

(2019) 07 GUJ CK 0128
In the Gujarat High Court
Case No : R/Criminal Appeal No. 300 Of 2013

Dolatsinh Jashwantsinh Patel	Vs	APPELLANT
State Of Gujarat		RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 313, 374 Indian Penal Code, 1860
— Section 302, 354

Citation : (2019) 07 GUJ CK 0128

Hon'ble Judges : R.M.CHHAYA, J;B.N. KARIA, J

Bench : Division Bench

Advocate : Pratik B Barot, Rakesh Patel

Final Decision : Dismissed

Judgement

1. This appeal, under section 374 of the Criminal Procedure Code, 1973 (for brevity, 'the Code') has been filed by the appellant - convict - original accused against the judgment and order dated 31.05.2012 passed in Sessions Case No. 3 of 2011 by the learned Additional Sessions Judge, Dahod, whereby, the appellant herein was convicted for the offence punishable under sections 302 and 354 of the Indian Penal Code, 1860 (for brevity, 'the IPC') and for the offence punishable under section 302 IPC, he was sentenced to undergo life imprisonment and fine of Rs.5,000/-, in default to pay fine, to undergo further rigorous imprisonment (RI) for 3 months, whereas, for the offence punishable under section 354 of the IPC, to undergo RI for 6 months and fine of Rs.500/- in default to pay fine, to undergo further simple imprisonment for 15 days. The sentences were to run concurrently.

2. Facts in nutshell of the prosecution case are that on 10.10.2010 at about 12:00 p.m. at Village: Panchela of Taluka:

Devgadh Bariya, when deceased Premilaben was mowing the grass in Soydiwala field, the appellant - original accused used criminal force with an intention to

outrage her modesty, to which, the deceased resisted and started screaming and when, she did not succumb to his demand, the accused killed the deceased by strangulation with her own stole in the Makaiwala field situated nearby. Thus, the appellant committed the offence punishable under section 302 and 354 of the IPC for which, an FIR being C.R. No. I-158 of 2010 came to be registered with the Devgadh Bariya police station.

2.1 Pursuant to FIR, investigation was carried and charge-sheet was filed in the Court of learned Judicial Magistrate First Class, Devgadh Bariya. As the case was sessions triable, it was committed to the sessions court at Devgadh Bariya under section 209 of the Code. The sessions court framed the charge to which, the appellant - accused denied the charges levelled against him and claimed to be tried. To bring home the charge against the appellant - accused, the prosecution examined as many as 15 witness and produced 8 documentary evidence.

2.2 After examining the prosecution witnesses, the learned Sessions Judge recorded Further Statement of the accused under section 313 of the Code in which, it is stated by the accused that a false case is filed against them. After hearing the arguments of both the sides and after appreciating the evidence on record, the learned Sessions Judge has come to the aforesaid conclusion, convicting and sentencing the appellant - accused and hence this appeal.

3. Heard, learned advocate Mr. Pratik Barot for the appellant - accused and learned Additional Public Prosecutor Mr. Rakesh Patel for the respondent - State.

3.1 The learned advocate for the appellant has submitted that the impugned judgment and order is contrary to law and the evidence on record and the trial court has materially erred in coming to such a conclusion. It is submitted that the trial court has not considered the evidence on record in its true and proper perspective and has erred in appreciating the evidence which is forthcoming on the record and the findings recorded are sans any cogent and justifiable reasons. It is further submitted that there are glaring and major contradictions in the depositions of prosecution witnesses, which seriously affect the root of the matter. It is submitted that so far as offence punishable under section 354 of the IPC is concerned, not an iota of evidence is there which is suggestive of such happenings nor any prosecution witness has asserted about the same. Besides, no any scratch or nail marks found or noticed on the person of the appellant - accused as per the panchnama produced on record nor the medical evidence supports such a case of the prosecution and hence, the ingredients of such offence are not satisfied. Accordingly, it is submitted that the learned trial court has committed a grave error in coming to such a conclusion.

