

(2024) 11 GUJ CK 0029

In the Gujarat High Court

Case No : Criminal Appeal (Against Conviction) No. 103 of 2014

Dilipji Varsangji Thakor (Chauhan) Versus

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-11-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374
Indian Penal Code, 1860 — Section 107, 114, 302

Citation : (2024) 11 GUJ CK 0029

Hon'ble Judges : Ilesh J. Vora, J; S.V. Pinto, J

Bench : Division Bench

Advocate : Lopa M Bhatt, D K Desai

Final Decision : Dismissed

Judgement

Ilesh J. Vora, J

1. The present appeal is filed by the appellant – original accused no. 1 under Section 374 of Code of Criminal Procedure, 1973 (old) ('Cr.P.C.', in short) against the judgment and order of conviction and sentence dated 26.12.2013 passed by the learned Additional Sessions Judge, Banaskantha-Palanpur in Sessions Case no. 3 of 2013, wherein, the appellant came to be tried for offence punishable under Section 302 read with Section 114 of the Indian Penal Code, 1860 ('IPC', for short).

2. At the end of the trial, the appellant came to be convicted under Section 302 of IPC and was sentenced to life imprisonment with fine of Rs.500/- and in default of payment of fine to suffer further simple imprisonment of fifteen days.

3. Brief facts which are necessary to dispose of the present appeal are in nutshell as under:

3.1 The appellant Dilipsinh Thakore – accused no.1 in this appeal has challenged his conviction and sentence for the murder of Naranji Chauhan, resident of

Village Moti Bamodra, Tal.: Danta, Dist.: Palanpur.

3.2 According to the prosecution version, on 02.11.2012, at about 01:00 p.m., deceased Naranji Chauhan was restrained by the appellant accused, and inflicted sword blows on the body of the deceased, as a result of which, deceased collapsed and died on the spot. The motive behind the killing of the deceased was, to the effect that, the appellant accused did not like the conduct of the deceased who used to pass through his house. So far as accused no.2 Babuji Thakore is concerned, it was alleged that he being a companion of the appellant accused had instigated him to kill the deceased.

3.3 The appellant accused surrendered himself before the Hadad Police Station. The PSO of Hadad Police Station informed P.I. Mahendra Parmar (PW:11) about the incident and facts of appellant accused who surrendered before him. The P.I. Mahendra Parmar (PW:11) went at the place of incident. The mother of the deceased Reviben Talaji (PW:1) disclosed her complaint before the P.I. Mahendra Parmar. After registration of the offence, the investigation was handed over to P.I. Mahendra Parmar, who had arrested the appellant accused and co-accused Babuji Thakore and seized and recovered the weapons sword allegedly used in the offence. The dead body of the deceased sent for postmortem and according to evidence of the doctor PW:8, the cause of death was due to hemorrhagic shock due to cut of major veins and multiple major injuries found on the body of the deceased. The investigating officer Mr.Parmar drew the panchnama of scene of offence and collected necessary samples for examination by the FSL and recorded the statements of material witnesses and at the end of investigation, the chargesheet came to be filed against the accused. The case was committed to the Court of Sessions at Palanpur.

4. On the basis of material on record, the charge was framed against the appellant at Exh. 6, to which he pleaded not guilty and therefore, he came to be tried by the trial Court, accordingly.

5. In order to prove the case against the appellant, prosecution has examined 11 witnesses and exhibited 25 documents to prove its case as per the following table:

