
(2013) 12 GUJ CK 0152
In the Gujarat High Court
Case No : Criminal Appeal No. 1422 of 2006

Dineshbhai Jayantibhai Harijanconvict Prisoner	APPELLANT
Vs	
The State of Gujarat	RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0152

Hon'ble Judges : Z.K. Saiyed, J; Akil Kureshi, J

Bench : Division Bench

Advocate : P.B. Goswami, No. 1, for the Appellant; H.L. Jani, APP for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Akil Kureshi, J.—This appeal is directed against judgment dated 20.7.2006 by learned Additional Sessions Judge, Dahod in Sessions Case No. 140 of 2005. Appellant was original accused. He was charged with offences punishable under Sections 302 of the Indian Penal Code and 135 of the Bombay Police Act. By the impugned judgment he was convicted for offence u/s 302 and sentenced to life imprisonment. Briefly stated prosecution version was that the appellant Dineshbhai Jayantibhai aged about 19 years lived with his wife Shila @ Asmita. He suspected her character. He would often therefore pick up quarrel with her. On 11.8.2005 he beat up his wife severely with a stick. She was taken to a hospital for treatment, but had already died before. She could not be given medical attention. FIR to this effect was filed on 12.8.2005 by one Prabhatsinh Vajesinh P.W. No. 4 Ex. 16.

2. Said Prabhatsinh Vajesinh turned hostile and did not support the prosecution. He did identify his signature in the FIR which was produced at Ex. 17. In the FIR it was stated that on 11.8.2005 at about 2 O'clock in the afternoon the complainant returned from work. At that time accused Dineshbhai Jayantibhai who lived near his house was running behind his wife Shila to beat her up. She was bleeding from her mouth. She cried for help saying that her husband was

beating her. He reasoned with the husband not to beat up wife who told him to mind his own business and dragged Shila inside the house. On the same day at about 6 O'clock he saw accused and his wife going towards Bariya. He saw that Shila would walk a few steps and then collapsed.

3. Various panch witnesses of panchnama such as the inquest, place of incident, recovery of clothes of the deceased etc., turned hostile.

4. Lakshmanbhai Rayjibhai P.W. No. 11 Ex. 30 though he was supposed to have in his police statement referred to the beating up by the accused to his wife with the stick, turned hostile and did not support the prosecution.

5. Ray la Hema P.W. No. 12 Ex. 31 deposed that Shila had got injured by a bullock hitting her with the horns. He was declared hostile since in his police statement he had referred to the quarrels between the husband and wife and the husband beating up the wife suspecting her character.

6. The deceased was taken by the accused himself for treatment to Dr. Shaileshkumar Manubhai P.W. No. 13 Ex. 32. He deposed that on 11.8.2005 when he was on duty as a Medical Officer, Civil Hospital, Devgadhi Bariya, deceased Asmitaben was brought to him for treatment by her husband Dineshbhai Jayantibhai. On examination she was found dead. The husband had told him that the deceased was injured when a bullock hit her. Since he had doubt about such theory he informed the police.

7. Dr. Kanubhai Khemabhai P.W. No. 14 Ex. 34 had carried out postmortem. He produced the postmortem report at Ex. 35. In his deposition as well as in the P.M. Report Ex. 37 he had noted several injuries on the body of the deceased. Such injuries principally included contusions and abrasions on the hands, back, buttocks etc. One injury which was serious was a head injury in the nature of a horizontal fracture over temporal bone of the scalp. According to him, the cause of death was due to shock on account of intra and extra cerebral hemorrhage caused by the head injury. In his opinion, the injuries could have been caused by muddamal article 11, a stick. In the cross-examination he agreed that the injuries on the various part of the body could be caused if a person fell down while running and pushed by a bullock. He denied that the head injury could have been caused if a bullock hit a person with his horns.

