

(2009) 05 GUJ CK 0027
In the Gujarat High Court

Case No : Criminal Appeal No's. 1019 of 2002 and 452 of 2003

Dineshbhai Pujabhai Baria

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 302, 323

Citation : (2009) 05 GUJ CK 0027

Hon'ble Judges : D.H. Waghela, J; Anant S. Dave, J

Bench : Division Bench

Advocate : A.Y. Kogje, for Sunil S. Joshi, for the Appellant; Shivangi J. Shukla, APP, for the Respondent

Judgement

D.H. Waghela, J.—These appeals are preferred from the judgment dated 5.10.2002 of learned Additional Sessions Judge (Fast Track), Godhra whereby original accused No. 2, namely, Dineshbhai Pujabhai Baria is convicted for the offence punishable u/s 302 of IPC and sentenced to imprisonment for life while the other accused persons Nos. 1, 3, 4 and 5 are acquitted, even as charge was framed against all the accused for the offences punishable under Sections 143, 147, 148, 302 and 323 of IPC. Appeal No. 1019 of 2002 is preferred by the convicted accused and Criminal Appeal No. 452 of 2003 is filed by the State to challenge acquittal of the remaining accused persons.

2. The case and the controversy are in a very narrow compass and they could be resolved by reference to only the facts which are relevant for the purpose. The FIR, being CR No. 210 of 2001, came to be lodged by one Takhatsinh Chhatrasinh against the accused persons at 11.15 a.m. at Village Eral, which is 22 kms. away from the police station. It was alleged in the complaint that the complainant and his family and his brothers and their wives were residing at the house of the father-in-law of their father and that being not liked by the other branch of their family consisting of the accused persons, the complainant's brother was attacked and killed in the morning while he was proceeding to

answer the call of nature. It was alleged that firstly the women among the accused had come out of their house in the neighbourhood and gripped the deceased and thereafter the male among the accused persons had come out and out of them one Dineshbhai had dealt a blow with a gupti on the chest of the deceased, who died on the spot.

3. During the course of trial, prosecution mainly relied upon depositions of two witnesses as the eye witnesses, namely, Manjulaben (PW 9 at Exh.25), who was the wife of the deceased and Takhatsinh, the complainant (PW 1 at Exh.11). PW 1 deposed that there was some quarrel regarding flow of water from the house of the accused to the doors of the witnesses' house. On the day of the incident, accused Buniben and Vimlaben had caught hold of the deceased while accused Pujabhai came running from his house and called the main accused Dineshbhai, who thrust gupti into the body of the deceased. Pujabhai was stated to have dealt lathi blow on deceased due to which he fell down and the accused Rameshbhai was stated to have come running and injured the witness on his right hand by a stick blow. He identified the weapon as gupti, muddamal article No. 6, as the weapon used in the offence. He also stated that the accused had run after him and he had gone to the place of one Hatesinh Bapu, who was the Sarpanch of the village. Then, he had gone to one Kabhai and on his advice he had gone to Adadara Outpost and complaint was registered at Kalol Police Station at about 11.00 a.m. He admitted in his cross-examination that there were several houses on the same street between his house and the house of the accused and he could not have seen the incident happening at the scene of offence while sitting in his own house. Then, he admitted that when he reached the spot, where the deceased was lying, he had seen the deceased in a dead condition and lying on the street while all the accused persons had run away. He denied that anyone else was present when he reached the spot. He deposed that he reached Adadara Outpost at around 9 O' clock after walking the distance. He admitted that his whole house and family were excommunicated and boycotted by the people of the village. He claimed total ignorance about the disputes and cases with regard to land and murder of his brother as well as about illicit affairs among the members of his family.

4. Other eye witness (PW 9 Exh.25), wife of the deceased, deposed before the Court that the accused had run away after committing murder towards Adadara Outpost and when she went to see her husband after infliction of injuries by gupti and sticks, seven women from the family of the accused had come and clung to her and torn her clothes. She deposed that Takhatsinh had also received injuries on his head. During her cross-examination, she stated that the incident had happened in front of the house of Ukedbhai and everybody was beating when she reached there. She admitted that her deceased husband was taking treatment of Dr. Gadhvi and capsules worth Rs. 10/-, but he was not in the habit of drinking liquor. She denied that she was having a love affair with Takhatsinh and that she had run away with him after the obsequies of her husband were over. One Tinaben was examined by the prosecution as PW 10 at Exh.26 and she

turned hostile. She happened to be wife of elder brother of Takhatsinh, and she stated in her cross-examination that Takhatsinh and wife of the deceased were living together before and after the offence.