Oral evidence

PW 1 – Exh. 11

Reviben Kantiji Talaji, complainant

PW 2 – Exh. 18

Mahendrabhai Raisangbhai, panch witness

PW 3 – Exh. 20

Bhawanji Hajaji Chauhan, panch witness

PW 4 – Exh. 24

Rakeshji Mohanji Thakor, panch witness

PW 5 – Exh. 31

Dehlaji Amthaji Chauhan

PW 6 – Exh. 32

Chauhan Hursangji Talaji

PW 7 – Exh. 33

Shankerji Talaji

PW 8 – Exh. 34

Ashokbhai Ganpatlal Chauhan, medical officer

PW 9 – Exh. 42

Sendhaji Sadaji Chauhan, Police Station Officer

PW 10 – Exh. 46

Narsabhai Taral, Circle Officer

PW 11 – Exh. 49

Mahendrabhai Dahyabhai Parmar

Documentary evidence

Exh. 12

Complaint

Exh. 19

Inquest Panchanama

Exh. 21

Panchanama of place of incident

Exh. 25

Panchanama of physical examination of accused and recovery of weapons from them

Exh. 35

Memo by PSI to medical officer to conduct postMortem and issue certificate of cause of death

Exh. 36

Post-Mortem report

Exh. 37

Panchanama of recovery of clothes of deceased

Exh. 38

Case papers of accused no. 1

Exh. 39

Case papers of accused no. 2

Exh. 40

Memo to medical officer

Exh. 47

Map of place of incident

Exh. 48

Memo to circle officer for map

Exh. 50

Special report of heinous offence

Exh. 51

Police report sent for post mortem

Exh. 52

FSL Van report

Exh. 53

Report of (AFIS) FSL

Exh. 54

Forwarding note

Exh. 55

FSL receipt

Exh. 56

Memo to medical officer for examination of accused

Exh. 58

Memo by medical officer to police

Exh. 59

Memo to Executive Magistrate for drawing map of place of incident

Exh. 60

Memo to Executive Magistrate for obtaining map of place of incident

Exh. 61

FSL letter

Exh. 62

FSL report

Exh. 63

Serological report

6. The accused upon being questioned under Section 313 of the Cr.P.C. with regard to incriminating circumstances made against him in the evidence rendered by the prosecution and he denied it and not lead any evidence in defence. the appellant accused in his reply stated that due to land dispute, he had been falsely implicated by the complainant.

7. The Trial Court, after appreciation of the evidence, acquitted the accused no.2 Babuji Thakore and held guilty the appellant accused for the act of murder. The learned Trial Court while recording the conviction, mainly relied on the testimony of PW:1 Reviben Kantiji and PW:5 Dehalji Chauhan.

8. Being aggrieved and dissatisfied with the impugned judgment and order passed by the trial Court, the appellant is before this Court by way of the present appeal.

9. Oral as well as documentary evidence:

9.1 Dr.Mahendrabhai Parmar (PW:11), who had examined the deceased, found the following external and internal injuries:

External injuries:

- (1) CLW on verbral aspect of Rt.middle finger size 2 cm x 1 cm x 1 cm
- (2) CLW on base of Index finger size-2x1x1 cm
- (3) opened incised wound on Rt Shoulder 15x7cm x deep incised
- (4) Incised wound on Rt. Side of forehead size-4cm x 1cm x 1cm
- (5) Sharp cutting wound on Rt. Left side of neck part below Mandible size 7x5x3cm
- (6) Sharp cutting lacerdeep wound, vertical stained from base of occipital region to left side of shoulder size 23x6x3cm
- (7) Sharp cutting lacerdeep Wound on left side of neck size 12x8x6cm cutting all Major vessels & Muscles

(8) Sharp cutting wound on Rt.side of base of neck size 18x5x8cm cutting all major vessel & muscles

(9) Incised wound on Rt. Fore arm- 10x1x0.5 cm

(10) Incised wound on Rt.side of abdomen vertically 12x3xdeep incised

(11) Incised wound on left for arm on incised aspect size - 18x7x5cm

(12) Incised wound on Transverse vessel on upper part of back size 11x4x3 cm

(13) Incised wound on vertical upper middle part of back size -15x5x4cm.

Internal injuries:

The doctor PW:11, in column no.20, of the post-mortem report Exh.36 noted that all the major veins of the neck were severed.

