

(2008) 07 GUJ CK 0087
In the Gujarat High Court
Case No : Criminal Appeal No. 977 of 2000

Mangubhai Ravjibhai Nayka	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114, 27, 8
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2008) 07 GUJ CK 0087

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

Bench : Division Bench

Advocate : Rekha H. Kapadia, for the Appellant; Public Prosecutor for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present Appellant/original accused in Sessions Case No. 158 of 1998 was charged and tried by the learned Additional Sessions Judge, Vyara, District Surat, for the offence punishable u/s 302 of Indian Penal Code (for short "IPC").

2. The facts of the prosecution case is that at village Vasrai in Nayaki Faliya deceased Ladkiben was doing illegal business of selling liquor. On 20.5.1998 at about 11.30 O'clock the present appellant/accused along with Shankerbhai Galiyabhai had gone to drink liquor at the place of complainant Bhikhabhai Dhediya and at that time deceased Ladkiben told him that liquor is not available. She also demanded earlier dues of Rs. 0.50 ps. On demanding the said amount some quarrel took place at that time Parasben, who was running the shop as tenant in the premise of the complainant, had given the said amount to Ladkiben. Thereafter, at about 2.00 O'clock Ladkiben raised shout "Oh Maai Re Mane Mari Nakhi, Bachao Bachao". On hearing the shout Bhikhabhai came out from the house and saw that the accused Mangubhai Ravjibhai Nayka was having

Axe with him and Ladkiben was lying on the earth and she was injured on back side of her body and was profused bleeding from spinal Cord of Ladkiben. Injury was also there on the hand of deceased and blood was coming out from the said injury. Due to these injuries Ladkiben died on the spot. At that time Kamleshbhai, Dineshbhai and Saiyedbhai from the Falia also came there. Thereafter the complainant also called his elder son Kikubhai and he was informed about the incident. Kikubhai went to inform the Sarpanch about the incident. Thereafter Sarpanch and other leaders of the village came and went to the Mahuva Police station for lodging the complaint. The police has registered the complaint vide CR No. I-37/98 and investigation was handed over to P.S.I. Ramjibhai Mithabhai Zala. Investigating Officer has drawn the Inquest Panchnama of dead body and sent the dead body for Post Mortem at Mahuva Primary Health Centre. Thereafter statement of witnesses were recorded. Thereafter possession of muddamal Axe was recovered after drawing the panchnama u/s 27 of the Evidence Act. The said muddamal axe was sent to Forensic Science Laboratory for examination. Thereafter after completion of investigation on 6.7.1998 the Police filed charge-sheet in the Court of learned J.M.F.C., Vyara.

3. After filing the charge-sheet, in the present case, as the offence was exclusively triable by the Court of Sessions, the learned JMFC, Vyara, committed the said case to the Court of Sessions at Vyara.

4. Thereafter, the charge (Ex.6) was framed against the present-appellant. The accused not pleaded guilty to the said charge and wish to defend his case after engaging the lawyer.

5. In order to bring home the charge levelled against the accused, the prosecution has examined in all 12 witnesses and relied upon their oral testimonies. They are as under:

P.W. 1 - Dr. Chandrakant Chhaganbhai Patel, Ex.12;

P.W. 2 - Bhikhabhai Dhediabhai (complainant), Ex.15;

P.W. 3 - Parasben Madanbhai, Ex.17;

P.W. 4 - Kamleshbhai Dineshbhai, Ex.18;

P.W. 5 - Saiyedbhai Mohmedbhai, Ex.19;

P.W. 6 - Parvatiben Bhikhabhai, Ex.20;

P.W. 7 - Shankerbhai Galiyabhai, Ex.21;

P.W. 8 - Laxmiben Mohanbhai, Ex.22;

P.W. 9 - Ghelabhai Galubhai Patel, Ex.24;

P.W.10 - Ratanjibhai Kholiyabhai Ahir, Ex.26;

P.W.11 - Dineshbhai Khalpabhai, Ex.28

P.W.12 - Ramjibhai Mithabhai Zala, Investigating Officer, Ex.29,

6. To Prove the culpability of the accused, the prosecution has also produced and relied upon the following documentary evidence. They are as under:

- (1) Yadi Ex.13 for Post Mortem;
- (2) Post Mortem Report, Ex.14;
- (3) Complaint, Ex.16
- (4) Inquest Panchnama Ex.23;
- (5) Panchnama of Muddamal Discovery Ex.25;
- (6) Panchnama of clothes from the Dead Body, Ex.27;
- (7) Panchnama of scene of offence Ex.29
- (8) Chit bearing signature of Panch
- (9) F.S.L. Report Ex. 33
- (10) Opinion of serologist Ex.34
- (11) Closing purshis of prosecution Ex.35

7. Thereafter, after examining the witnesses the further statement of accused u/s 313 Cr.P.C. was recorded in which the appellant/accused has denied the case of prosecution.

