

(2015) 08 GUJ CK 0024
In the Gujarat High Court

Case No : Criminal Appeal Nos. 1287 of 2010 and 160 of 2011

Kantibhai P. Gamar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 GUJ CK 0024

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : Punit B. Juneja and Pratik B. Barot, for the Appellant; K.L. Pandya, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J—Heard learned advocates for the appellants and Mr. K.L. Pandya, learned Additional Public Prosecutor for the respondent-State.

2. Criminal Appeal No. 1287 of 2010 is preferred by Kantibhai P. Gamar being original accused No. 2, whereas, Criminal Appeal No. 160 of 2011 is preferred by Babubhai Bhanabhai Khokharia being original accused No. 1. The impugned judgment is dated 29.4.2010 in Sessions Case No. 10 of 2010 by the Sessions Judge, Palanpur, wherein, Sessions court has awarded sentence to both the appellants, as under:--

All the sentences are to run concurrently after extending set-off for the period during which they remained as an under trial prisoner. The Record and Proceedings shows that the appellants have not deposited the fine of Rs. 1,000/-.

3. The jail reports of both the appellants shows that both of them have absconded when released on temporary bail and till date, they have undergone less than six years of imprisonment in all.

4. The sessions court has framed the charges at Exh. 7 on 24.2.2010, wherein, it is alleged that on 31.10.2009 at about 4.30 pm both the appellants have looted

the complainant and his wife and taken away golden and silver ornaments and mobile phone and cash amount from them and while doing so, they have inflicted injuries on neck and hands of both the complainants.

5. To substantiate its case, the prosecution has examined as many as 15 witnesses and produced 32 documentary evidence.

6. Since the appellants are challenging the conviction on all counts including lack of evidence regarding their involvement and confirmation of their identity etc., to ascertain the correctness of the impugned judgment, we have to scrutinize the evidence available on record.

7. PW-1 at Exh. 13 is a Medical Officer, who has examined the accused after eight days of the incident when she found injuries on the face of the appellant - Babubhai Bhanabhai Khokharia. For the history of injury, Doctor has recorded that the appellant has told her that she was beaten by someone. However, in cross examination, she has admitted that such injuries are possible if someone falls on hard and stony area. In both the cases, the fact remains that it supports the case of the prosecution that at the time of actual loot, complainant has resisted and during such resistance, appellant - accused had been injured. The witness has proved police Yadi at Exh. 14 and injury certificates at Exhs. 15 and 6 which confirms her version.

8. PW-2 at Exh. 17 is also a Medical Officer, who has examined the complainant Nileshbhai Chunilal Nayi on the date of incident itself and proves injuries on his neck, chest and both hands so also the injury certificate at Exh. 18 and police Yadi at Exh. 19. She has also examined the other victim being wife of the complainant and proves her injuries as well as certificate at Exh. 20. Her evidence also confirms the injuries during the scuffle between the appellant and the complainant. During cross examination, it was suggested and she admits that such injuries are possible by nail or by snatching the necklace or even by falling from motor-cycle. But even in that case, on the contrary, it confirms the scuffle between the accused and the complainant as alleged by the complainant.

9. PW-3 at Exh. 21 is panch witness of place of incident. He supports the investigation and case of prosecution and identifies the Mudamal articles recovered in his presence viz. ladies foot wear, knife, towel etc. and proves the Panchnama at Exh. 22. He denies the suggestion that he has signed the ready panchnama and that everything was kept ready by police when they reached at the place and that they have simply signed the documents, but confirms that every activity was carried out in his presence.

10. PW-4 at Exh. 23 is P.S.O. of Palanpur Taluka police station. He simply registered the FIR which he proves at Exh. 24 and its intimation at Exh. 25. Thereby, there is nothing against the appellants except factual details of FIR and, therefore, he was not cross examined.

11. PW-5 at Exh. 26 is panch witness regarding recovery of clothes of the

complainant. He also supports the investigation and prosecution case and, thereby, he proves Panchnama and slips at Exhs. 27 to 29. He was not cross examined at all.

12. PW-6 at Exh. 30 is Jitendrakumar is panch witness of Panchnama of the physical condition of the accused and Mudamal article recovered from them. He proves such Panchnama at Exh. 31 and in his detailed deposition before the Court, he did not only confirm the investigation and prosecution case but disclosed in detail about the recovery of golden ornaments from both the accused and explained about each article so recovered and confirms his signature of identification slip pasted on such article. He also identifies the accused before the Court and proves Panchnama, bill and slips at Exhs. 31 to 34. He was cross examined at length by all the accused but he denies all the suggestions that he does not know anything or that he has signed ready-made Panchnama or that police has kept everything ready before calling them. On the contrary, he reconfirms the activity of Panchnama and thereby, there is positive evidence against the appellants.

13. PW-7 at Exh. 38 is a goldsmith and panch witness regarding valuable Mudamal article recovered from the house of the appellant. He also explained the details of investigation and supports the prosecution case and also identified the accused and Mudamal and, thereby, proves the Panchnama and his slips at Exhs. 39 and 40. He was cross examined to establish that he was not knowing about Mudamal article but appellant could not succeed in rebutting his evidence or to prove any other thing, which is the position for all the panch witnesses i.e. there is no evidence in rebuttal to disprove the evidence of panch witnesses, which is otherwise supporting the evidence and case of prosecution.

