

(2008) 08 GUJ CK 0041
In the Gujarat High Court
Case No : Criminal Appeal No. 800 of 2001

Dharsi Chakubhai Vaghari

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114, 114A
Penal Code, 1860 (IPC) — Section 302, 34, 342, 394, 397

Citation : (2008) 08 GUJ CK 0041

Hon'ble Judges : Z.K. Saiyed, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : U.S. Brahmbhatt, for the Appellant; K.S. Shah, Assistant Public Prosecutor for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—Original Accused/present Appellant ("the Accused" for short) of Original Sessions Case No. 10 of 1999, who has been punished for the offence of Sections 302 397 34 and 452 75 of the Indian Penal Code ("IPC" for short) by the learned Additional Sessions Judge, Junagadh by judgment and order dated 30.7.2001. The Accused is convicted for the offence punishable u/s 302 IPC life imprisonment and fine of Rs. 2000/- and for the offence punishable under Sections 397 and 34 of IPC, 7 years imprisonment and fine of Rs. 2000/-, and for the offence punishable under Sections 452 and Section 75 of IPC 7 years imprisonment and fine of Rs. 1000/- and i.d. of above fine, 2 years SI, is awarded to the Accused.

2. Against the judgment and order of conviction the Accused has filed the present Criminal Appeal through jail. Learned Advocate Mr. U.S. Brahmbhatt for the Accused who is appointed through legal aid, so his services were provided to the Accused to defend himself.

3. The case of the prosecution is that, during investigation of ICR No. 98 of 1998

at Junagadh Taluka Police Station, which was registered for the offence punishable under Sections 302 397 34 and 452 IPC, I.O. has filed charge sheet before the learned Chief Judicial Magistrate at Junagadh and reported that the Accused and other absconders have made agreement under common intention, and on 21.6.1998 at 2 O'Clock at Taluka Junagadh, near Zalansar village at Dhoraji highway Langadiya Hanuman's place, they have entered into said place to commit criminal wrong, and at that time, for the purpose of urinal, when the complainant came out from his room, at that time he was assaulted with stick and at the same time deceased Sukhdev Bapu and other witnesses also came there so the Accused has inserted knife blow to the Sukhdev Bapu and the complainant and other witnesses who had closed the room, so the Accused and other co-accused had broken the iron rod of window, door and looted Rs. 9000/- from the complainant and ran away.

4. Injured witnesses were shifted to hospital and medical treatment was given and investigation was carried out. Autopsy and inquest panchnama was drawn and also panchnama of scene of place and panchnama of discovery and recovery were also tagged with investigation papers and then I.O. has obtained all documentary evidence against the Accused and co-accused and filed a charge sheet on 27.10.1998 before the learned Chief Judicial Magistrate. Above alleged offences were triable by the Sessions Court, so the learned Chief Judicial Magistrate has committed the case to Sessions Court. The Accused and other co-accused persons were arrested on 31.7.1998.

5. Above sessions Case was listed for hearing before the learned Additional Sessions Judge, Junagadh. So, the learned Judge has framed charge against the Accused persons. The Accused persons had denied the allegations and tried to establish their innocence.

6. The prosecution has examined 18 witnesses and produced documentary evidence just to prove the case the details of which are as under:

-----					PW	No.
Name	and	Status				Exhibit
-----						1
Ashwinkumar	Devraj,	Medical	Officer			26
-----						2
Mohanbhai	Vashrambhai,		Panch			27
-----						3
Chaganbhai	Kamabhai,		Panch			31
-----					4	Kanjibhai
Anandjibhai,		Panch				33
-----					5	Dr.
Rameshkumar	Arjanbhai,	Medical	Officer,	Junagadh		34
-----						6
Gordhanbhai		Shamjibhai				38
-----					7	Arjanbhai

