

**(2008) 08 GUJ CK 0043**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 51 of 2001**

Jagdishbhai Sankalchand

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

**Date of Decision :** 04-08-2008

**Acts Referred:**

Bombay Police Act, 1951 — Section 135(1)  
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374  
Penal Code, 1860 (IPC) — Section 302, 323, 34

**Citation :** (2008) 08 GUJ CK 0043

**Hon'ble Judges :** Z.K. Saiyed, J; A.M. Kapadia, J

**Bench :** Division Bench

**Advocate :** Sadhana Sagar, appointed by Legal Aid Committee, for the Appellant; Mukesh Patel, APP for Respondent 1, for the Respondent

**Final Decision :** Dismissed

## Judgement

A.M. Kapadia, J.—Challenge in instant appeal u/s 374 of the Code of Criminal Procedure ("the Code" for short) is to the correctness of the judgment and order dated 16.10.2000 rendered in Sessions Case No. 148 of 2000 by the learned Additional Sessions Judge, Court No. 13, City Sessions Court, Ahmedabad, by which appellant/original accused No. 1 ("A-1" for short) has been convicted for the offences punishable u/s 302 of the Indian Penal Code ("IPC" for short) and Section 135(1) of the Bombay Police Act ("BP Act" for short) and sentenced to imprisonment for life and fine of Rs. 3,000/- i.d., simple imprisonment for three month for commission of the offence u/s 302 IPC and imprisonment for one month and fine of Rs. 200/- i.d., simple imprisonment for fifteen days for commission of the offence u/s 135(1) BP Act. Both the sentences were ordered to run concurrently.

It may be noted that so far as original accused No. 2(A-2) is concerned, she has been acquitted of the offence under Sections 302 read with Section 34 IPC by giving benefit of doubt. However, she has been convicted for the offence u/s 323

IPC and sentenced to fine of Rs. 1,000/- i.d., imprisonment for one month.

2. The prosecution case as disclosed from the FIR and unfolded during trial is as under:

2.1. Deceased Chetan alias Pappu Pandharinath Vani was a retail vegetable vendor, who used to sell vegetables at Haripura Vegetable Market. A-1, Jagdishchandra who is the husband of A-2, Vandanaaben alias Gitaben, came to know about the illicit relations of Vandana alias Gita with Chetan alias Pappu. Therefore on 10.11.1999 at about 8 P.M., both the accused reached the place where Chetan alias Pappu was selling vegetables and A-2 gave fist blows and pulled his hair whereas A-1 took out a knife and gave severe blows to Chetan as a result of which he sustained injuries and succumbed to the same soon thereafter.

2.2. A complaint in this regard has been lodged by P.W.1, Shailaben Pandharinath Vani, mother of deceased Chetan alias Pappu, Ex.10. The said complaint was recorded by P.W.9, Natwarlal Somabhai Rathod, PI of Amraiwadi Police Station at LG Hospital, Ahmedabad against the accused persons where it is registered vide CR No. 492/99 at Amraiwadi Police Station, Ahmedabad City and which is on record at Ex.45.

2.3. P.W.9, Natwarlal S. Rathod, thereafter started investigation and held inquest on the dead body of deceased Chetan and sent the dead body to Civil Hospital, Ahmedabad for post mortem examination. Panchnama of the scene of offence was drawn. He recorded statements of the witnesses and arrested both the accused persons and drawn panchnama of their person and recovered the clothes worn by them. During the course of investigation, A-1 has shown willingness to show the knife which he has used for commission of the offence in the presence of panchas and therefore discovery panchnama was drawn and knife which was stained with blood was recovered at the instance of A-1 in presence of panchas from the place which was shown by A-1. Thereafter he sent the muddamal articles, knife as well as clothes, to FSL for chemical analysis.

2.4. On receipt of the post mortem report as well as FSL report and as sufficient incriminating evidence was found against the accused, he filed charge sheet against the accused in the Metropolitan Magistrate's Court, Ahmedabad.