3.2 It is further submitted that so far as the prosecution witnesses are concerned, more particularly PW-9 to PW-13, they are by and large connected with each other and are belonging to the same family; their testimonies appear to have been recorded on the same day i.e. 29.09.2011, which is an aspect gives a reason to ponder over as to how the evidence stood recorded on single day,

complexion of evidence coming forth, sameness in deposing as regards material particulars of the case, is one area giving an impression as if some how, though, the witnesses have not seen the actual occurrence, are still projecting themselves as eye-witnesses to the case. It is submitted that all so-called eye-witnesses i.e. PW-9 to PW-13 have deposed that they had no occasion to go near to the deceased so that they could see the actual occurrence, which creates serious doubt about their presence near the spot. Besides, none of the eye-witnesses had informed the family members of the deceased about the incident in question and only explanation come forward is fear of their false implication in the crime in question, which is indigestible.

3.3 Next, it is submitted by the learned advocate for the appellant that overall conduct of the eye-witnesses appears to be unnatural and dubious. It is submitted that actual distance between the eye-witnesses and the deceased has not come forth in the evidence nor any map is prepared during the investigation. Had that distance, which is crucial in the case on hand, come on record, the scenario would be different, however, in absence of such a crucial material, no such conclusion can be arrived at.

3.4 Making above submissions, it is submitted that the prosecution has failed to prove the case against the present appellant beyond reasonable doubt and the trial court has committed an error of law, facts and the evidence on record in convicting the appellant and hence, it is urged that present appeal may be allowed and the appellant may be acquitted from the charges levelled against him.

3.5 In support of his case, the learned advocate for the appellant has relied upon a decision of the Hon'ble Apex Court in Abdul Razak and others V. State of Karnataka, represented by Station House Officer, Hutti Police Station, (2015) 6 SCC 282.

4. As against this, learned Additional Public Prosecutor for the respondent - State, while supporting the impugned judgment and order, submitted that the judgment and order delivered by the trial court deserves to be upheld as proper and plausible reasons for conviction have been recorded. It is submitted that in past also, the appellant - accused had tried to rape the deceased, however, on account of family relations, complaint was not registered at that time. He submitted that complainant - PW-1 Narvatsinh Budhabhai Patel, exh. 8 has clearly deposed such a thing in his deposition and thus, supported the case of the prosecution. It is further submitted that immediately after the incident had taken place, FIR came to be registered and the names of the eye-witnesses had also been given; the evidence of the eye-witnesses is natural, unambiguous and clear and there is no question to disbelieve the same. He submitted that from the deposition of PW-8 Babubhai Raylabhai Panda, exh. 23, the presence of the appellant at the spot is clearly established. PW-9 Manduben Rameshbhai Panda, exh. 24 and other prosecution witnesses including to medical evidence have supported the case of the prosecution and accordingly, the prosecution has

proved its case against the appellant beyond reasonable doubt and hence, the present appeal being devoid of any merits, deserves to be dismissed.