According to the doctor, the cause of death of the deceased was hemorrhagic shock due to cut of major veins and multiple injuries noted in column no.17 of the post-mortem report. The doctor further opined that the injuries found on the body of the deceased would be possible with the weapon sword and further opined that the injuries sustained were sufficient to cause death in the ordinary course of nature.

9.2 PW:1 Reviben Kantiji who is mother of the deceased was examined at Exh.11. She claimed to be eyewitness of the incident. She has stated that, on 01.11.2012, when the deceased was passing near the house of the accused, the quarrel took place, raising the issue that why the deceased was passing through the house of the accused. She would further state that, she had intervened to rescue his son – deceased and requested the appellant accused not to cause any harm to his son. She has further stated that on the next day i.e. 02.11.2012, at about 01:00 p.m., when the deceased was in the village and passing through the house of the appellant accused, he was again restrained by the accused appellant and raising the quarrel which was raised earlier, inflicted multiple sword blows on body of the deceased. The witness PW:1 has clearly stated that after hearing the shouting, she came out from the house and reached at the place of the occurrence where she saw that the accused appellant mercilessly inflicted a sword blow on the deceased and so as to kill the deceased, at the relevant time, the accused no.2 instigated the appellant accused. She further stated that her brother in law PW:5 Dehalji Chauhan was also came at the place, who had seen the incident. The witness PW:1, stated in her chief examination that due to multiple injuries inflicted by the appellant accused, the deceased her son died on the spot. She would further state that on arrival of the police, she narrated the facts of the incident which led to the registration of the offence. She also identified the accused as well as the weapon sword.

The lengthy cross examination was done by the defence, however, her version on the main incident is not shaken. The defence has tried to establish that the deceased was notorious person and having habit of drinking liquor and he used

to harass the women of the village, as a result, the villagers have killed the deceased. The witness PW:1 has denied the allegations made against the deceased. It was specifically alleged that due to bad character, deceased was killed by the village people, however, the same has been denied. It was denied that the deceased was harassing the widow mother of the appellant accused. It was denied that at the time of incident, the deceased was found uncompromising position with someone house and caught red-handed by the village people and was beaten to death by them.

9.3 Another witness, who claimed to be eyewitness of the occurrence is PW:5 Dehalji Chauhan, who happened to be uncle of the deceased and residing opposite to the place of the incident at the same village. According to say of the witness, when he went to call of nature nearby the place for his grand-daughter, he heard the shouting and immediately came to the spot of the incident where he saw that the accused appellant Dilipsinh Thakore, armed with the sword, inflicted the injuries over the body of the deceased and accused Babuji Danaji was present there and instigated the appellant accused. The witness, in his deposition, further stated that mother of the deceased PW:1 also came at the place and in the presence of both of them, the appellant accused caused fatal injuries to the deceased. The witness has further stated that, with his folded hands, he requested the accused not to kill the deceased, but he did not heed the request.

In the cross-examination, the defence has tried to establish that the deceased was beaten to death by the village people as he was used to harass the women and at the relevant time, he had been caught red-handed in uncompromising position in someone's house. The witness has denied the defence. The witness has admitted the suggestion that deceased was habitual in drinking liquor. He admitted that after his arrival at the scene of offence, the mother thereafter came at the place. He also admitted that before incident, there was no quarrel took place with the appellant accused. He has denied the suggestion that the incident was over when he reached at the spot.

9.4 The another witness Hursangji Talaji PW:6 claimed to be eyewitness of the incident, had been examined by the prosecution. The said witness has stated in his chief examination that after hearing the shouting, he rushed towards the place of the incident and while reaching there, he saw that the appellant accused armed with the sword inflicted multiple blows on the body of the deceased and accused no.2 was present there and instigated the appellant accused to kill the deceased. In the cross, he stood firm on the main incident and denied the defence about the bad character of the deceased.