2.5. As the offence u/s 302 is exclusively triable by a court of Sessions, the learned Metropolitan Magistrate committed the case to the City sessions Court, Ahmedabad.

2.6. The learned Additional Sessions Judge, Court No. 13, City Sessions Court, Ahmedabad ("the trial court" for short) to whom the case was made over for trial, framed the charge against the accused persons. The accused pleaded not guilty to the charge and claimed to be tried and thereupon they were put to trial by the trial Court in Sessions case No. 148 of 2000.

2.7. To prove the culpability of the accused, the prosecution has examined 9

witnesses and relied upon their oral testimonies, details of which have been mentioned in para 1 of the impugned judgment and order. They are as under:

Sr. No. P.W. No. Name of witness Ex. No. 1 PW 1 Shailaben Pandharinath Vani 10 2 PW 2 Jayantibhai Vechatji Rathod 11 3 PW 3 Kalpeshbhai Maganbhai Kamande 14 4 PW 4 Hareshchandra Gabhalbha Jadav 15 5 PW 5 Lalaram Ramjiram Sharma 17 6 PW 6 Sanjaybhai Shivabhai Patel 18 7 PW 7 Savdhanji Valaji Darbar 24 8 PW 8 Shaileshbhai Madhurbhai Gurjar 27 9 PW 9 Natwarlal Somabhai Rathod 35

2.8. To prove the case against the accused, the prosecution has also produced a number of documents and relied upon the contents thereof, the details of which have been described in the last part of para 1 of the impugned judgment and order.

2.9. After recording of the evidence of the prosecution witnesses was over, the trial Court explained to the accused the circumstances appearing against them and recorded their further statement u/s 313 of the Code. In their further statement, the accused denied the case of the prosecution in its entirety. They have stated that a false and concocted case has been filed against them. A-1 has denied discovery of knife at his instance. A-2 has also denied that the clothes alleged to have been recovered in presence of panchas. Both of them have reiterated that false case has been filed against them and they have been falsely roped in the case. However, they have neither led any evidence nor examined any witness in support of their defence.

2.10. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial Court came to the conclusion that the deceased Chetan alias Pappu has died a homicidal death and A-1 is the author of the injuries caused to the deceased with knife. Therefore the prosecution has successfully established the complicity of A-1 for commission of murder of Chetan alias Pappu whereas the prosecution has failed to establish complicity of A-2 for commission of the offence of murder of Chetan alias Pappu. She has been held guilty only for the offence u/s 323 IPC. On the aforesaid finding, the trial court convicted A-1 for the offence u/s 302 IPC and also u/s 135(1) BP Act whereas A-2 has been convicted for the offence u/s 323 IPC and both of them have been sentenced accordingly to which reference is made in the earlier paragraphs of this judgment which has given rise to instant appeal at the instance of original accused No. 1(A-1).

3. Ms. Sadhna Sagar, learned advocate for the accused appointed by the Legal Aid Committee for A-1, has contended that the prosecution has failed to prove the charge levelled against A-1 as all the witnesses are interested witnesses. She has also contended that evidence of T.I. Parade does not inspire confidence. So far as discovery of knife at the instance of A-1 is concerned, the said piece of evidence is not clinching and satisfactory. Therefore, according to her, the impugned judgment and order is contrary to the evidence on record which

deserves to be quashed and set aside and thereby A-1 may be acquitted of the offences with which he was charged. She therefore urged to allow the appeal.