14. PW-8 at Exh. 41 is panch witness of arrest panchnama of accused at Exh. 42 and Panchnama of Mudamal article identified by the complainant and victim at Exh. 43. He has also supported the case of prosecution and activities during investigation in detail and confirmed that how place of incident was examined and how complainant and witnesses have identified the Mudamal articles. Thereby, he also proves that Mudamal article recovered from the accused is owned by the complainant and also place of incident. His short cross examination does not prove anything in favour of the appellants so as to confirm their acquittal.

15. PW-9 at Exh. 45 is eye witness of the incident who has witnessed the incident as he was with the complainant and his wife being his cousin brother. Therefore, he narrated the nature of incident as conveyed by the complainant and confirms that thereupon he took them in hospital. He was also not cross examined to prove the innocence of the accused.

16. PW-10 at Exh. 46 is a goldsmith who has inspected the golden and silver ornaments which are looted Mudamal and recovered from the appellants and disclosed the details of his activities. Therefore, his cross examination is also not

much material.

17. PW-11 at Exh. 47 is complainant Nileshbhai Chunilal Nayi. He has narrated the incident in detail, wherein, he categorically discloses that when he with his wife and another couple being his cousin brother and his fiancée had been to Balaram temple on a pleasure trip and when they were sitting and moving near Balaram temple at about 4.30 pm, two people have come near them with knife and looted them by injuring him on their neck, hand and chest with the knife. He discloses the details of ornaments and articles looted from them and confirms that during such incident, when he tried to rescue and resist even the appellant has received some injuries on his face near eyes and that because of his injuries, there was bleeding and thereupon, his wife was frightened and because of the clash, the person who had looted them had run away from the place. When identification parade was carried out, he and his wife has identified both the accused and even during the deposition, he saw one of the accused as a person who has injured him by knife and another accused as a person who has looted the article from him. He also identified the Mudamal articles, weapon, stolen ornaments and clothes everything. He was cross examined at length. He denied the suggestion that some shooting was ongoing at the place and because people had tried to rush from here and there, he had fallen down on stone and got injured and during such scuffle, he lost his ornaments. However, appellants fail to realize that even if there is a story as suggested then they have to explain that how Mudamal articles which are looted from the complainant and his wife have reached their house. Witnesses has also proved complaint at Exh. 48, wherein also everything is disclosed in nut-shell.

18. PW-12 at Exh. 49 is wife of the victim and another victim of the incident. She has received minor injuries, her valuables and ornaments were looted by both the appellants. She has narrated the entire story of incident and investigation and she also identifies everything i.e. accused, Mudamal stolen articles and Mudamal clothes etc. recovered to prove the incident. If we peruse the cross examination of this witness, instead of proof of absence or no involvement, it transpires that on the contrary, accused have tried to contradict her own factual details as if they have not committed loot. However, cross examination on the contrary confirms that the loot was certainly effected and articles under reference were looted and, thereafter, when victim identifies both the appellants before the identification parade and before the Court, there remains nothing in favour of the appellants to rescue them from the conviction, more particularly, when they could not rebut the evidence of the complainant and his wife in any manner whatsoever and failed to prove their defence of absolute innocence or otherwise.

19. PW-14 at Exh. 55, P.S.I. of Palanpur Taluka police station has investigated the incident and, therefore, he explained entire investigation and it results in detail and proved relevant documentary evidence from Exhs. 56 to 64 which includes FSL report and communication. Being a Police Officer, he sustained to

his version during his cross examination and, thereby, there is no evidence in rebuttal in favour of the appellants. The FSL report proved by the witness at Exh. 62 confirms that shirt of the accused was having blood stains and blood group of blood stains was that of the complainant. Therefore, there was no clash and if injuries were not inflicted by the appellants to the complainant then blood of complainant would never have been present on the shirt of the appellant.

20. PW-15 at Exh. 65 is panch witness of the identification parade. He also supports the investigation and case of the prosecution in detail and though he was cross examined, accused could not rebut his evidence and, thereby, there is a positive evidence on record regarding proper identification parade of the appellants on record.

21. Thereby, the over all evidence on record certainly confirms the case of prosecution and, therefore, there is no substance in the arguments by the appellants, though there is some contradiction in the deposition and his witness that it is not possible to snatch ornaments if somebody is holding neck or that there cannot be such an incident in daylight. However, it is settled legal position that some minor contradictions here and there would not change the position and in-fact the entire evidence is to be read and appreciated without separating few lines here and there.

22. I have perused the impugned judgment in detail. The Court has taken care of all relevant aspects of the matter both, for evidence and law point and assigned good reasons for confirming conviction of the accused. I do not see any reason to interfere with such decision. Thereby, there is no substance in the appeals so as to disturb or interfere in the impugned judgment of conviction.

23. Thereby, when there is proper identification of the accused with recovery of Mudamal articles from them and corroborating evidence by all the witnesses on record, there is no doubt to confirm the conviction as awarded by the trial Court.

24. Thereby, the appeals need to be dismissed on ground of lack of merits. Hence, the appeals are hereby dismissed.

25. Record and Proceedings be sent back to the concerned trial Court.