
(2009) 06 GUJ CK 0028
In the Gujarat High Court
Case No : Criminal Appeal No. 455 of 2003

Himansusinh @ Rakeshkumar Arjnsinh Thakore and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 06 GUJ CK 0028

Hon'ble Judges : J.C. Upadhyaya, J; Bhagwati Prasad, J

Bench : Division Bench

Advocate : SV Raju and Parthiv G. Sheth, for the Appellant; MG Nanavati, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The challenge in this appeal is to the judgment and order rendered by Id. Addl. Sessions Judge, Fast Track Court, Panchmahals, Godhra in Sessions Case No. 248 of 2002 on dated 21.2.2003 recording conviction of both the appellants for the offences punishable u/s 302 read with Section 34 of the IPC and Section 135 of the Bombay Police Act.

2. All the appellants were sentenced to undergo imprisonment for life and fine of Rs. 1000/- each and in default of payment of fine, S.I for one month for the offence punishable u/s 302 r/w. Section 34 of the IPC and S.I for one month and fine of Rs. 100/- each and in default of payment of fine, S.I for fifteen days for the offence punishable u/s 135 of the Bombay Police Act.

3. The prosecution case in nutshell is that the incident occurred at about 11 p.m. on 6.6.2002 in the house of deceased Bathibhai Hathibhai situated in village Gothda, Taluka Godhra, District Panchmahals. According to the prosecution case, the appellant - accused No. 1 Himanshusinh @ Rakeshkumar Arjnsinh maintained illicit relation with widowed daughter-in-law of deceased Bathibhai Hathibhai. Deceased Bathibhai opposed to such illicit relation maintained by the

appellant - accused No. 1 with his widowed daughter-in-law, which was not liked by the appellant - accused No. 1. Keeping this grudge in mind, both the appellants, carrying knife and iron-leg of cot, entered the house of deceased Bathibhai, while he was all alone in the house and caused fatal injuries to the deceased. It is the case of the prosecution that at the time of the incident, the family members of deceased Bathibhai had gone to attend one marriage, and Bathibhai was alone in the house. Soon after the incident, message was conveyed to Dahyabhai Bathibhai, son of the deceased and Dahyabhai Bathibhai lodged FIR in Godhra taluka police station against both the appellants regarding the incident.

3.1 The Investigating Police Officer recorded statements of material witnesses, weapon - iron-leg of cot came to be discovered, clothes of the deceased and of the appellants came to be seized. After the completion of the police investigation, chargesheet came to be filed in the Court of learned CJM, Godhra against both the appellants - accused. Since the offence was exclusively triable by the Court of Sessions, the Id.CJM committed the case to the Court of Sessions, Panchmahals at Godhra, which came to be registered as Sessions Case No. 248 of 2002.

3.2 The Id.trial Judge framed charge against both the accused at Exh.2, to which they did not plead guilty and claimed to be tried. The prosecution thereupon adduced its oral and documentary evidence. After appreciating the evidence on record and considering the submissions made on behalf of both the sides, the Id.trial Judge recorded the conviction of both the accused persons for the offences punishable u/s 302 r/w. Section 34 of the IPC and Section 135 of the Bombay Police Act and awarded sentence as hereinabove referred to in this judgment.

4. Ld. Sr. Advocate Mr. Raju for the appellants submitted that the entire case rests upon the evidence of so-called two eye-witnesses. Their evidence is shaky, unnatural and untrustworthy. Both the so-called eye-witnesses are closely related to the deceased. The independent eye-witnesses, whose names are emerging in the charge, Exh.2 itself, have not been examined by the prosecution. So-called eye-witness Ramilaben Takhatsinh, who was Sarpanch did not immediately inform the police, regarding the incident. The FIR is belated one, creating reasonable doubt about the case of the prosecution. Weapon - knife was not recovered by the Investigating Police Officer during the course of the investigation. The so-called incident occurred at about 11 p.m. on 6.6.2002, but, the FIR came to be registered on next day. Neither the so-called eye-witness nor the relative of the deceased made any arrangements for immediate medical treatment of the deceased. The deceased did not die instantaneously, and if the prompt medical treatment was administered to the deceased, he would have survived. The medical evidence does not corroborate ocular evidence adduced by the prosecution. Therefore, it is submitted that the appeal be allowed.

5. Per contra, the learned A.P.P. Mr. Nanavati for the State fully supporting the

impugned judgment rendered by the trial Court submitted that the trial Court rightly relied upon the evidence of two eye-witnesses. It is true that there are many eye-witnesses, whose statements came to be recorded by the Investigating Police Officer, and except the two eye-witnesses examined by the prosecution, the rest of the eye-witnesses came to be dropped, but, it is the quality and not the quantity of evidence, that is to be considered. The evidence of the two eye-witnesses examined by the prosecution is natural, cogent, clear and trustworthy, getting support by the medical evidence on record and the FSL evidence on record. Therefore, it is submitted that the appeal may be dismissed.