5. Having analysed the evidence of the prosecution witnesses, first of all, if we consider the medical evidence led by the prosecution, PW-7 Dr. Arvind Buddhsen Vasney, who was performing his duty as a Medical Officer in a Primary Health Center at Guna, Taluka: Devgadh Bariya on 11.10.2010, had received the dead-body of deceased Premilaben Govindbhai for post mortem along with yadi from PSI. He himself and another penal doctor namely Shri Satish K. Azad started performing post mortem of the deceased on 11.10.2010 at about 12:35 p.m. which was ended at about 2:30 p.m. As per the evidence of this witness, the dead-body was of a Hindu lady, aged 24 years. In column No. 17 of the Post Mortem Note (PM Note), he has described the injuries found by him during the post mortem. It appears from the deposition of this witness that 13 injuries were received by the deceased on various parts of the body. As per the opinion of this doctor, all the, external as well as the internal injuries, were of prior to death. He was shown muddamal article No. 1 i.e. stole, to which, he has opined that if it is tied on neck and pulled forcefully, death could be possible. This witness has further opined that injury Nos. 1 to 5 and 13 could be possible if somebody is dragged into the field, whereas, the injury Nos. 2, 3 and 4 could be possible if a stole (patoda) is tied on the neck of somebody and pulled heavily. PM Note was prepared by him under his signature and of another penal doctor Shri Satish K. Azad. This witness has identified his signature as well as of Dr. Satish K. Azad and the PM Note was exhibited vide exh. 22. In his cross-examination, this witness has accepted that generally, in the case of strangulation, print would be found, however, if a person is strangled by a stole (odhni), then, ligature mark may not be found. No videography or photography was made of strangulation. He has also accepted that such marks would also be possible if strangulation is made by an article other than muddamal stole. This witness is not in a position to state as to ligature mark in the present case is of which article. So far as muddamal stole is concerned, no specific opinion was given by this witness. He has further stated that in a case of strangulation, eyes remain wide open, whereas, in the present case, the eyes of the deceased were found closed. He has also admitted that in a case of smothering, ligature marks would not be found. From the entire cross-examination of this witness, it appears that no fruitful result was found by the defence.

5.1 Now, so far as role and involvement of the present appellant is concerned, we have gone through the depositions of each witness. PW-1 Narvatsinh Budhabhai Patel, exh. 8 who is the complainant and paternal uncle of the deceased has deposed to state that he had not witnessed the incident in question and had been informed about the same by one Shri Kishansinh Deepsinh Patel on telephone. On receiving the telephonic message by this witness, he himself, his nephew Mahesh, Manubhai Valabhai and Narsingbhai Shanabhai reached at the place of the offence in a motorcycle at about 9:00 p.m. They found the dead-body of his niece Premila in the field. The father-in-law and the mother-in-law of

deceased Premila were present. This witness had also found that by tying the stole over the neck, strangulation was made. On inquiry made with the parents-in-law of the deceased, they were not in a position to answer. Thereafter, they inquired with the persons in the neighbouring filed and came to know that the accused came to the filed where the deceased was working and tried to outrage her modesty. He tried to commit rape on her. The deceased was screaming 'save me, save me', however, she was dragged by the accused in the corn field. When she did not succumb to the demand of the accused, the accused killed her by strangulation by the stole worn by her. This witness has further stated that on previous occasion also, in the month of Shravan, the accused had tried to commit rape of deceased but as the deceased started shouting, the accused fled away from there. This witness has identified the accused sitting in the Court as he was related to him. The muddamal articles i.e. clothes of the deceased were shown to this witness and he had identified the same. In the cross-examination, he has, of course, admitted that when he, along with others, reached at the place of offence, there was darkness, however, with the help of battery, they could visualize everything. The dead-body of the deceased and strangulation by a stole, were seen by this witness. While reaching to the police station for lodging the complaint, this witness had never tried to contact Shri Kishansinh Deepsing Patel as it was not found convenient. He has also admitted that when the dead-body was found, crop of corn was cultivated in the filed as well as in the nearby fields. Though, this witness is not an eye-witness to the incident, from the inquiry from the persons of the neighbouring filed to the incident; he was informed about the same. The name of the accused was clearly known to this witness. This witness had informed to Devgadh Bariya police station in respect of the incident. In the complaint also, the name of the accused viz. Dolatsinh Jashwantsinh Patel was declared by him. The complaint lodged by this witness before the police is produced vide exh. 9. The same thing, as deposed by this witness before the Court, was declared before the police which shows that the accused had tried to outrage modesty of the deceased, she resisted and as did not succumb to the demand of the accused, she was murdered by the accused by strangulation with her own stole.