9.5 PW:7 Shankarji Talaji being an uncle of the deceased, was examined by the prosecution. On careful perusal of his evidence, it emerges that he is the hearsay witness.

9.6 PW:9 PSO, Hadad Police Station, Shenghaji Sadaji Chauhan has stated that

on 02.11.2012, when he was on duty, the accused armed with sword came into police station and confessed before him that he has killed the deceased Naranji Kantiji. The witness had informed his superior officer PSI M.D. Parmar PW:11 who at the relevant time, was on field and when he returned back to the police station, the custody of the accused being handed over to him. He also identified the sword allegedly found with the accused.

9.7 PW:10 Babubhai Taral being a revenue circle officer, had prepared a map of scene of offence which he has produced at Exh.47.

9.8 PW:11 PSI M.D. Parmar, Hadad Police Station, in his deposition, has stated that when he was on duty, he received the information of killing of the deceased and immediately, he reached the spot where he recorded the complaint, allegedly disclosed by the mother of the deceased PW:1; he drew the panchnama of scene of offence and sent the dead body for post-mortem, recorded the statement of the witnesses, obtained the blood samples of the deceased as well as the accused and sent it to the FSL for its examination and arrested the accused and seized the weapon sword and after completion of the investigation, filed a chargesheet for the offences, as enumerated above. In cross, he admitted that, he did not receive any complaint for the incident which allegedly happened before the incident. He also admits that the cases is under the prohibition were registered against the deceased as he was used to drink wine. He admits that before the incident, the deceased had entered into quarrel with the teachers of the village school. He also admits that the witnesses are family members of the deceased and did not have recorded the statements of independent witnesses. The witness has explained that during the investigation, except the family members, nobody is willing to give their statements as the persons from the vicinity of the area came at the spot after the incident is over. He also admits that when he reached the spot, he saw stains of sperms on the trouser of the deceased.

10. In view of the aforesaid facts and circumstances, learned counsel Mr.D.K. Desai appearing for and on behalf of the appellant accused, has submitted that the judgment of conviction and sentence is unjust, improper and has been recorded, against the evidence on record and in utter disregard to the settled principles of appreciation of evidence. While assailing the judgment and order of conviction and sentence, he made the following submissions:

(A) That the presence of eyewitnesses PW:1, PW:5 and PW:6 are seems to be doubtful. The PW:1 who is mother of the deceased stated that she was the first to have seen the incident and later on, PW:5 Dehalji Chauhan came at the spot. That PW:5 Dehalji Chauhan stated that after his arrival at the spot, the PW:1 came later on. That PW:6 Hursangji Talaji has deposed that after his arrival, the aforesaid two witnesses came later on. Thus, the witnesses gave a different version about their presence at the spot as the version given by the witnesses in the Court as different from the version disclosed in the police statement and therefore, this major discrepancy and contradiction creates a doubt about the

presence of the witnesses at the spot and the said inconsistencies affect the credibility of the evidence tendered by the witnesses and their evidence cannot be relied upon, unless corroborated by the independent witnesses.

(B) The deceased and the accused belong to the Thakore Community and the incident allegedly took place in the day light at about 01:00 p.m. The villagers having their farm at the backside of their house and therefore, considering the small population of the village, it cannot be prudently acceptable that except the witnesses as referred above, nobody has seen the incident. Thus, despite of the availability of the independent witnesses, the I.O. failed to record the statements of independent witnesses and the explanation of not recording the statements of witnesses is not prudently acceptable and convincing.

(C) Deceased was notorious person and under the influence of the liquor, he used to harass the village women and was also after the mother of the appellant accused. The appellant accused at the relevant time, was residing in the rented house and on account of pressure made by the deceased, he was compelled to vacate the house. In addition to that, doctor who had performed the postmortem found that deceased did not have wear shirt and/or bushirt on his body. The panch-witness of inquest panchnama PW:2 Mahendra Raisingbhai had admitted that at the relevant time, the deceased found wearing the trouser and no underwear found therefrom. On the trouser of the deceased, stains of sperm found by the doctor as well as the investigating officer. It is in these admitted facts, it was submitted that in absence of any explanation and/or clarification on the aforesaid aspect by the prosecution, the defence about killing the deceased by the village people as he found in uncompromising position with someone, would more probable and acceptable. However, the learned trial Court failed to appreciate the probable defense.