Manjibhai				39
-----	8	Biharibhai		
Ambabhai				40
-----				9
Chandubhai		Rudabhai		41
-----	10	Vrajlal		
Purshottamdas,		Mamlatdar		42
-----	11	Hasmukh		
Bhaktiram,	Deputy	Mamlatdar		46
-----	12	Jaysingh		
Jodhabhai,	Dy.	SP.		49
-----				13
Bhanubhai	Nathabhai,	Panch		52
-----	14	Dr.		
Narendrakumar		Tapubhai		54
-----				15
Hasmukhlal		Madhavjibhai		57
-----				16
Jagmalbhai	Samatbhai,	Head	Constable	59
-----				17
Mansingh		Kalusingh		62
-----				18
Harishchandra		Ravubha		67

7. The prosecution has produced number of documents details of which are as under:

Particulars	Exhibit	Srl. No.
-----		1
Panchnama of seizure of Dhoti of deceased Sukhdevbapu Guru Balakdas.		10
-----		2
Panchnama of body of deceased Sukhdevbapu Guru Balakdas.		11
-----		3
Panchnama of collecting blood of deceased Sukhdevbapu Guru Balakdas.		12
-----		4
Inquest	panchnama.	13
-----	5	Yadi
by Junagadh B Division Police Station at the request of Constable on duty at the hospital.		14
-----	6.	Yadi
written to the learned CJM by PSI for adding Section 302 IPC.		15
-----	7.	Yadi
sent to PSI, Junagadh by Medical Officer, Rajkot in respect of the sample of the blood of Sukhdev.		16

-----	8.
Forwarding Note in respect of the muddamal articles sent to FSL.	17
-----	9.
Receipt issued by FSL in connection with the muddamal articles received.	18
-----	10.
Forwarding letter along with analysis report sent by FSL.	19
-----	11.
Analysis Report from FSL.	20
-----	12.
Serological Report from FSL.	21
-----	13.
Report in respect of the supervision done by the officer of FSL.	22
-----	14.
Order of the Sessions Court, Porbandar in Sessions Case No. 78/98.	24
-----	15.
Map of the place of scene of offence.	25
-----	16.
Yadi sent for performance of PM examination.	27
-----	17. PM
Report.	28
-----	18.
Panchnama of the scene of offence.	30
-----	19.
Demonstration panchnama.	32
-----	20.
Injury certificate of Gordhandas Shamji.	35
-----	21.
Injury certificate of Balakdas Ramchandra.	36
-----	22.
Yadi sent to the Executive Magistrate by PSI, Junagadh for arranging identification parade.	43
-----	23.
Yadi sent by Mamlatdar to PSI, Junagadh to present the Accused and the witnesses.	44
-----	24.
Panchnama of identification parade.	45
-----	25.
Yadi sent by Police Head Constable to Deputy Mamlatdar, Rajkot for recording DD.	47
-----	26.
DD of deceased Sukhdev Balakdas.	48
-----	27.
Arrest panchnama of Accused.	53
-----	28.
Memo by which deceased was referred to Rajkot Hospital from Junagadh Hospital.	55

-----	29.
Certificate in respect of the injuries received by the deceased.	56
-----	30.
Crime record card of the Accused.	58
-----	31.
FIR 60 -----	
32. Extract of station diary.	61
-----	33.
Forwarding letter by which the complaint against the Accused was sent.	63
-----	34.
Complaint against the Accused.	64
-----	35.
FIR against the Accused CR No. I 10/93.	65
-----	36.
Charge sheet against the Accused.	66
-----	37.
Complaint.	68
-----	38.
Yadi showing that the Accused was presented for identification parade.	69
-----	39.
Other complaints - FIR CR No. I 0079/98 against the Accused.	71
-----	40.
Note made in the station diary on 30.4.1998.	72
-----	41.
Order in Sessions Case No. 130/1998.	73
-----	42.
Closing purshis filed by the defence side.	74

8. Statement of Accused was recorded u/s 313 of Cr.PC and it was contended that he has not committed any offence but it was admitted that in Sessions Case No. 78 of 1998 and Sessions Case No. 3 of 2000 he is convicted by the learned Additional Sessions Judge, Porbanbdar for the offence punishable under Sections 342 452 506 and 394 of IPC and also admitted that for the offence punishable u/s 460 IPC in Sessions Case No. 130 of 1998 he is convicted for life imprisonment and also admitted that at Maliya Police Station offence of Section 400 and 401 IPC is also registered first CR No. 10 of 1993 and contended that he is acquitted from other offences and denied allegations and contended that he is wrongly booked in said offence.