4. Per contra, Mr. Mukesh Patel, learned APP for the respondent - State of Gujarat has submitted that there is no infirmity or illegality committed by the trial Court in recording the conviction and sentence against A-1. Therefore, no interference is called for in the impugned judgment and order. According to him, there is ample evidence on record to show that A-1 was having a grudge against deceased Chetan and wanted to take revenge in connection with the illicit relations he had with his wife- A-2. Therefore, he, in the company of his wife A-2, came at the place where deceased Chetan was selling vegetable and inflicted multiple injuries on vital parts of his body and on receiving such injuries Chetan succumbed to the same. Therefore, complicity of A-1 for the offence u/s 302 IPC has been duly proved. According to him, there are eye witnesses to the incident who have no reason to falsely rope in the accused in the crime. Therefore, he urged to dismiss the appeal by confirming the judgment and order of conviction and sentence recorded against A-1 by the trial court.

5. This Court has considered the submissions advanced by Ms. Sadhna Sagar, learned advocate for the accused and Mr. Mukesh Patel, learned APP for the respondent - State of Gujarat and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. There is no dispute to the fact that the deceased had died a homicidal death. Even the learned advocate for the accused has not raised any dispute in this regard. To prove this fact, the prosecution has examined P.W.4, Dr. Hareshchandra Gabhalbha Jadav, Ex.15. He was a Medical Officer, Civil Hospital, Ahmedabad at the relevant and he performed post mortem examination on the dead body of Chetan alias Pappu, which is on record at Ex.16.

6.1. On a conjoint reading of the oral testimony of P.W.4, Dr. Hareshchandra Gabhalbha Jadav, Ex.15 and the post mortem report at Ex.16, it is seen that there were four external injuries and ten internal injuries on the dead body of Chetan which were on vital parts of the body and the cause of death was stab and incised wounds at various parts of body which damaged vital organs like liver, (Rt) lung and other organs.

6.2. In view of the aforesaid evidence, according to us, the prosecution has established that Chetan alias Pappu died a homicidal death. We are, therefore, of the opinion that the trial court has rightly held that Chetan alias Pappu has died a

homicidal death and, therefore, we confirm the said finding and hold that the deceased has died a homicidal death.

7. Now the next question is whether A-1 was the author of injuries caused to deceased Chetan.

7.1. To prove this fact, the prosecution has examined and relied upon the oral testimony of P.W.1, Shailaben Pandharinath Vani, Ex.10. It may be noted that she is not a eye witness to the incident. She came to know about the murder of his son Chetan from one Lalabhai who had seen the incident. However, he could not identify the assailants at the spot. P.W.1, Sahilaben has inter alia testified as per the complaint lodged by her which is on record at Ex.45. It is also testified by her that after receiving the information from Lalabhai she along with her daughter and son went to the place where her son Chetan was lying in a profusely bleeding condition and unconscious and they shifted him to the hospital where he was declared dead.

7.2. This witness was cross-examined at length but nothing substantial could be brought out from her cross-examination which would impeach the credibility of this witness.

8. The prosecution has thereafter examined and relied upon the oral testimony of P.W.3, Kalpeshbhai Maganbhai Kamande, Ex.14. The prosecution has projected him as an eye witness. He has inter alia testified that the incident had taken place on 10.11.1999 at about 8 P.M., when he was at Haripura vegetable market for purchasing vegetable. He was standing near the lorry of Chetan alias Pappu and at that time A-2, Vandanaben alias Gitaben suddenly came there and caught hold of the hair of Chetan and started beating him. At that time, A-1, Jagdishbhai, husband of Vandanaben, came with a knife and started inflicting one after another blows on Chetan. Thereafter Vandanaben and Jagdishbhai ran away.

8.1. It may be appreciated that this witness was cross-examined at length by the learned advocate for the accused but nothing substantial has been brought out from his cross-examination which would impeach the credibility of his evidence.

8.2. On reappraisal of the evidence of this witness, according to us, complicity of A-1 in commission of murder of Chetan is duly established.

