

(2009) 06 GUJ CK 0034
In the Gujarat High Court
Case No : Criminal Appeal No. 366 of 2003

Chhaganbhai Bhilubhai Rathva

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 374(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 06 GUJ CK 0034

Hon'ble Judges : H.B. Antani, J; D.H. Waghela, J

Bench : Division Bench

Advocate : Rekha H. Kapadia, for the Appellant; Chetna Shah, APP for Opponent 1, for the Respondent

Final Decision : Allowed

Judgement

H.B. Antani, J.—This appeal is preferred u/s 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short) challenging judgment and order dated 21.03.2003 passed by the learned Additional Sessions Judge, Camp at Chota Udepur, Vadodara in Sessions Case No. 79 of 1997 by which, the learned Judge convicted the appellant for the offence punishable u/s 302 of the Indian Penal Code and awarded sentence of rigorous life imprisonment and fine of Rs. 500/-, in default, further S.I. for three months.

2. The short facts giving rise to the present appeal are as under.

3. On 01.09.1997, deceased - Harsingbhai did not bring plough in the field of the appellant situated in Gunata village. The appellant was annoyed by the action of the deceased of not bringing plough and, therefore, he assaulted Harsingbhai with arrow and caused serious injuries on the right side abdomen of the deceased. As a result of which, Harsingbhai died on 03.09.1997. The complaint was given by one Bhailalbhai Harsingbhai Rathwa to the police sub-inspector, Rangpur police station on 01.09.1997. On the strength of the complaint given by Bhailalbhai, investigation was set in motion. The investigating officer visited the

place, where the incident in question took place and prepared panchnama of the place of incident. Inquest panchnama of the deceased was prepared in the presence of panch witnesses. Thereafter, dead body of deceased-Harsingbhai was sent to the hospital at Chota Udepur, Vadodara for autopsy. The muddamal which was recovered, was sent to F.S.L. for the purpose of detailed analysis. The appellant was arrested during the course of investigation. On receipt of the postmortem report and F.S.L. report, the accused - appellant was chargesheeted and produced before learned Judicial Magistrate First Class, Chota Udepur who, in turn, committed the case to the Sessions Court u/s 209 of the Code, as the case was exclusively triable by the Sessions Court. Charge against the appellant was framed by learned Additional Sessions Judge, Camp at Chota Udepur, Vadodara vide Exh.4 and the appellant pleaded not guilty to the charge levelled against him.

4. The prosecution has, in order to prove inextricable involvement of the appellant in the commission of offence, examined following witnesses:

-----					Sr.	No.	PW
Names	Exhs.	-----					
1.	1	Bhailalbhai	H.	Rathwa		16	
-----					2.	2	
Jingalabhai		N.		Rathwa		25	
-----					3.	3	
Gulabsing			Sevlabhai			26	
-----					4.	4	Dr.Manoj
R. Kapur	43	-----					
5.	5	Dr.	Kishor	P.	Desai	45	
-----					6.	6	
Kadarbhai			Sabirabhai			48	
-----					7.	7	
Meghajibhai			Guliabhai			49	
-----					8.	8	
Mohanbhai			Jivubhai			51	
-----					9.	9	
Abheysingbhai		B.		Bhaliya		53	
-----					10.	10	
Jesingbhai		J.		Rathwa		55	
-----					11.	11	Head
Constable-Ramchandra				Lala		57	
-----					12.	12	
Ranchodbhai		G.		Vasava		58	
-----					13.	13	
Jitubhai		Mohanbhai		Vasava		60	

5. The prosecution has also produced following documentary evidences in order

to bring home the guilt against the appellant.

	Sr.	No.
Documents		Exhs.
given by Bhailalbhai	1.	Complaint 17
certificate of Harsingbhai	2.	Medical 44
Postmortem notes	3.	46
Yadi dated 03.09.1997	4.	Copy of 47
Panchnama of the person of appellant	5.	50
Panchnama	6.	Inquest 52
Panchnama with regard to seizure of 54 clothes put on by the deceased	7.	54
regard to place of incident	8.	Map with 56
registration of crime	9.	Yadi of 61
Yadi dated 01.09.1997	10.	Copy of 62
which was sent to F.S.L. with 63 regard to muddamal articles.	11.	Note 63
F.S.L. 64	12.	Report of 64
Yadi to Rangpur police station dated 65	13.	03.09.1997. 65
which was sent to Executive 66	14.	Note 66
the police constable	15.	Yadi by 67
Panchnama of the place of incident	16.	72

6. During the course of trial, further statement of the appellant was recorded u/s 313 of the Code. The appellant was put incriminating material and he submitted in his statement that he was not involved in the commission of offence and false case was foisted on him.