5.2 PW-8 Babubhai Raylabhai Panda, exh. 23 was projected as an eye-witness by the prosecution. This witness has not supported the case of the prosecution and has turned hostile. If we consider his examination-in-chief, he has stated that before nine months, the incident in question had taken place, when he was working in his filed. His daughter Rasilaben and other ladies namely Manduben, Radhaben and Neetaben were also called to assist him in the field. He was at some distance. The said four ladies, who were cutting the grass, started running away saying that some one was quarrelling and hence, this witness returned back to home. He did not know as to who had committed the murder of the deceased. The accused was identified by this witness in the Court room. Thereafter, in his cross-examination by the prosecution, he has not supported the case of the prosecution. From the examination-in-chief of this witness it appears

that he had secured presence of his daughter namely Rasilaben and other ladies namely Manduben, Radhaben and Neetaben in his field. While cutting the grass in the field, these ladies ran away saying that some one was quarrelling. Accordingly, the evidence of these ladies would be material for the prosecution.

5.3 If the deposition of PW-9 Manduben Rameshbhai Panda, exh. 24 is referred, as she was present at the time of incident as per the evidence of her father namely Babubhai Raylabhai (PW-8). Manduben says in her evidence that before nine months, the incident had occurred when she herself, her sister-in-law Rasilaben, paternal aunt Radhaben and one Neetaben as well as Premilaben were cutting the grass in the field. Her father-in-law - Babubhai was also working in the field. This incident had taken place at about 12:00 p.m. when accused DolatsinhJashwantsinh came into their field and caught Premilaben and fell her down. He tied the stole in her neck and dragged her. The deceased was screaming and thereafter, she had died. She was shown muddamal stole, which she identified it to be worn by the deceased and by that stole, she was strangulated. She has further stated that Premilaben was using abusive language against the accused. She has also identified the accused sitting in the Court room. This witness was cross-examined by the defence. She has admitted that field of Govindbhai was quite adjacent to her field. That, crop of corn was readily available in their field. She had shown the grass to the police as well as the distance between the place where deceased Premilaben was lying and they were cutting the grass. She was not in a position to hear the voice of the deceased clearly. She has clearly denied the suggestion of the defence that she was not in a position to see from her field the activity carried out in the field of Govindbhai Veerabhai. As she herself and her others were cutting the grass in bending position, they were able to see the incident. She has denied of visiting the field of Govindbhai as some untoward incident had taken place in his field. After the incident, as per the deposition of this witness, they stopped cutting the grass and out of fear, they went to their home. After one day, the police inquired this witness. Of course, this witness has not tried to inform the family members of the deceased under apprehension that such a untoward incident would also happen with her. In her cross-examination, she has stated that the accused was known to her as he was from her village. Of course, she has no information about the relation between the accused and the deceased and with regard to any dispute between father-in-law Veerabhai of the deceased and the accused. From the entire deposition of this witness, it appears that this witness has certainly supported the prosecution case, identified the accused as he arrived in the field, caught the deceased, fell her down, strangulated her by stole, dragged her and committing her murder.

5.4 Now, if we examine evidence of other prosecution witness i.e. PW-10 Neetaben Babubhai Parmar, exh. 25, she has also deposed that she herself along with Radhaben, Rasilaben and Manduben were cutting the grass in the field of Babubhai Raylabhai. Babubhai was also working in the field.

Premilaben was cutting the grass in the field of Govindbhai at about 11:00 a.m. at that time, the deceased shouted. The accused tied the stole on her neck, fell her down and was dragging her. As she feared, she did not choose to visit the place of incident and returned back to home. She has also identified the accused before the Court. In her cross-examine, she has denied that it was not possible to see the deceased cutting grass in the field of Govindbhai from the field of Babubhai. She has stated that by standing in the field, it was possible to see the incident. After falling down Premilaben on the field, the deceased was strangulated. She has denied that on instruction of Babubhai, she has given false deposition. From the evidence of this witness, she has also supported the evidence of the previous witness i.e. PW-9 Manduben, exh. 24. There is no reason to disbelieve the evidence of these two eye-witnesses seeing the accused trying to outrage the modesty of the deceased, felling her down in the field and tied her neck with a stole.

