, the Trial Court acquitted the accused-appellant of the charge of offence punishable u/s 135 of the Bombay Police Act. The Trial Court also gave benefit of set off to the convict.

3. Learned Advocate, Ms. Hina Desai, for the appellant submitted that the first informant is not an eye-witness. There are three eye-witnesses to the incident, namely, P.W.2-Bharatbhai Mangalbhai, P.W.3-Ramsundar Rajmal and P.W.6-Ranjitbhai Shantilal. Learned Advocate for the appellant submitted that out of these three eye-witnesses, P.W.2-Bharatbhai Mangalbhai and P.W.3-Ramsundar Rajmal have not supported the prosecution case and have been declared hostile. If evidence of P.W.6-Ranjitbhai Shantilal is seen, it is clear that he went to the spot after the incident was over and crowd had gathered and he has deposed on the basis of what he learnt from the crowd. Under the circumstances, all the three eye-witnesses would not inspire any confidence. In absence of the evidence of eye-witnesses, there is no other material to link up the accused with the offence and, therefore, the Trial Court erred in convicting the appellant. She submitted that the appeal may, therefore, be allowed.

4. Learned Additional Public Prosecutor, Mr. Mengdey, has opposed this appeal. According to him, although two eye-witnesses (P.W.2 and P.W.3) have not supported the prosecution case, at least P.W.6 supports the prosecution case. He also relies on evidence of P.W.3 and that of the Investigating Officer, Harjitsinh Jadeja (P.W.12 at Exhibit 25), through whose depositions, it emerges that Ranjitbhai Shantilal had seen the incident. Mr. Mengdey submitted further that there is discovery of weapon by the accused-appellant, which would complete the chain of circumstances against him and, therefore, the Trial Court was justified in convicting the appellant for the offence of murder. He submitted that the appeal may, therefore, be dismissed.

5. We have examined the record and proceedings in the context of what is argued before us by rival sides.

6. It is not in dispute that the deceased died of a homicidal death. He died

because of head injury which he suffered. The dispute is only on the question, who caused the injury.

7. In this context, the first informant, Laxmanbhai Harjibhai, who is the nephew (sister's son) of the deceased, is not an eye-witness and his evidence, therefore, be of no virtue to the prosecution.

8. P.W.2-Bharatbhai Mangalbhai and P.W.3-Ramsundar Rajmal were projected as eye-witnesses, but both of them have not supported the prosecution case. From their cross-examination, it emerges that they reached the spot after the incident was over and have deposed before the Court on the basis of what they learnt being discussed by the crowd, which had gathered near the dead body of the deceased. If this is the version emerging from their cross-examination, they cannot be relied upon as eye-witnesses, who support the prosecution case. Conviction cannot be founded on such evidence.

9. Now comes evidence of P.W.6-Ranjitbhai Shantilal. He also claims to be an eye-witness. He supports the prosecution case. But, during cross-examination to the defence, he admits that he went to the spot after the incident was over and a crowd had gathered. He also admits that he has deposed before the Court on the basis of what he heard being discussed in the crowd about the incident. This puts a full stop to the prosecution case against the accused-appellant.

10. It is true that the accused is said to have discovered the weapon allegedly used in commission of the crime. But, if we read the evidence of the Panch witnesses and the Investigating Officer, we are of the view that requirements of Section 27 of the Evidence Act are not fulfilled. That apart, discovery itself would only lead us to the authorship of concealment and not the use of the weapon in the offence unless there is cogent material or evidence to support such a case.

11. In view of what is discussed hereinabove, we are of the view that the Trial Court erred in convicting the appellant for the offence of murder. The appeal, therefore, deserves to be allowed and the same is allowed. The judgment and order of conviction and sentence of the appellant, Chandubhai Naranhai Makwana, by City Sessions Court in Sessions Case No. 139 of 2002 is hereby set aside. The appellant is acquitted of the charge of murder of Lalabhai Manjibhai and he be set at liberty forthwith, if not required in any other case. Fine, if paid, be refunded to him.