7. The learned trial Judge, on the strength of oral deposition and documentary evidence, held that the appellant, on 01.09.1997 at about 17:00 hrs., assaulted deceased -Harsingbhai in the sim of village Gunata situated in Chota Udepur and caused serious injury and, as a result of which, Harsingbhai died on 03.09.1997.

The learned Judge held that the prosecution has, by adducing cogent, convincing and conclusive evidence in the form of oral deposition and documentary evidence, proved involvement of the appellant in the commission of offence punishable u/s 302 of IPC. The learned Judge held that the depositions adduced by PW-1-Bhailalbhai vide Exh.16, PW-4-Dr.Manoj vide Exh.43 and PW-5-Dr.Kishor-vide Exh.45, inspire confidence and the same are corroborated by documentary evidences such as, complaint given by Bhailalbhai vide Exh.17, P.M. note vide Exh.46, Panchnama with regard to place of incident vide Exh.72, inquest panchnama vide Exh.52, panchnama with regard to recovery of the clothes vide Exh.54 and the report of F.S.L. vide Exh.64. Thus, the learned Judge convicted the appellant for the offence punishable u/s 302 of IPC and awarded sentence of rigorous life imprisonment and fine of Rs. 500/-, in default, further S.I. for three months.

8. Learned advocate Ms.Rekha H. Kapadia, representing the appellant, submitted that the prosecution has examined 13 witnesses and produced documentary evidence in support thereof in order to prove the entire link connecting the appellant with the commission of offence. She submitted that the prosecution has not examined material witnesses nor has produced dying declaration of the deceased in order to bring home the guilt against the appellant. This lacuna as per the submission of learned advocate for the appellant goes to the root of the matter and on the face of it glaring and the benefit of the same is required to be given to the appellant. The learned advocate submitted that Dr.Manoj, vide Exh.43, deposed in his testimony that the deceased sustained one injury on the right side of abdomen which was 8 to 10 cms. deep and, when he was brought to the hospital, he was unconscious. Whereas, Dr. Kishor has narrated two injuries on the abdomen of the deceased. This raises doubt about the injury sustained by the deceased in the altercation which took place with the appellant and, therefore, the benefit of the same is required to be given to the appellant. The learned advocate submitted that the deposition adduced by Dr.Kishor Desai as well as P.M. note produced at Exh.46, do not inspire confidence to establish the involvement of the appellant in the commission of offence. Thus, it is submitted by the learned advocate that the prosecution has miserably failed to prove the involvement of the appellant in the commission of offence by adducing cogent, convincing and conclusive evidence and, therefore, the appellant is required to be acquitted forthwith.

9. Learned A.P.P. Ms.Chetna Shah, representing the State, submitted that the learned Judge has assigned reasons for convicting the appellant for the offence punishable u/s 302 of IPC. The learned judge gave finding after appreciating oral depositions and the documentary evidence on record of the case, therefore, the order of conviction passed by the learned Judge does not call for any interference and, as the appeal is devoid of merits, the same is liable to be dismissed. The learned A.P.P. submitted that there was no lacuna in the prosecution story or the documentary evidence or the deposition adduced by the prosecution so as to dislodge the entire case. The learned A.P.P. submitted that the prosecution has,

by adducing cogent and convincing evidence, proved the case against the appellant for the offence punishable u/s 302 of IPC beyond all reasonable doubt and, therefore, the appeal is required to be dismissed.

10. We have heard learned advocate Ms.Kapadia for the appellant and learned A.P.P. Ms.Chetna Shah for the respondent-State at length and in great detail. We have also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record of the case with reference to broad and reasonable probabilities of the case.

