
(2009) 02 GUJ CK 0082
In the Gujarat High Court
Case No : Criminal Appeal No. 879 of 2002

Fatabhai Chhaganbhai Parmar	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 504

Citation : (2009) 02 GUJ CK 0082

Hon'ble Judges : J.C. Upadhyaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : N.K. Majmudar, for the Appellant; M.R. Mengdey, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The appellant was the original accused in Sessions Case No. 18/2001 tried by the learned Joint District Judge, 2nd Fast Track Court, Nadiad, and the appellant came to be convicted by judgment and order dated 11.10.2002, for the offence punishable u/s 302 of the Indian Penal Code and was sentenced to undergo life imprisonment and fine of Rs. 2000/-, in default of payment of fine, S.I for two months.

2. The prosecution case, in nutshell, is that the incident occurred on 18.11.2000 at about 9.00 A.M at village Dantali of Kapadwanj Taluka. Deceased Shantaben Kanubhai was residing with her husband Kanubhai. It is alleged that Shantaben had illicit relation with the appellant, but, the appellant came to know that deceased Shantaben had illicit relations with others. On the day and time of the incident, when Shantaben went to fetch water from a water tap, at that time the appellant armed with dharia abused the deceased and inflicted three blows with dharsia on her head, face and neck. At that time, Kanubhai Ratnabhai, husband of the deceased had gone to village Motipura, but, when he returned to village Dantali at about 9.30 A.M, he was informed about the incident by his nephew

Kalabhai Revabhai and one Babarbai Kodarbai. Kanubhai lodged FIR with Kapadwanj Rural Police Station regarding the incident and the FIR came to be registered. The police commenced investigation and recorded statements of material witnesses. The dead body of deceased Shantaben was sent to Kapadwanj Hospital for the purpose of post mortem. The panchnama of scene of occurrence was drawn in presence of the panchas. At the instance of the appellant, muddamal weapon dharia came to be discovered in presence of the panchas. After collecting the required material for the purpose of lodgment of charge sheet, charge sheet came to be filed in the Court of learned J.M.F.C. Kapadwanj. Since the offence was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions at Nadiad, where it was registered as Sessions Case No. 18/2001.

3. The learned trial Judge framed charge at Exh.8 for the offences punishable under Sections 302 and 504 of I.P.C., to which the appellant-accused did not plead guilty and claimed to be tried. The prosecution, therefore, adduced its oral and documentary evidence. After completion of the oral evidence adduced by the prosecution, the learned trial Judge recorded the further statement of the accused u/s 313 of Cri.P.C., and the accused denied generally all the allegations levelled against him by the prosecution and stated that Kanubhai, husband of deceased Shantaben used to quarrel with her and, therefore, he believed that her husband might have murdered Shantaben, and he was wrongly involved in this case. After considering the evidence on record and the submissions made on behalf of both the sides, the learned trial Judge recorded conviction of the appellant-accused for the offence punishable u/s 302 IPC and awarded sentence, as hereinabove referred to in this judgment. However, the accused came to be acquitted for the offence punishable u/s 504 IPC.

4. Learned advocate Mr. N.K. Majmudar for the appellant submitted that the judgment and order recording conviction of the appellant-accused is contrary to law and evidence on record. That, in the FIR, first informant Kanubhai referred to the names of his nephew Kalabhai Revabhai and Babarbai Kodarbai as the witnesses and the persons who informed him about the incident. First informant Kanubhai is not an eye witness. However, the prosecution did not examine either Kalabhai Revabhai or Babarbai Kodarbai in this case, but, examined Vikrambhai Panchal, Ramanbhai Bababhai and Jasubhai Valand in the capacity of eye witnesses. That, therefore, the witnesses, who are named in the FIR, are not examined, but, the witnesses in the capacity as eye witnesses, who are examined, have not been referred to in the FIR. It is submitted that even otherwise, considering the evidence of the above-referred to three witnesses, their evidence does not inspire confidence and it is not cogent and convincing. That, it has come in the evidence that at the time of the alleged incident, about 40 to 50 persons had gathered. The prosecution did not examine all or any of them as independent witnesses. Mr. Majmudar, learned advocate for the appellant ultimately submitted that the appeal may be allowed.