8. The murder weapon stick was discovered at the instance of the accused. The panch witness Gobarbhai Jokhnabhai P.W. No. 6 Ex. 19 turned hostile. He, however, identified his signature on the discovery panchnama which was produced at Ex. 20. Such panchnama records the manner in which the accused led the police party and the panch witnesses to his house from where he took out the stick which he hid inside, carrying blood marks. The forensic evidence establishes presence of blood of group "AB" that belonging to the deceased on such stick.

9. Savjibhai Nathabhai P.W. No. 19 Ex. 47 was the A.S.I., Devgadhi Bariya Police

Station. He deposed that he had received information of accidental death because of which he had not recorded statements of witnesses of the neighbourhood. In his inquiry he had found that deceased Asmita had died upon a bullock hitting her.

10. Instigating officer Jethabhai Paragbhai P.W. No. 22 Ex. 50 deposed that A.S.I. Savsing on 12.8.2005 produced complainant Prabhatsinh Vajesinh before the Police Station upon which his complaint was recorded.

11. This in nutshell is the evidence on record. From such evidence it can be seen that all the material witnesses turned hostile and did not support the prosecution. The complainant himself though supposed to have witnessed part of the incident of the beating of wife, before the Court did not support the prosecution. Likewise, Lakshmanbhai Rayjibhai P.W. No. 11 Ex. 30 also though supposed to have seen the accused beating up the wife as per the police statement, did not support the prosecution. So also Rayla Hemabhai P.W. No. 12 Ex. 31 had referred to frequent quarrels between husband and wife in his police statement, but in his deposition before the Court referred to the accidental injuries received by the deceased by bullock.

12. Essentially, the prosecution had only the complainant as an eyewitness who had seen the husband beating up the wife. He, however, did not support the prosecution. There were no other eyewitnesses. Barring discovery of the blood stained stick no other circumstantial evidence was produced.

13. In essence therefore all that the prosecution had at its command was the discovery of a stick allegedly at the instance of the husband which carried blood of the wife. Only on the basis of such discovery it would not be possible to sustain the conviction of the accused. Firstly, panch witness of the discovery panchnama did not support the prosecution, secondly, though the discovery of the murder weapon may be a relevant circumstance and a corroborative piece of evidence, solely on the basis of such discovery it would be highly unsafe to base the conviction of an accused, that too, when the panch witness did not support the discovery.

14. Additionally, from the outset the accused had taken a stand of the wife receiving accidental injuries upon being hit by a bullock. The fact that the deceased and his wife are agriculturist and lived on agriculture in a rural area, is not seriously in dispute. The terrain was uneven and rocky as is borne out from the complaint itself. Immediately upon the wife being taken to the Government Hospital, Devgadhi Bariya, the accused had informed the doctor about such incident. This has clearly come out in the deposition of Dr. Saileshkumar P.W. No. 13 Ex. 32. The fact that the accused himself took the wife for the treatment and that too in a Government Hospital is significant.

15. Dr. Kanubhai Khemabhai P.W. No. 14 Ex. 34 who had carried out the postmortem also agreed that most of the injuries recorded by him in the P.M. Note could be caused by a person falling down while running and being hit by a

bullock.

16. Additionally we also find that even as per the A.S.I. P.W. No. 19 Ex. 47 he had proceeded as if the death was accidental. During his inquiry it was found to be so. It was later on, that he brought the complainant before the Police Station as deposed by the Investigating Officer Jethabhai Paragbhai P.W. No. 22 that the FIR was recorded.

17. Sum total of the above discussion would be that the appellant - accused is entitled to benefit of doubt. The accidental injuries theory cannot be totally ruled out. Even otherwise, there was no independent evidence of the appellant causing death of his wife by injuring her. The incident allegedly happened in the afternoon hours near the house of the deceased. As per the complainant between his house and house of the deceased there are several houses. If that is so, there had to be some witnesses who would have seen the incident. The prosecution did not examine any other witnesses. In the result, appeal is allowed. The impugned judgment dated 20.7.2006 is set aside. Appellant be released forthwith, if not required in any other criminal case. R & P to be transmitted to the trial Court.