
(2007) 05 GUJ CK 0016
In the Gujarat High Court
Case No : Criminal Appeal No. 1330 of 1999

Keshaji Hiraji Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Citation : (2007) 05 GUJ CK 0016

Hon'ble Judges : Sharad D. Dave, J;A.L. Dave, J

Bench : Division Bench

Advocate : Kartik V. Pandya, for the Appellant; Falguni Patel, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—The appellant came to be tried along with Sajanben Keshaji and Reshamben Dhulaji for the offence of murder of Bhavanji Javanji, allegedly, committed by them on 14th August, 1998 around 13.00 hours, at village Ganjan of Modasa Taluka of Sabarkantha District. It is alleged that the appellant was armed with a knife whereas the acquitted accused were armed with sticks and they committed assault on the deceased while the deceased was resting in the front courtyard of his house. On the deceased being assaulted, shouts were raised and hearing those shouts, witnesses Udaji Jehaji, Kismatben Bhavanji and Bharatsinh Laxmansinh and other witnesses came to the spot. The accused persons, therefore, escaped from the place. The deceased was taken to hospital, where he was declared dead. An F.I.R. was lodged by Udaji Jehaji before Modasa Police at the hospital itself. On the basis of the F.I.R., an offence came to be registered and investigated. The police, having found sufficient evidence, filed charge sheet in the Court of learned Judicial Magistrate, First Class, Modasa, who, in turn, committed the case to the Court of Sessions and Sessions case No. 66 of 1998 came to be registered. The Sessions Court Camping at Modasa framed charge at Exhibit 1 and the accused persons pleaded not guilty to the charge and came to be tried. After considering the evidence led by the

prosecution, the Sessions Court came to a conclusion that the prosecution was unable to prove the charges against original accused Nos. 2 and 3, namely, Sajanben Keshaji and Reshamben Dhulaji and, therefore, acquitted them of the charges levelled against them. The Sessions Court, however, came to a conclusion that the charges against accused No. 1-Keshaji Hiraji Parmar were proved and, therefore, convicted him for the offence of murder and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to undergo imprisonment for a period of six months. The judgment was delivered on 12.7.1999, which is the subject in this appeal.

2. We have heard learned Advocate, Mr. Kartik V. Pandya, for the appellant and learned Additional Public Prosecutor, Mrs. Patel, for the respondent-State.

3. Mr. Pandya contended that the prosecution has examined only interested witnesses, who are relatives of the deceased and independent witnesses, though available, have not been examined by the prosecution. Mr. Pandya submitted that the depositions of the eye-witnesses, if examined, run contrary to each other. Lastly, it was contended that the motive for the offence is not properly proved. What is projected as motive is too fragile a ground for committing murder and that also is not properly proved. Under the circumstances, the appeal may be allowed, conviction may be set aside and the convict may be set at liberty.

4. Learned Additional Public Prosecutor, Mrs. Patel, has opposed this appeal. According to her, the incident has occurred right in front of the house of the deceased and the presence of relatives at the place is quite natural and, if the relatives are examined, it cannot be said that they are interested witnesses. The witnesses may be interested in the deceased being relatives, but that interest would not persuade them to falsely implicate an innocent person and let go the real culprit. She also submitted that apart from deposition of eye-witnesses, there is corroborative evidence, which would lend credence to the version of the eye-witnesses. She submitted that the injuries corresponding to the version of the eye-witnesses are noticed by the doctor while performing postmortem and there is medical evidence to that effect. She submitted further that the appellant has discovered the knife used in commission of the offence on the very next day and it is found to be stained with blood of the group of the deceased. She submitted that clothes of the accused were also stained with blood of the deceased. Last but not the least, the appellant himself was found to have sustained injuries on his left index finger. The accused also had sustained three other injuries, medical certificate of which is at Exhibit 16. These injuries are not explained by the accused. The Trial Court, therefore, cannot be said to have committed any error in convicting the appellant for the offence of murder. She, therefore, submitted that the appeal may be dismissed.

