

(2009) 11 GUJ CK 0028
In the Gujarat High Court

Case No : Criminal Revision Application No. 658 of 2008

Jayantibhai Mathurbhai Patel and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 227
Penal Code, 1860 (IPC) — Section 114, 227, 239, 245, 299

Citation : (2010) CriLJ 1245

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : B.M. Mangukiya, Nos. 1 - 3 and Bela A. Prajapati, for Petitioners
Nos. 1 - 3, for the Appellant; DC Sejpal, APP, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The matter is notified along with Criminal Misc. Application No. 5587 of 2009 at Sr. No. 28 in Board No. I.

2. The present Revision Application is filed by the petitioners, Jayantibhai Mathurbhai Patel and two others, who are the original accused in CR No. I-36/2007 at Kothamba Police Station. The petitioners have prayed that:

19 a) Be pleased to quash and set aside the order dated September 23, 2008 in application below Exh.2 in Sessions Case No. 118 of 2007 and order to discharge the petitioners in connection with the First Information Report lodged with Kothamba Police Station, which is recorded as CR No. I-36 of 2007, for the offences punishable under Sections 302, 504 and 114 of the Indian Penal Code read with Section 135 of the Bombay Police Act.

3. Heard learned advocate Mr. B.M. Mangukiya for the petitioners.

4. The learned advocate for the petitioners invited attention of the Court to the FIR which is produced at Annexure "A", page Nos. 16 to 19. The same was read

in toto. The learned advocate also invited attention of the Court to the statement of Niruben, wife of Gordhanbhai Kantibhai Patel, who has died in the incident alleged. The said statement is more or less on the lines of the FIR and what is stated in the FIR is reiterated by the wife of the deceased.

5. The learned advocate for the petitioner then invited attention of the Court to the inquest panchnama, page Nos. 55 to 57; Panchnama of the place of offence, page Nos. 58 to 60; panchnama of recovery of clothes of the deceased, page Nos. 61 and 62; panchnama of recovery of the clothes of the accused - Jayantibhai Mathurbhai Patel, page Nos. 63 and 64; arrest panchnama, page Nos. 65 and 66; discovery panchnama whereby wooden log "Ado" was recovered by the police authority on the same being pointed out by the accused, page Nos. 67 to 69.

6. Learned advocate for the petitioners then invited attention of the court to various statements recorded by the police. The learned advocate read the relevant part of the statements of the following persons:

- (i) Mahendrabhai Kantibhai Patel, brother of deceased, page Nos. 70 to 72;
- (ii) Ankurkumar Gordhanbhai Patel, son of the deceased, page Nos. 73 to 75;
- (iii) Satishkumar Gordhanbhai Patel, son of the deceased, page Nos. 76 and 77;
- (iv) Savankumar Mahendrabhai Patel, son of brother of the deceased, page Nos. 78 and 79;
- (v) Kokilaben, wife of Mahendrabhai Kantilal Patel, wife of brother of deceased, page Nos. 80 and 81;
- (vi) Shantilal Gokalbhai Patel, brother-in-law of deceased, page Nos. 82 and 83;
- (vii) Kokilaben, wife of Shantilal Gordhanbhai Patel, daughter-in-law of deceased, page Nos. 84 and 85;
- (viii) Vaneshkumar Mahendrabhai Patel, son of the brother of the deceased, page Nos. 86 to 88;
- (ix) Darshnaben wife of Vaneshkumar Mahendrabhai Patel, wife of son of the brother of deceased, page Nos. 89 and 90;
- (x) Fuliben, wife of Kantibhai Jorabhai Patel, mother of deceased, page Nos. 91 and 92;
- (xi) Manilal Kantilal Patel, brother-in-law of the deceased, page Nos. 93 and 94;
- (xii) Kamleshbhai Jayantibhai Patel, a neighbour of the deceased (an independent witness not related to either side), page Nos. 95 and 96;
- (xiii) Ramilaben, wife of Kiritbhai Jethabhai Patel, neighbour of the deceased, page Nos. 97 and 98;

(xiv) Ramilaben wife of Kiritbhai Jethabhai Patel, page Nos. 99 and 100 (produced again);

(xv) Kantibhai Vinodbhai Patel, neighbour of the deceased (check) page No. 101;

(xvi) Chaturbhai Sakhidas Patel, a neighbour of deceased, page No. 102;

(xvii) Arvindbhai Babarbhai Patel, a witness who heard about the incident, page No. 104;

(xviii) Mukeshbhai Parsottambhai Patel, a person who was to accompany the brother of deceased on the day of the incident to Gandhinagar but later on he was informed by the brother of the deceased that as the incident has taken place he is not able to accompany the deponent and the deponent may go alone to Gandhinagar, page Nos. 105 and 106;

(xix) Premilaben, wife of Jayantibhai Mathurbhai Patel, mother of the accused Kalpesh, page Nos. 107 and 108.

7. The learned advocate for the petitioners also invited attention of the Court to the charge-sheet filed and order passed by this Court in Criminal Misc. Application No. 8072 of 2007 on 1.8.2007 whereby bail was granted to the accused. The learned advocate then invited attention of the Court to the memo of Criminal Misc. Application No. 254 of 2007 filed in Sessions Case No. 118 of 2007, which is an "application for discharge u/s 227 of the Code of Criminal Procedure, 1973 (A No. II of 1974)".