8.3. It is settled legal position of law that evidence of solitary eye witness is sufficient to base order of conviction. In this connection, it would be appropriate to refer to the following two decisions of the Supreme Court:

8.4. In the case of Kunju @ Balachandran Vs. State of Tamil Nadu, , the Supreme Court has held that conviction on the basis of the testimony of the sole eyewitness is permissible where the testimony of sole eyewitness was not shaken although he was cross-examined at length and the same was corroborated by the evidence of another witness who did not support the prosecution version in toto.

8.5. In the case of Krishna Mochi and Others Vs. State of Bihar, , the Supreme Court has held that credible evidence of even a solitary witness can form the basis of conviction.

9. The prosecution has thereafter examined and relied upon the evidence of P.W.5, Lalaram Ramjiram Sharma, Ex.17. He has inter alia testified in the same line as testified by P.W.2, Jayantibhai Vechatji Rathod. He has deposed that he could not identify the accused at the spot but he narrated the incident in verbatim as narrated by P.W.2, Jayantibhai Vechatji Rathod, Ex.11.

9.1. The prosecution has just with a view to identify the accused, held TI Parade and in the TI parade he has identified A-1 and A-2 as the assailants. The TI Parade was arranged by P.W.7, Savdhanji Valaji Darbar, Executive Magistrate, Ex.24.

9.2. This witness was also cross-examined at length by the learned advocate for the defence with a view to impeach the credibility of his evidence with regard to identifying A-1 and A-2 in the TI Parade but he has successfully withstood the test of cross-examination and nothing substantial could be brought out from his cross-examination which would impeach the credibility of his evidence.

10. The prosecution has successfully established the complicity of A-1 in commission of offence of murder of deceased Chetan from the testimonies of the above witnesses. However, further to corroborate the evidence, the prosecution has relied upon the discovery panchnama of knife used by A-1 for commission of the offence which was recovered at his instance.

10.1. In this connection, the prosecution has examined P.W.2, Jayantibhai Vechatji Rathod, Ex.11. He has deposed as per the contents of panchnama which is on record at Ex.13 and in his presence A-1 has shown his willingness to show the weapon while recording preliminary panchnama and thereafter he has taken the panch witness as well as police to the place where he had hidden the weapon and from the place shown by A-1 A-1 had taken out the knife having blood stain.

11. To further corroborate the prosecution case the prosecution has relied upon the FSL report Ex.40 with respect to analysis done on the muddamal articles, clothes worn by the accused as well as the knife which were having blood stains. As per FSL report, the blood stains found on the muddamal articles were of A group which is similar blood group of the deceased. Therefore it has to be held that A-1 has used the knife for committing murder of Chetan and therefore the knife was stained with blood of A group and on the clothes put on by A-1 also A blood group was found.

12. On overall reappraisal of the prosecution evidence, according to us, there are two eye witnesses who saw A-1 giving fatal blows with knife to deceased. He has been identified in TI Parade by the witness and muddamal articles which was recovered at his instance also was having similar blood group as that of deceased.

13. In view of the clinching and satisfactory evidence of the prosecution

witnesses, complicity of A-1 in commission of the offence of murder of Chetan alias Pappu has been duly established. Suffice it to say that the trial Court has given cogent and convincing reason for convicting A-1 for commission of offences u/s 302 IPC and Section 135(1) BP Act and Ms. Sadhna Sagar, learned advocate for the A-1, could not dislodge the said reasons given by the trial Court.

14. We find ourselves in complete agreement with the finding, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial Court, as according to us, no other finding, conclusion and order, is possible except the one reached by the trial Court, which is required to be affirmed by us.

15. Seen in the above context, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the trial Court, and as the appeal lacks merit, it deserves to be dismissed by confirming the judgment and order passed by the trial Court.

16. For the foregoing reasons, the appeal fails and accordingly it is dismissed. Resultantly, the judgment and order of conviction and sentence dated 16.10.2000 rendered in Sessions Case No. 148 of 2000 by the learned Additional Sessions Judge, Court No. 13, City Sessions Court, Ahmedabad, is hereby confirmed and maintained.