8. After considering the oral as well as documentary evidence and after hearing the parties, the learned Additional Sessions Judge vide impugned Judgment and Order dated 13.9.2000 held the accused guilty to the offence charged against him. The accused was convicted and sentenced to suffer rigorous imprisonment for life with fine of Rs. 250/- I/d to under go Simple imprisonment for one month for the offence u/s 302 I.P. Code.

9. Being aggrieved by and dissatisfied with the impugned Judgment and Order of conviction and sentence passed by the learned Trial Judge the present appellant/accused has filed this Appeal, through Jail, and learned Advocate Ms. Rekha H. Kapadia is appointed through Legal Aid to defend the case of the present Appellant/accused.

10. Heard Ms. Rekha Kapadia, learned Advocate, appointed through Legal Aid, for the appellant "accused and Mr. Mukesh Patel, learned A.P.P., for the respondent" State.

11. Learned Advocate Ms. Kapadia has read the charge Ex.6 and submitted that the present appellant/accused is falsely involved in the commission of offence. She has contended that the prosecution has failed to prove its case beyond

reasonable doubt. She contended that the complainant is the husband of deceased and is an interested witness. The complainant himself is not an eye witness to the incident and he was not present at the time of incident. She submitted that the alleged incident took place at 2.00 O'clock in the after-noon and the complaint was filed at 17.30 hrs. She further contended that Prosecution Witness No. 6-Parvatiben is the daughter of complainant and deceased Ladkiben. Said witness deposed in her deposition that on the date of incident she had been to the place of Govindbhai to attend marriage. After attending the marriage when she was coming back to her house, on the way Mangubhai (accused) met her on the way. On being asked Mangu, he told that "I had finished your mother" and thereafter he ran away. She did not tell anybody that Mangu has killed her mother. Ms. Kapadia then contended that in light of the provisions of the Evidence Act and in light of the principles laid down by the Hon''ble Court said extra-judicial confession is a weakest evidence and it cannot be used against the present appellant to prove it as a guilt. She then contended that from the deposition of Panch witness Ghelabhai, Ex.24, the prosecution has failed to prove the discovery panchnama of weapon Ex.25. Said panch witness has not supported the case of prosecution and the prosecution has failed to establish that ingredients of provision of Section 27 of the Evidence Act were satisfied. She also contended that the manner in which investigation conducted is doubtful. Investigating Officer, P.W. 12, has not carried out the investigation in a proper manner. She lastly contended that the Judgment of the trial Court is erroneous and without considering properly the evidence of prosecution witnesses. She also prayed that the sentence of imprisonment of life is also very harsh and the punishment awarded to the accused is required to be reduced.

12. Learned APP Mr. Mukesh Patel, for the respondent, has contended that there is voluminous reliable, trustworthy and clinching evidence on record which unequivocally and unerringly proves that the appellant "accused had committed the murder of victim lady. He further contended that from the evidence of the complainant and other witnesses as well as from the documentary evidence, the prosecution has proved the offences charged against the accused. He further contended that the prosecution has established its case beyond reasonable doubt and prayed that the Judgment and Order passed by the trial Court is required to be confirmed. He also contended that the trial Court, after fully corroborating the evidence has rightly convicted and sentenced the appellant/accused. There is no lacuna in the Judgment of the trial Court and prayed to confirm the Judgment and order of conviction and sentence passed by the trial Court.

13. We have gone through the oral as well as documentary evidence led by the prosecution before the trial Court.

14. The Hon''ble Apex Court in a number of decisions held that "it is not the duty of the appellate Court when it agrees with the view of trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial Court". The said law is laid down by the Hon''ble Court in the case of (1)

Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, and (2) in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, . Yet, in the interest of justice and to observe said cause of Appeal in a legal way, we have discussed the evidence as well as the reasons assigned by the trial Court.

15. From the oral evidence of complainant Bhikhabhai he has fairly stated before the Court that he wake up on hearing the shout of his wife and rushed to the place of occurrence where he saw that the present appellant/accused was having Axe with him. He heard the word of his wife that "Oh Maai Mari Nakhi" He has also identified the muddamal weapon which was used at the time of incident. We have compared the oral evidence of complainant with the medical evidence which is produced by P.W. 1 Dr. Chandrakant Chhaganbhai Patel. This witness has explained the injuries caused by the deceased in detail and expressed his opinion that the injuries were possible by Muddamal Axe. The learned Advocate for the appellant/accused has not challenged the oral evidence of Medical officer.