8. Last but not the least the learned advocate for the petitioners invited attention of the Court to order passed by the learned Additional Sessions Judge, Panchmahals at Godhra dated 23.9.2008 below the discharge application.

9. Police has recorded statements of as many as 19 persons of whom Premilaben, wife of Jayantibhai Mathurbhai, is the mother of the accused. Even she admits that on the fateful day i.e., 13.4.2007 an incident had taken place which takes care of the submissions made by the learned advocate for the petitioners with all vehemence that, "the entire incident is got up one and it is a creation of the fertile brain of the police authorities". Number of statements were requested to be discarded on the ground that those are the statements of the witnesses who are not eye witnesses but who deposed only as "hear-say".

10. The Court is conscious of the fact that statements of the witnesses who are deposing only on "hear-say" has a limited value. But then it is required to be noted that as many as 12 persons have come forward and said that they heard of the incident having taken place on the fateful day i.e., 13.4.2007. The submission made by the learned advocate for the petitioners that, "the entire incident is a got up one by the police authorities" is required to be considered in light of the statement of Premilaben-mother of the accused. Once that is done then it renders this submission to be an "over enthusiasm" on the part of the learned advocate for the petitioners to get the accused discharged of the alleged

offence u/s 302 IPC.

11. There are as many as six eye witnesses and that being so the matter requires at least "trial".

12. The learned advocate for the petitioners vehemently submitted in the post-mortem report the cause of death is described as under:

23. The cause of death is pending till the Histo-pathological examination of viscera.

13. It is then mentioned in the same column that-

The cause of death is "died due to shock & inter cerebellum & intra cerebrum haemorrhage associated with lung pathology" after histo-pathological report of viscera for examination.

14. This is a matter of evidence which will be in the form of explanation by medical experts before the Court. The Court will then take into consideration the evidence and will record its findings.

15. Assuming for the sake of argument that what the learned advocate for the petitioners submitted is having an iota of substance then also in light of the statement of Premilaben, wife of Jayantibhai, mother of the accused, which is on record to the effect that, "the entire family of the accused knew about the ill-health of the deceased", it will be considered by the learned Judge before whom the trial will take place. The learned Judge will consider as to whether the injuries inflicted by the accused caused the death, or it expedited the death of the deceased.

16. Column No. 17 of the post mortem report recorded external injuries on the body of deceased and those injuries do tally with the statements of the eye witnesses; to be precise:

(i) Injury No. 1 is about 2 x 1 cm. contusion present over left hypochondrial region (this is about the blow given on the stomach part);

(ii) Injury No. 2 is about 1 cm. abrasion at the right elbow joint (this again tallies with the second blow which is alleged to have been given by the accused to the deceased);

(iii) Injury No. 3 is about 4 cm. liner abrasion present below right - right elbow swollen (this tallies with the third blow alleged to have been given by the accused to the deceased).

17. The Court has no hesitation in inferring that the present proceedings are initiated only with a view to see that the regular trial is delayed and the said delay is to the benefit of the accused because the accused are on bail.

18. The learned advocate for the petitioners then invited attention of the Court to Sections 299 and 300 of the IPC and vehemently submitted that Section 299 is

to be interpreted in a manner suggested by him.

19. The learned advocate for the petitioners suggested that Section 299 of the IPC defines "culpable homicide" and the opening part of the said section is "whoever causes death...." He submitted that thus first the prosecution must come forward with convincing evidence to the effect that the death is homicidal and unless that is done by the prosecution nothing further can be done. He submitted that there are medical papers which are clear that the deceased died a natural death due to "melanoma" which he submitted that, is one of the "dreaded kind of cancer"- "carcinoma".

20. All these aspects are required to be examined and considered by the Court on the basis of the evidence which will be led before it. Only because the learned advocate for the petitioner is able to assert with vehemence that does not make the submissions good. It is a fit case wherein a regular trial is warranted.

21. Heard learned APP Mr. DC Sejjal, who made available a copy of the post-mortem report which records the aforesaid cause of death. The learned advocate for the petitioners while reading the entries made in column 20 of the post mortem report submitted that he is not able to read. If that is so then the submission made with all vehemence that, "the death was a natural death" is a "hollow" assertion.

22. The learned APP relied upon a decision of the Honourable the Apex Court in the case of Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others, He placed reliance on the observations of the Honourable the Apex Court in paras 10 and 11 which are reproduced below for ready perusal:

10. In State of Maharashtra v. Som Nath Thapa this Court observed as follows: (SCC p.671,paras 31-32)

31. Let us note the meaning of the word "presume". In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming". Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "a presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged". In Law Lexicon by P. Ramanatha Aiyar the same quotation finds place at p.1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused had committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the

materials brought on record by the prosecution has to be accepted as true at that stage.

11. Sections 227, 239 and 245 deal with discharge from criminal charge. In *State of Karnataka v. L. Muniswamy* it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused (underlined* for emphasis). The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into (See *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia and State of W.B. v. Mohd. Khalid*).

23. Taking into consideration the totality of the case the Court has no hesitation in dismissing this petition as there is no case made out for grant of any of the relief's prayed for.

24. The petition is dismissed. Rule is discharged.

25. As the incident is of the year 2007, it is expected that the concerned court will see to it that the trial proceeds as expeditiously as possible.