5. The other incriminating evidence pressed into service by the trial court for the conviction was the panchnama by which weapon wielded for the offence was supposed to have been discovered by the Investigating Officer. That panchnama dated 8.10.2001 is at Exh.21A and inter alia reports that the appellant-Dineshbhai Pujabhai was taken to his house under police escort and he had brought the muddamal gupti from the courtyard of his house. Out of the two witnesses of the panchnama, only one Sureshbhai was examined as PW 8 at Exh.22 and he had turned hostile and not supported the evidence of discovery at the instance of the appellant. The Investigating Officer, involved in the discovery of the weapon, was examined at Exh.35 as PW 13. He proved the aforesaid panchnama, subsequently exhibited as Exh.23, only by testifying to the signatures of the witnesses made in his presence; and, significantly made no attempt at proving the contents of the panchnama.

6. It was clear from bare reading of the above relevant evidence on record that the two witnesses examined by the prosecution as eye witnesses were not only contradicting each other, but the deposition of each of the witness was inconsistent with the statements made in their own cross-examination. The say of wife of the deceased that seven women had clung to her was simply unbelievable and the allegation of tearing of her clothes was not proved. While she stated that Takhatsinh was also injured on his head, he himself stated that he had reached the scene of offence after everyone had fled. None of the witnesses could depose to a credible background of facts in which, in the early hours of the day all the members of the family of the accused would rush to beat and kill Budhabhai without any occasion, provocation or desire. The complexity of relations within the family of the deceased has come on record and depositions of both the witnesses from the family of the deceased do not inspire any confidence. In that context, learned Counsel Mr. Kogje, appearing for the appellant, pointed out that, admittedly, complaint was lodged after consultation with some elders and it was physically impossible that the complainant would have walked down the distance of about 22 kms. and taken suitable advise as well to lodge the complainant within two hours of the incident. Therefore, the complaint and the version of the complainant were suspect. It was also pointed out from deposition of the complainant (Exh.11) that he described the gupti as having a slightly bent blade, before it was produced and proved before the court as muddamal article. In absence of proper proof of discovery of the weapon, alleged to have been used for the offence, it was highly probable that the weapon was planted and shown to have been discovered at the instance of the accused. It was also pointed out that two other witnesses, who were identified as independent eye witnesses present at the scene of offence, were dropped by the prosecution inasmuch as neighbours of the deceased, Uked Rama and Nathu Rama whose presence at the scene of offence was natural and their statements

were though recorded during investigation, were not examined before the court. Thus, the prosecution had chosen to base its case upon absolutely unreliable and contradictory evidence, according to the submission.

7. Learned APP Mr. Shivang Shukla, appearing for the State, which is also the appellant in Criminal Appeal No. 452 of 2003 against acquittal of the other accused, vehemently argued that the case against each of the accused was proved beyond reasonable doubt by virtue of the deposition of two eye witnesses and the injuries found on body of the deceased as well as the witnesses. He supported the conclusion drawn by learned Session Judge to the effect that the victims of the offence could not expect any support from the people of the village as they were boycotted; but death of the deceased by a single fatal blow of gupti clearly indicated intention of the killer of causing instant death. The group of blood found on the gupti discovered from the place of the accused matched with the blood of the deceased and evidence of both the eye witnesses was clear and categorical as far as the injury being caused with the gupti by Dineshbhai was concerned.

8. Having regard to the facts and considering the contentions of learned Counsel, it was clear that the evidence of both the eye witnesses was not credit-worthy, that they had contradicted each other in material particulars and it was very doubtful whether they were eye witnesses to the incident in the first place. The link between the weapon alleged to have been used for the offence and the accused person was not established as discovery of the weapon was by no means proved from the house or at the instance of the accused person. As far as other accused persons were concerned, the trial court also did not find any evidence to support the case of the prosecution.

9. Under such circumstances, findings recorded by the trial court for convicting Dineshbhai are found and held to be perverse and unsustainable in law. The investigation of serious offence of murder is found to be lackadaisical and clearly appears to have been influenced by some interested persons or extraneous consideration.

10. Therefore, in absence of sufficient evidence to prove any of the offences against any of the accused beyond reasonable doubt, the accused persons were entitled to acquittal. Accordingly, Criminal Appeal No. 1019 of 2002 is allowed, the accused appellant-Dineshbhai Pujabhai Baria is acquitted and the impugned judgment is set aside to that extent. The appeal of the State against other accused persons is dismissed and the impugned judgment is upheld to that extent. Both the appeals stand disposed accordingly.