5.5 Now, if we examine other witness i.e. PW-11 Rasilaben Babubhai Panda, she was also present along with other witnesses namely Radhaben, Neetaben and Manduben in the field. Deceased Premilaben was known to her as she was from her village. The deceased was cutting the grass in the nearby field at about 10:00 a.m. The accused came into the field where Premilaben was working. The accused tied the stole on the neck of the deceased and strangulated her. Premilaben abused the accused saying, 'taro rajiyo kutu'. This witness did not go to the field of Premila as she feared. Her statement was recorded by the police. She has also identified the accused present before the Court. She has also admitted that the incident was not informed to the family members of the deceased. She has not shown the place of offence to the police. No detailed cross-examination of this witness was carried out by the defence. On the same line of previous two witnesses, she has supported the prosecution. She has denied that there was another field between the field of Babubhai Panda where she was working and the field where the deceased was working. She has further denied that on a spur of the moment, the incident had taken place or she was not present at the time of incident.

5.6 Now, if we refer the evidence of PW-12 Radhaben Manglabhai Bhil, exh. 27, as per her evidence, her field was adjacent to the field of deceased Premilaben. The deceased was cutting the grass. At about 12:00 p.m., accused Dolatsinh came into her field and fell her down and thereafter, strangulated her with her own stole. She has further stated that she had seen the incident and thereafter, out of fear, she ran away to her home as Premilaben had died. She did not try to save the deceased or intervene as the accused was a headstrong person. She has also identified the accused person before the Court. She has admitted in her cross-examination that in her field, there was standing crop of corn. She has denied that due to standing crop of corn in the middle of the field, it was not possible to see the deceased where she was working. She has denied that she was giving false evidence on instruction of Babubhai Panda.

5.7 We have also gone through the evidence of panch witnesses and other prosecution witnesses i.e. PW-13 Sugraben Narvatbhai Koli Patel, exh. 28, PW-14 Nanabhai Rupabhai Parmar, exh. 30, PW-15 Viraldan Khengardan Gadhvi, exh. 33.

5.8 There are four eye-witnesses to the incident. There is no reason to disbelieve the evidence of these four witnesses who were present in the nearby field and were engaged in cutting the grass. Whatever questions were asked by the defence in their cross-examination to these witnesses, they have strongly denied the possibility of not seeing the incident in a nearby field where the deceased was working on account of standing crop of corn in the field. None of the witnesses examined by the prosecution were related to the deceased. There is also no enmity with the accused with these witnesses. There is no reason to disbelieve the evidence given by these four witnesses in support of the prosecution.

5.9 We find that, in the present case, there is a direct evidence to substantiate the involvement of the appellant - accused in the commission of the crime, given by the eye-witnesses and other circumstances point out towards the guilt of the appellant who tied the stole on the neck of deceased Premilaben and dragged her as a result of which, deceased Premila suffered multiple injuries and eventually, died. Evidence of the prosecution witnesses is otherwise reliable evidence which has remained unshaken pointing towards complicity of the appellant in the commission of the crime. In that view of the matter, no fault can be found with the impugned judgment and order while confirming the finding of guilty against the appellant and convicting him under section 302 and 354 of the IPC. Hence, this appeal must fail.

5.10 We have also gone through the decision relied upon by the learned advocate for the appellant. There cannot be any dispute as regards the ratio laid down in the same, however, in the facts and circumstances of the case on hand, the same is of no avail to the appellant.

6. For the forgoing reasons, this appeal fails and is dismissed accordingly. The impugned judgment and order dated 31.05.2012 passed in Sessions Case No. 3 of 2011 by the learned Additional Sessions Judge, Dahod is hereby confirmed. R&P be returned forthwith.