11. On reappreciating and reevaluating the entire gamut of oral depositions and documentary evidence, as on 01.09.1997, the deceased could not bring plough in the field of the appellant, the appellant got infuriated and assaulted deceased-Harsingbhai with arrow on the right side of the abdomen. The deceased succumbed to the injuries on 03.09.1997. The prosecution has examined complainant - Bhailalbhai Harsingbhai Rathwa vide Exh.16. He has deposed in his testimony that the appellant assaulted the deceased with arrow in the right side of abdomen in an altercation which took place with the deceased. The complaint was given by Bhailalbhai wherein, he has narrated as to in what manner the deceased was attacked by the appellant and, as a result of which, how he had sustained fatal injuries. PW-2- Jinglabhai has been examined vide Exh.25. He has supported the version given by PW-1-Bhailalbhai vide Exh.16 in his deposition. PW-3-Gulabsing has been examined vide Exh.26 and he has deposed in his testimony as to how the deceased was assaulted by the appellant with the arrow on the right side of abdomen. PW-4-Dr.Manoj has been examined vide Exh.43 and Dr.Kishorkumar, who carried out postmortem on the dead body, has been examined vide Exh.45. Considering the deposition of both the doctors, it becomes clear that Dr.Kishor has deposed in his testimony that the deceased had sustained two injuries in the abdomen, while Dr.Manoj has deposed in his testimony that the deceased had sustained one injury which was 8 to 10 cms. deep. Thus, there is contradiction in the depositions adduced by both the doctors. PW-6-Kadarbhai at Exh.48 and PW-7-Meghajibhai at Exh.49 have turned hostile and not supported the prosecution story with regard to the assault committed on the deceased. PW-8 - Mohanbhai Jivubhai has been examined vide Exh.51. He was called at A.S.G. Hospital as a Panch-witness. PW-9-Abheysingbhai B. Bhaliya has been examined at Exh.53 and he was also called as a Panch-witness and panchnama with regard to the clothes put on by the deceased was prepared in his presence. PW-10-Jesingbhai has been examined vide Exh.55 and he had prepared a map of scene of offence. PW-11-Head Constable-Ramchandra Lala has been examined vide Exh.57. He received clothes which were seized during the investigation. PW-12-Ranchodbhai has been examined at Exh.58 and he prepared panchnama of the place of incident in the presence of panch witnesses. PW-13-Jitubhai Mohanbhai Vasava at Exh.60 is the investigating officer, who carried out the investigation. We have also considered the documentary evidences such as, complaint given by Bhailalbhai vide Exh.17, P.M. note vide Exh.46, inquest panchnama vide Exh.52, panchnama of the

seizure of clothes put on by the deceased, panchnama of the place of incident, detailed P.M. note and F.S.L. report heavily relied upon by the prosecution. The P.M. note mentions about the injuries sustained by the deceased. On perusal of the P.M. note at Exh.46, it becomes clear that Harsingbhai died because of septicemia following peritonitis following trauma. On perusal of the cause of death along with the documentary evidence and the oral deposition, it becomes clear that the deceased sustained injuries in a scuffle which took place on 01.09.1997. However, after sustaining injuries, the deceased was taken to the police station and subsequently to the hospital for treatment. During the aforesaid period, his injury in the abdomen, was aggravated and it caused septicemia because of the trauma suffered by the deceased. It appears from the record of the case that the material witnesses are not examined in the present case in order to bring home the guilt against the appellant. Even dying declaration of the deceased which was recorded has not been produced on record of the case to indicate the involvement of the appellant in the commission of offence or to establish the guilt of the appellant. This lacuna is, on the face of it, glaring. The deposition adduced by the doctors also raises doubt about the injuries sustained by the deceased. It is not clear from the record of the case that whether the deceased had sustained one or two injuries in the abdomen, as narrated by Dr.Kishor vide Exh.45 and in the P.M. report vide Exh.46. These are the factors which cannot be overlooked by this Court while appreciating the evidence on record of the case. Thus, on overall perusal of the evidence on record, we are of the considered view that the prosecution has not adduced cogent and convincing evidence to prove the inextricable involvement of the appellant in the commission of offence. Even, the evidence adduced, does not inspire necessary confidence to convict the appellant for the offence punishable u/s 302 of IPC.

12. In view of the aforesaid facts and circumstances of the case, the appellant is required to be given benefit of doubt as the prosecution has miserably failed to prove the involvement of the appellant in the commission of offence beyond all reasonable doubt. We, therefore, pass the following order.

13. The appeal is allowed and order dated 21.03.2003 passed by the learned Additional Sessions Judge, Camp at Chota Udepur, Vadodara in Sessions Case No. 79 of 1997 convicting the appellant for the offence punishable u/s 302 of IPC is hereby quashed and set aside. The appellant is acquitted for the offence punishable u/s 302 of IPC and he is set at liberty. The appellant, as per the jail remarksheet produced by the learned A.P.P., is already on bail during the pendency of the appeal and, therefore, bail bond is required to be cancelled and is accordingly cancelled. Muddamal articles are to be disposed of in terms of the directions given by the learned Judge in the judgment impugned in the appeal.