16. We have also gone through the deposition of P.W. 3 Parasben. She has also supported the version of the complainant. She has fairly deposed before the trial Court that the present appellant/accused has given axe blow to the deceased Ladkiben on spinal cord. She deposed that she was informed by Bhikhubhai-complainant that the accused has given axe blow to Ladkiben. It is also on record that extra-judicial confession was made by the present appellant before P.W. 6 Parvatiben, daughter of complainant and deceased. Parvatiben deposed in her statement before the Court that when she was coming back after attending the marriage at the place of Govindbhai, present appellant/accused Mangubhai met her with axe. She saw him and on being asked where you have gone. Mangubhai told her that "I have killed your mother" and thereafter he ran away. Thereupon Parvati rushed to her house and saw that dead body of her mother was lying on the earth and witness Parasben and her father-complainant were present there.

17. P.W. 9-Ghelabhai Gulabbhai Patel, examined at Exh. 24. He is a panch witness of discovery panchnama Exh. 25. This witness has fairly deposed that in presence of other Panch Ratanji they went to the house with accused. From the house of accused from the heap of wood and mud muddamal axe was taken out. Thereafter the police has taken possession of said muddamal article. Another panch witness and the Investigating Officer have supported the version of this panch witness.

18. The Hon"ble Apex Court in the case of State of Maharashtra Vs. Bharat Fakira Dhiwar, observed, in Head Note (B), as under:

(B) Evidence Act (1 of 1872), Section 27-Recovery of articles used in commission of offence "One of the articles was found in tall grass and the others were buried" They were out of visibility of others in normal circumstances "Until they were disinterred, at instance of accused their hidden state had remained unhampered and the accused alone know where they were until he disclosed it" Thus plea that since recovered articles were found from an open place no reliance can be placed

on such recoveries would not be tenable.

19. In the decision of the Division Bench of this Court in the case of Vinugiri Motigiri v. State of Gujarat reported in 2002 (1) GLH 176 even the Panch of discovery panchnama turned hostile and yet, this Court has considered the prosecution case against the accused and oral evidence of maker of Panchnama i.e. evidence of Investigation Officer was considered. In Head Note "C" this Court observed as under:

(C) Indian Evidence Act, 1872 - Sections 27 and 114 - Indian Penal Code, 1860 - Sections 302 and 149 - Discovery of weapon - Pancha witnesses turning hostile - Whether evidence of recovery can be relied upon - Recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of CRPC "When a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the version to be correct if it is not otherwise shown to be unreliable" On facts, held that though witnesses have turned hostile, even without the discovery panchnamas, the evidence found on record is reliable to connect all the accused with the crime - Appeals dismissed - Conviction confirmed.

20. Learned Advocate for the appellant then submitted that the complainant is a husband of deceased and, therefore, he is an interested witness. Looking to the time of incident and the fact that the accused has assaulted on the deceased at the house of complainant and, therefore, it is but natural that no outsider can be present in the house except the complainant, who is the husband of deceased. Merely, because the complainant is a husband of deceased it cannot be inferred that he has mean to falsely involve the accused in the commission of offence. The presence of accused at the house of deceased is also proved by witness Parasben, who is an independent witness. Therefore, there is no question to falsely involve the present accused in the commission of offence.

21. The Hon"ble Supreme Court in the case of A.N. Venkatesh and Anr. v. State of Karnataka reported in 2005 (3) Crime 231 (SC) has held that by virtue of Section 8 of Evidence Act, the conduct of the accused person is relevant. The Hon"ble Apex Court has held that "by virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact." The evidence of circumstances simplicitor that the deceased demanded Rs. 0.50 paise from the accused and on such demand some quarrel took place. The witnesses have fully supported the prosecution case and the muddamal axe was also found from the place of accused. The said conduct of the accused is relevant in eye of law in the context of Section 8 of Evidence Act.

22. This Court has considered the submissions advanced by the learned Advocates appearing for the parties 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 for the parties with reference to broad and reasonable probabilities of the case. In light of caution sounded by the Supreme Court while dealing with criminal appeals, this Court has examined the entire evidence on record for itself independently 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.

23. As observed and discussed at length, in our opinion, in light of the oral as well as documentary evidence, it is established by the prosecution that accused had inflicted a blow of axe on the deceased Ladkiben on spinal cord and due to that injury the deceased died on the spot. There is no reason for the complainant to falsely involve the appellant/accused. From the oral as well as documentary evidence adduced by the prosecution, in our opinion, the learned trial Judge has rightly convicted and sentenced the appellant/accused. Therefore, the conviction and sentence awarded by the trial Court against the appellant/accused does not call for any interference of this Court in exercise of appellate powers.

24. We find ourselves in complete agreement with the said finding, ultimate conclusion and resultant order of conviction passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned Judgment and order of conviction and sentence.

25. For the forgoing reasons the Appeal fails and is hereby dismissed. The Judgment and Order of conviction and sentence dated 13.9.2000 recorded by the trial Court against the appellant/accused in Sessions Case No. 158 of 1998 is hereby confirmed and maintained. Muddamal be disposed of in terms of directions contained in the impugned Judgment and order passed by the trial Court.

26. This Appeal is accordingly dismissed.