(D) That, the accused no. 2, Babuji Danaji, against whom the witnesses have deposed that, he instigated the present appellant – accused and despite of clear evidence against him, the learned trial Court disbelieved the act of instigation and acquitted him. However, at the same time, relying upon the testimonies of the witnesses, the learned trial Court convicted the appellant herein and therefore, the conviction recorded qua the appellant accused on the same evidence, is not sustainable in law.

(E) All the witnesses, who are near relatives of the deceased and they are highly interested in securing the conviction of the appellant accused and therefore, where their presence at the spot create a doubt, their evidence without independent corroboration, cannot be relied.

(F) That the prosecution has not been able to prove the motive on the part of the appellant accused to kill the deceased. The quarrel as referred by the prosecution allegedly occurred before the incident, has not been proved and established.

11. In view of the aforesaid submissions canvassed by the counsel Mr.Desai, he prayed that, the complicity of the appellant – accused in the crime is not

established and proved beyond reasonable doubt and the judgment of conviction and sentence may be set aside.

12. On the other hand, Mr.L.B. Dabhi, learned APP for the respondent State, opposing the contentions, contended that, the witnesses, though related to each other, have no enmity against the appellant and there is no motive for them to falsely implicate in a serious charge of murder. So far as, non examination of the independent witness is concerned, it was submitted that, the prosecution case cannot be thrown out or doubted on that ground alone. The IO PW-11 has clarified in his deposition that, no one from the village was ready to depose in relation to the incident and therefore, he could not record the statement of villagers. Thus, where the evidence of the prosecution witnesses found to be reliable, the non-examination of the independent witness would not in any manner affect the case of the prosecution. The witnesses, who are related to the deceased, have no motive to falsely implicate the appellant accused and there is a ring of truth in their evidence, and therefore, they cannot be equated as interested witnesses. The defence failed to establish that, the deceased was beaten to death by the villagers. There is no evidence on this count nor it reveal from the prosecution case that the deceased was beaten to death by the villagers. The facts about non-wearing of shirt by the deceased or underwear or some sperm dots found on his trouser would not be a ground to discredit the version of the eye-witnesses. On the contrary, it strengthen the case of the prosecution that accused had motive to kill the deceased.

13. In view of the aforesaid submissions, the learned State Counsel has submitted that, the learned trial Court has properly considered and appreciated the evidence in its true prospective, which does not warrant interference and thus, present appeal may not be entertained.

14. We have considered the submissions advanced by learned counsel for the respective parties and perused the case records and perused the judgment.

15. In the instant case, the death of the deceased was homicidal and there is no dispute on this aspect. The issue as to whether the appellant is the author of the crime or not?

16. We have carefully gone through the oral evidence of eye-witnesses as referred above, who are mother and uncle of the deceased respectively. The witnesses have categorically stated that, after hearing the shouting, they went to the place of occurrence where they show that the appellant accused, armed with sword gave multiple blows on the body of the deceased. It is settled position of law that, the evidence of related witnesses cannot be discarded merely they are related to each other. The Supreme Court in its various judgments, time and again observed and held that, close relatives of the deceased would normally reluctant to spare the real assailant and falsely mentioned the name of the another person. On close scrutiny of the oral evidence, we find that, there is minor variation and/or contradictions in respect of who came first at the scene of

offence, however, facts remain that, they were present at the spot and saw the incident of assault allegedly committed by the appellant accused and on this aspect, the version of witnesses is consistent and found to be truthful, cogent and acceptable. In such circumstances, their presence at the spot is fully established and nothing on record, to show that the oral evidence of the witnesses seem to be inherently improbable or unreliable. The IO during the investigation, tried to record the testimony of the independent witnesses but no one willing to become a witness of the incident. The same facts clarified by the eye-witnesses that after incident was over, the villagers came later on. In the circumstances, the submissions advanced by the learned counsel with respect to non-examination of independent witness would cast doubt on the credibility of the related witnesses, cannot be accepted.