5. We have examined the record and proceedings in light of the contentions raised before us by rival sides.

6. Deposition of Dr. Amrutbhai Chaturbhai Patel (Exhibit 13) indicates that the

deceased had eight injuries on his person, which could have been caused with the muddamal knife. The doctor has also deposed that the deceased died of shock due to haemorrhage and injuries on vital organs. The doctor has opined that the injuries were sufficient in ordinary course of nature to cause death. During cross-examination, he has indicated that the injuries found on person of the deceased recorded in column 17 of the Postmortem Notes were not possible by a single blow. All injuries were not possible with a single weapon. Injuries No. 1, 2 and 6 were possible to be caused by brushing of the body with sharp stones.

6.1 In context of the above medical evidence, if depositions of eye-witnesses Udaji Jehaji (Exhibit 21), Kismatben Bhavanji (Exhibit 23) and Bharatsinh Laxmansinh (Exhibit 24) are seen, they all consistently and corroboratively state that, while the deceased was resting on a cot in the front courtyard of the house, the appellant attacked him with a knife and inflicted number of blows. On shouts being raised, they all rushed and the appellant escaped. Witness-Udaji is cousin of the deceased, witness-Kismatben is daughter of the deceased and witness-Bharatsinh is the nephew of the deceased. It has come in evidence that their houses are located adjacent to each other and they have a common front courtyard. Their presence at the place, therefore, is quite natural and all of them implicate the appellant-Keshaji Hiraji Parmar in the incident. It has come in evidence of these witnesses that one Dhulesinh, Suresh and Rukhiben had also come to the place on hearing the shouts.

7. We find that the evidence of these witnesses is consistent not only with each other but is corroborated by medical evidence. They have stood the test of cross-examination and have remained unshaken. It is true that Bharatsinh, during cross-examination, has admitted that he did not state before police that the appellant had given blow behind right ear, but the fact remains that he did state about the appellant having given knife blow on neck of the deceased, which is a fatal injury. Inconsistency, if any, is relatable not to the fatal injury and, therefore, this inconsistency is not so significant. Likewise, in the deposition of the first informant and eye-witness, Udaji Jehaji, he stated during cross-examination that he had stated before police that deceased-Bhavanji was sleeping on his right side. We may note that this statement is given in cross-examination and not in examination-in-chief. When we peruse the F.I.R. (Exhibit 22) and consider the evidence of Investigating Officer-Chhatrasinh Magansinh Vaghela (Exhibit 34), we find that he has not so stated in the F.I.R. When he has stated this aspect in cross-examination, it cannot be considered as an improvement on his part. It may be a mistake on his part and, therefore, in our view, the evidence of the three eye-witnesses examined by the prosecution is cogent and trustworthy. It has stood the test of cross-examination and, therefore, in our view, non-examination of other eye-witnesses would not render the prosecution unbelievable. In this regard, we may refer to a decision of the Apex Court in the case of Nagarjit Ahir etc. Vs. State of Bihar, where a view is taken that non-examination of independent witness by the prosecution, though a large number of persons had gathered at the place of occurrence, would not

render the deposition of witnesses, who are relatives, discardable. It is for the prosecution to decide as to how many witnesses on same point are required to be examined. There is no point in burdening the Court record by examining many witnesses on same point. If the witnesses who are examined are found to be otherwise reliable, non-examination of witnesses on same ground will not damage the prosecution case in any manner. In the instant case, all three eye-witnesses are found to be trustworthy, reliable and truthful. Their depositions cannot be discarded only because they are relatives because their presence at the place is natural and, in such situation, non-examination of other witnesses would not render the prosecution case unbelievable particularly when the version of eye-witnesses gets support from the medical evidence.

7.1 Apart from the above aspects, there are other circumstances which also lead to prove the case against the appellant. The knife has been discovered by the appellant in presence of Panch witness, who has supported the discovery. That knife carried blood of the group of the deceased. Likewise, the clothes of the appellant also carried blood of the group of the deceased. These factors support the prosecution case against the appellant and establish involvement of the appellant in the incident.

8. In light of the above discussion, we are of the view that the Trial Court was justified in recording conviction of the appellant. Acquittal of other two accused is not subject matter of challenge before us. The appeal, therefore, must fail and stands dismissed. Judgment and order of conviction and sentence rendered by the Trial Court is hereby confirmed.