6. We have examined record and proceedings in context with the submissions made on behalf of rival sides.

7. Considering the evidence on record, it transpires that the entire case depends upon the evidence of witnesses Ramilaben Takhatsinh, examined at Exh.9 and Rayjibhai Hathibhai, examined at Exh.23. Considering the evidence on record, it transpires that at the time of the incident, deceased Bathibhai Hathibhai was alone in his house. His family members, including his son Dahyabhai Bathibhai had gone to attend a marriage in their family. Considering the evidence of witness Ramilaben Takhatsinh, examined at Exh.9, hearing the uproar, she and her husband Takhatsinh, who were residing in the neighbourhood, immediately went to the house of deceased Bathibhai and saw that the appellant - accused No. 1 Himanshusinh @ Rakeshkumar Arjunsinh carrying knife in his hand and appellant - accused No. 2 Ganapatsinh Bathalbai carrying iron-leg of cot in his hand, inflicting fatal blows on the vital part of the body of the deceased - Bathibhai with their respective weapons. She deposed that at the time of the incident, hearing the sound of commotion, other neighbours came to the site, namely, one Swaroopbhai and Piyushbhai. Both the accused thereafter, disappeared along with their weapons. He stated that the deceased had sustained serious injuries in his head and body and within half an hour the deceased died. She stated that her son Piyush and her husband's elder brother went to inform Dahyabhai, the son of the deceased about the incident. During morning hours, Dahyabhai came and lodged FIR.

7.1 Her evidence is seriously disputed by the defence stating that though Ramilaben was Sarpanch, yet soon after the incident, she herself did not inform the police. It is true that Ramilaben herself did not inform the police about the incident, but, the incident occurred in village Gothda, and there is no evidence on record to the effect that there was any police station or police chowky in the village. Soon after the incident, steps were taken to inform son of the deceased about the incident and Dahyabhai, son of the deceased came to be informed and he immediately lodged the FIR.

8. Considering the evidence of second eye-witness Rayjibhai Hathibhai, examined at Exh.23, he deposed that his house is situated at the distance of about 50 feet from the house of the deceased. At the time of incident, while he was in his house, he heard the noise of commotion and he went to the house of the

deceased. He saw both the accused there in the house of the deceased along with weapons - knife and iron-leg of cot held by the respective accused persons. He saw the deceased lying on the floor, in a pool of blood. At that time, Ramilaben, Takhatsinh, Piyushbhai and Swaroopbhai, residing in the neighbourhood had come. The family members of the deceased had gone to attend a marriage. Piyushbhai was sent to inform Dahyabhai, son of the deceased about the incident. In his cross-examination made on behalf of the accused, it is suggested that since he happens to be the brother of the deceased, he is supporting the case of the prosecution. However, merely because witness happens to be the brother of the deceased, it cannot be presumed that he is telling lie against the accused persons. There is nothing on record to come to the conclusion that he had any animosity with the accused persons to falsely involve them in the incident.

9. If the evidence of Dr. Jadav, examined at Exh.32 and the P.M. report, Exh.34 is considered, it transpires that the deceased had sustained five external injuries and out of them three external injuries were on different parts of head. Dr. Jadav opined that injury No. 1 can be caused by hard and blunt substance and the remaining four injuries can be caused by sharp cutting instrument. According to his evidence, the external injuries caused fatal internal injuries to brain, heart and lungs of the deceased. The death was caused on account of hemorrhage on account of serious and vital injuries.

10. Thus, we are of the considered opinion that the evidence of eye-witnesses gets due corroboration by the medical evidence on record. It is true that the weapon iron-leg of cot came to be discovered by the accused and came to be seized by the Investigating Police Officer, but, the knife could not be seized by the police. Considering the overall evidence on record, we are of the opinion that mere fact that one of the weapons used in commission of the offence could not be seized by the Investigating Police Officer during the course of investigation, cannot be treated as such infirmity in the investigation, which would destroy the entire case of the prosecution. The evidence of eye-witnesses adduced by the prosecution, which is a substantive piece of evidence, is cogent, clear and trustworthy, not only regarding the role played by each accused persons, while committing the offence, but, about the weapon used by them. Considering the FSL evidence, it further transpires that the blood group of the deceased is "B" Group, and on the iron-leg of cot and on the clothes of the accused, blood stains came to be found were of the blood group "B" of the deceased.

11. In light of the entire above discussions, we are of the considered opinion that the learned trial Judge rightly recorded conviction of both the accused persons for the offence charged against them. We do not find any merits in the appeal and the appeal deserves dismissal.

12. For the foregoing reasons, the appeal is dismissed.