5. Learned A.P.P. Mr. Mengdey for the State vehemently opposed this appeal and submitted that the prosecution successfully proved its case on the basis of the evidence of three eye witnesses and their evidence is duly corroborated by the evidence of discovery of weapon dharia at the instance of the appellant-accused and the F.S.L evidence. Mr. Mengdey, therefore, submitted that the appeal may be dismissed.

6. We have considered the records and proceedings in the context with the submissions made on behalf of both the sides.

7. Considering the evidence of first informant Kanubhai Ratnabhai Valand (Exh.24) and the FIR (Exh.25), it clearly transpires that at the time of the incident, he was not present. Even according to his version, he came to know about the incident through Kalabhai Revabhai and Babarbhahi Kodarbhahi.

7.1 The prosecution has examined Vikrambhahi Panchal at Exh.32, Ramanbhahi Bababhahi at Exh.33 and Jasubhai Manilal Valand at Exh.34 in the capacity as eye witnesses. Considering the evidence of witness Vikrambhahi, his Pan-Shop is situated near the place of the incident and according to him, when deceased Shantaben had come to fetch water near water tap, the accused assaulted her with dharia and inflicted three blows of dharia on her head, face and neck. Accordingly, considering the evidence of witness Ramanbhahi Bababhahi, his grossery-shop is situated near the place of occurrence. He also described the incident in his deposition as it is described by witness Vikrambhahi Panchal. He also stated that the accused inflicted three blows with dharia on the head, face and neck of Shantaben.

7.2 According to the evidence of witness Jasubhai Valand examined at Exh.34, at the time of the incident, he was going to a temple through the road and he saw the accused inflicting three dharia blows on deceased Shantaben.

7.3 All the three witnesses came to be cross-examined at length on behalf of the accused, but, nothing emerges from their cross-examination, which would render their evidence doubtful one. They stick to their version that at the time of the incident, they were present and had seen the actual commission of the offence.

8. It is true that the prosecution did not examine Kalabhai Revabhai and Babarbhahi Kodarbhahi as witnesses. However, considering the evidence of witness Vikrambhahi Dhirubhai Panchal (Exh.32), in his cross-examination on behalf of the accused, he has categorically stated that at the time of the incident, Ramanbhahi Bababhahi, Babarbhahi Kodarbhahi and Kalabhai Revabhai were present. Thus, presence of Kalabhai Revabhai and Babarbhahi Kodarbhahi is stated to be there by witness Vikrambhahi at the time of the incident. It is true that first informant Kanubhai came to know about the incident through Kalabhai Revabhai and Babarbhahi Kodarbhahi. But, perusal of the evidence would reveal that those two were not the persons, who were only present at the time of the incident. The presence of witnesses Vikrambhahi Dhirubhai Panchal and Ramanbhahi Bababhahi

near the place of the incident is natural, in the sense that they both have their shops near the place of the incident and the incident occurred at about 9.00 A.M., and according to them, at the time of the incident, they were available at their respective shops. Considering the evidence of Jasubhai Valand, at the time of the incident he was going to the temple through the road and witnessed the incident. Under such circumstances, the witnesses, who are examined by the prosecution, duly implicate the accused in the crime. There is no reason whatsoever to disbelieve their version.

9. Moreover, considering the evidence of panch witness Pirubhai Alarakha and the investigating officer, it is duly established that the weapon dharia came to be discovered at the instance of the accused. The weapon dharia and the clothes of the accused were sent to F.S.L for chemical analysis, and the F.S.L. Report (Exh.38) indicates that the bloodstains found on weapon dharia and on the clothes of the accused were of human-blood of group `A", which was the blood group of the deceased. Thus, the ocular evidence adduced by the prosecution is duly corroborated by the above-referred to circumstantial evidence.

10. In the light of the above discussion, we do not find merits in this appeal and the appeal deserves dismissal.

For the foregoing reasons, the appeal stands dismissed.