9. Then arguments were heard and the Accused was convicted for the above mentioned offences.

10. Heard learned advocate Mr. Brahmbhatt for the Accused and learned APP Mr. K.C. Shah for the Respondent - State of Gujarat.

11. Learned advocate Mr. Brahmbhatt has contended that the Accused is falsely

involved and in the absence of any iota of evidence, the learned trial Judge has wrongly punished. It is also contended that the learned trial Judge has not applied his mind and only due to doubtful and vague allegations, the Accused was penalised for the above offences. It is also contended that the prosecution has not produced any direct evidence to link the Accused with the said allegation.

12. It is vehemently argued that the evidence of T.I. Parade and connected evidence of the witnesses are not corroborated with oral as well as documentary evidence. It is also contended that the contention of panchnama are also not proved and recovery is established in doubtful manner. Learned advocate Mr. Brahmbhatt has read oral as well as documentary evidence and contended that from the above evidence the Accused cannot be punished for the said offences.

13. Learned APP Mr. K.C. Shah for the Respondent - State of Gujarat has contended that the prosecution has proved the case beyond reasonable doubt and also established chain of the circumstances and the Appellant also proved guilt for alleged offences. Learned APP Mr. K.C. Shah has read evidence of medical experts and contended that muddamal weapon and the Accused were identified and also corroborative evidence was produced and prima facie involvement of the Appellant and common intention was proved, so there is no scope to say that prosecution has not proved its case beyond reasonable doubt.

14. We have heard both the parties and also read documentary evidence as well as oral evidence. We have considered submission made by learned advocate Mr. Brahmbhatt and also perused the oral evidence of injured eyewitnesses and also considered the oral and documentary evidence of independent witnesses Executive Magistrate.

15. From the perusal of evidence injured of deceased Sukhdev and Gordhan Shamji and Balakdas, we are not hesitate to say that from the oral evidence of medical experts, it is established that deceased has received fatal injuries from the knife blow inserted by the Accused on the vital part of the body. From the oral evidence of the witnesses identification of the Accused proved beyond reasonable doubt. Oral evidence of PW-1 and PM note Exh.28 is corroborated to each other and from the oral evidence of PW-6 Gordhanbhai injured eye witness has proved presence of the Accused and proved case and incident and beyond reasonable doubt. The act of the Accused was proved before the trial Court also. We have perused the evidence of T.I. Parade and its panchnama. Independent witnesses have explained corroborated evidence with the documentary evidence and we have not found any enmity with the Accused, so their evidence cannot be discarded only with a single word that there is no direct evidence to involve the Accused in the present case. We have also considered the oral as well as documentary evidence in the light of the statement made by the learned advocate Mr. Brahmbhatt. It is not on record to show that there was any enmity with the eyewitnesses and other independent witnesses so say that due to enmity with the witnesses of the Appellant he is wrongly booked and penalised by the trial Court.

16. From the oral evidence of eyewitnesses PW 7, 8 and 9, we have not found any wrong and wrong involvement of the Appellant. From the oral evidence of PW-17, we have verified that the Accused is a habitual offender. We have not found any doubt from the oral evidence of I.O. We have found that recovery of the muddamal is proved beyond reasonable doubt. From the panchnama Exh.53, it is proved that stolen property was recovered from the possession of the Accused and also corroborative piece of evidence of PW 6 injured witness has proved its version with the evidence of medical expert. We have perused the oral evidence of PW 14 Exh.54. It is on record that he has mentioned whole injuries in medical certificate exh.56.

17. From the recovery of stolen property it is on record and we have perused panchnama and oral evidence of the witnesses, recovery has been proved and no question can arise to make any doubt for presumption.