17. The next contention relates to acquittal of the co-accused on the same evidence by the Trial Court. In the instant case, the role of the co-accused was to the effect that, he remained present at the place and instigated the present appellant accused. The co-accused was without arm, nor he had caused any injury to the deceased. So far role of present appellant is concerned, he inflicted sword blows on the body of the deceased. The medical evidence shows that there were as many as 13 external injuries found on the body of the deceased and according to opinion of the doctor, the cause of death due to cut of major veins and multiple injuries on the vital parts of the body and said injuries would be possible by sword. Thus, the case of the appellant accused and the co-accused cannot be equated at par and their role is distinguishable on facts. The witnesses have categorically stated that the appellant accused inflicted multiple sword blow on the body of the deceased. So far as accused no.2 is concerned, merely presence at the spot would not be a ground to believe that he had aided and instigated the appellant accused as defined under Section 107 of the IPC. Thus, the evidence led by the prosecution would find insufficient to prove the charge of abetment qua accused no.2. Thus, in our considered opinion, mere facts that the co-accused has been acquitted would be no ground to acquit the present appellant accused whose participation is proved beyond reasonable doubt. The judgments of the Supreme Court relied by the appellant accused i.e. (i) Yogarani Vs. State by the Inspector of Police, Criminal Appeal No. 477 of 2017 decided on 23.09.2024, (ii) Saheb s/o Maroti Bhumre Vs. The State of Maharashtra, Criminal Appeal No. 313-314 of 2012 decided on 18.09.2024, (iii) Mukesh Vs. State of M.P. (2022) SAR On-line, 40), would not come to the rescue of the appellant – accused, as on factual aspects, the cases cited are distinguishable.

18. The other contention relates to the non-acceptance of the defence by the trial Court. It is no doubt true that, the criminal cases for consumption of liquor being registered against the deceased and before the incident, the deceased compelled the appellant accused to vacate the rented premises. However, there is no evidence that the villagers were unhappy with the attitude and conduct of the deceased with respect to maintaining physical relationship with the woman of

the village. Thus, merely, a dead body of the deceased found without wearing any shirt or underwear or dots of the sperm on the trouser of the deceased would not be sufficient ground to infer that, the deceased was beaten to death by the villagers.

19. The last submission was that the prosecution has not been able to prove the motive as, it is specific case of the prosecution that, before the incident, the deceased was scolded by the appellant accused, which had resulted into altercation between the parties. The witnesses do not throw any light on the issue of earlier incident and therefore, the conviction in eye of law is not sustainable in law. We do not find any substance in the submission. In the instant case, as per the version of the witnesses, the deceased was beaten to death by the appellant and their version found to be credible, reliable and acceptable. In *Birendradas Vs. State of Assam* (2013 SCC (12) 236), the Supreme Court on the issue of motive, has observed and held that, if the incident in question as projected by the prosecution, is to be accepted, then, the presence or absence of motive by itself would not make the prosecution case weak and motive loses all its importance in a case where the direct evidence of eye-witness is available.

20. For the reasons recorded, this Court after threadbare analysis of the evidence and judgment is satisfied that the prosecution has proved its case with sufficient oral as well as documentary evidence beyond all reasonable doubts and further satisfied that Trial Court has rightly found the appellant the guilty and convicted him under Section 302 of the IPC.

21. Resultantly, the appeal lacks of merits and deserves to be dismissed and is hereby dismissed. Registry is directed to send R & P to the Court concerned.