18. The presumption permitted to be drawn u/s 114 Illustration(A) of the Evidence Act has to be read, along with the important time factor. If ornaments or things of the deceased were in his observation at mandir (scene of place), a person, within short period soon after the murder a presumption of guilt may be permitted. It is a law that presumption arise in favour of the validity of the Act.

19. From the perusal of the evidence we have not found any reasonable explanation of the Accused for the possession of stolen property. We are with the opinion that where the explanation of the Accused to the possession of the stolen property is not reasonably true, a presumption would immediately be drawn in accordance with Section 114, Illustration (A) of the Evidence Act.

20. We have found that within short period after the offence stolen article recovered from the Accused coupled with the other circumstances of case warrant the presumption that the Accused himself had committed the offence of murder. It is open to the Court to convict the Accused by using the presumption where the circumstances indicate that no other reasonable hypothesis except the guilty knowledge of the Accused is open to the prosecution.

21. We are with the opinion that article of stolen property were recovered very soon after the dacoity and murder had taken place and had been proved to have been stolen in the course of said offence. The case of the Accused clearly falls within the ambit of charge framed against him.

22. The factum of recovery of articles at the instance of the accused person in the presence of police officer and panch witnesses who have deposed to the same is itself sufficient to bring the case under the provisions, which are framed against the Accused in charge by trial Court of IPC with the aid of Section 114 of the Evidence Act.

23. Oral evidence of eyewitnesses and injured witnesses, circumstances shows that due to the recovery of muddamal by the police and panch witness is something else to show that the Accused and the co-accused were in the

company of each other at the scene of place and identification of the Accused and his presence when proved in the absence of any explanation then perhaps a presumption can be drawn upon the facts and circumstances of the case.

24. The Illustration (A) to Section 114 of the Evidence Act is to the effect that "The man who is in the possession of stolen goods within short period of said offence is the real culprit of the offence" so no doubt in above case presumption is further extended to the extent by holding such person committed the offence of murder also. So in above case there are sufficient circumstances to connect the Accused with the murder and also guilt under the provisions mentioned in charge which framed against him and that is to say that he has not explained the possession of stolen property that the only presumption is required to be drawn by the application of Section 114(A) of the Evidence Act. We are of the opinion that it can be safely be held that the aforesaid accused is guilty of offence of robbery and murder and possession of the stolen property is the strongest and reasonable ground for the presumption that he is a real offender.

25. From the record of the case it is evident that while committing robbery the Accused had committed murder of Sukhdev Balakdas and complainant Balakdas Guru Ramchandradas was assaulted with a stick and when the deceased had tried to intervene, the Accused had given knife blow and murdered him.

26. We have perused paragraph 30 of the impugned judgment and order. Bad antecedents are enumerated by the learned Judge, having regard to the facts of the case, we have no hesitation to say that the Accused is a incorrigible offender and history-sheeter. We are with the opinion that the case against the Accused stands proved by the reliable evidence of complainant and eyewitnesses.

27. We have perused the oral DD of deceased Sukhdev Balakdas at Exh.48. He had also explained the presence of the injured witness at the time of the incident. We have perused the evidence of the said injured witness and we have also compared their injuries with the oral as well as documentary evidence of the medical officer. From the expert opinion of the autopsy maker, he has firmly explained serious injuries which were found from the body of the deceased. We have considered the oral evidence of this medical officer. We have no word to say that before the trial Court also defence has failed to prove his defence beyond reasonable doubt. We have perused the papers. We have not found any iota of the word to say that regarding possession of the stolen property the Accused has explained before the trial Court.

28. From the above discussion and observation, we have not found any doubt from the reasons given by the learned trial Judge which was made against the Accused. Even the learned Advocate Mr. Brahmabhatt has failed to highlight his case before us and when beyond reasonable doubt case of the prosecution is proved then Appeal is required to be discarded. Appeal fails. Dismissed. Judgment and order of the learned trial Judge is hereby confirmed.