

(2016) 02 GUJ CK 0071
In the Gujarat High Court
Case No : Criminal Appeal No. 2307 of 2008

Meghabhai Dhanabhai Rajput

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 114, Section 201, Section 302, Section 34

Citation : (2016) 02 GUJ CK 0071

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Ashish M. Dagli, Advocate, for the Appellant; C.M. Shah, APP, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. This appeal is filed against the impugned judgment and order dated 13.8.2008 passed by learned Additional Sessions Judge, Gandhidham-Kachchh, in Sessions Case No. 59 of 2006 by the present appellant-original accused No. 2, who was convicted for the offence punishable under Section 302 read with Section 114 of the Indian Penal Code (for short, "IPC") and ordered to undergo imprisonment for life with fine of Rs. 5,000/- and, in default of payment of fine, further simple imprisonment of four months was imposed. Accused No. 1 was also convicted along with him, however, no appeal is preferred by accused No. 1.

2. The case of the prosecution is that on 27.7.2006 between 4.30 p.m. to 6.30 p.m., one Pancha Megha son of the complainant, Meghabhai Vaghabhai Chauhan was taken in a jeep. It is alleged that since some dispute arose with regard to fare, the accused gave knife blows on the chest of the deceased and thereby caused his death. It is also alleged that accused No. 2 with an intention to destroy the evidence and to prove that the deceased died in an accident, threw

the dead body of the deceased near the tyre of the jeep. With this allegation, a complaint was registered against the accused persons.

2.1 Upon filing of the complaint, investigation was carried out and the accused were arrested and charge-sheet was submitted in the Court of learned Magistrate. However, as the case was exclusively triable by the Court of Sessions, the same committed to Sessions Court. Thereafter, charges were framed against the accused. The accused pleaded not guilty and claimed to be tried.

2.2 During the trial, the prosecution has examined following witnesses:-

2.3 The prosecution has also produced and relied upon following documentary evidence:-

2.4 At the end of trial, the Court below recorded further statements of the accused persons under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order awarding the sentence, as aforesaid. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeal is preferred by accused No. 2 before this Court.

3. Mr. Ashish Dagli, learned advocate appearing for the appellant-original accused No. 2 has taken us through the evidence and submitted that the impugned judgment and order is against the evidence on record. He submitted that the prosecution has failed to prove its case against the accused. He also submitted that a false case is filed against the accused and he is wrongly roped in. He further submitted that the witnesses examined by the prosecution are interested witnesses as they are relatives of the deceased and no independent witnesses have been examined in the present case. He also submitted that the case is based on circumstantial evidence and there is no eye witness to the incident and the trial Court has committed an error in convicting the accused. It is also submitted that there was no intention or motive on the part of the accused to commit the offence. He further submitted that from the reading of the charge, it is clear that charge against the present appellant is for offence punishable under Section 201 of IPC and it is not for an offence punishable under Section 302 of IPC. He also submitted that since charge under Section 34 of IPC is not proved against the appellant, the State has not preferred any appeal. In that view of the matter, he submitted that the appellant ought to have been acquitted from the charge of offence under Section 302 of IPC. He further submitted that from the FSL report it is clear that the blood found on the clothes of the accused was of B group, which was of one of the injured accused and it was not of the deceased. He also submitted that only on the basis of discovery of weapon at the instance of the accused, he cannot be convicted by the trial Court. In support of his submissions, he has relied upon the decision of Division Bench of this Court in Criminal Appeal No. 1502 of 2009 with Criminal Appeal No. 2206 of 2009, wherein it is observed by the Court in paragraphs 28, 33 and 36 as under:-

"28. We shall now consider the circumstance of discovery. In the present case there are two discovery panchnamas drawn under Section 27 of the Evidence Act. The first discovery panchnama, Exh.51, is that of the clothes of the accused No. 1 i.e. one shirt with check, a black pants as well as a pair of slippers. One of the panch witnesses i.e. the P.W.17 in his evidence Exh.53 has deposed that on 24th August, 2008 he was called at the Police Station to act as a panch witness. Along with him there was one other person by name Rameshbhai as a second panch witness. All that the P.W.17 has deposed is that as led by the accused they had gone to one agricultural field situated at the village Virol and from there one bag was taken-out by the accused No. 1 and handed-over to the police. The bag contained a pants, one shirt with check and a pair of rubber slippers. The second panchnama is that of the weapon of offence i.e. the Gupti. So far as the discovery of Gupti is concerned, the PW.18 Rameshbhai has deposed that on 25th August, 2008 he was called at the police station to act as a panch witness. All that has been deposed by the P.W.18 is that they had gone to a place which was an agricultural field and from there one concealed plastic bottle was taken-out by the accused No. 1 which contained a Gupti without its handle. It appears that the trial Court has placed strong reliance on both these panchnamas drawn under section 27 of the Evidence Act as one of the incriminating circumstances.

33. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Phulukuri Kottaya Vs. Emperor - , AIR 1947 PC 67, which have become locus classicus, in the following words:-

"It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed "A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant." What emerges from the evidence in the form of panchnama is that the appellant stated before the panch witnesses to the effect that "I will show you the weapon used in the commission of offence". This is the exact statement which we could read from the discovery panchnama and the Investigating Officer also could not have deposed as regards the exact statement other than what has been recorded in the panchnama. This statement does not suggest that the appellant indicated anything about his involvement in concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the

weapon, and, therefore, it cannot be presumed or inferred that because a person discovered weapon, he was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he disclosed that he would show the weapon used in the commission of offence. In the same manner we have also perused the panchnama Exh.32 wherein the statement said to have been made by the accused before the panchas in exact words is "the accused resident of Roghada village on his own free will informs to take out cash and other valuables".

36. There is one more reason why we are not inclined to accept the evidence of discovery. We are constrained to observe here that the evidence of both the panch witnesses was recorded in a very slipshod manner. Same is the case with regard to the recording of the evidence of the Investigating Officer, so far as the aspect of discovery is concerned. The learned Public Prosecutor, who conducted the prosecution before the trial Court, failed to bring on record in the substantive evidence of the two panch witnesses as well as the Investigating Officer the fact of the accused No. 1 having made the statement that he had kept the weapon of offence and the clothes at a particular spot and that he was inclined to show the spot, even though it has been recorded in the two panchnamas Exhs. 51 and 53 respectively. The learned Public Prosecutor does not appear to have realized that there should be substantive evidence on record in this regard and that the panchnamas can be used only to corroborate the evidence of the panch and not as a substantive piece of evidence. A panchnama, which can be used only to corroborate the panch has to be read over to the panch and only thereafter it can be exhibited. If the panch witness has omitted to state something which is found in the panchnama, then, after reading over the panchnama the panch has to be asked whether that portion of the panchnama is correct or not and whatever reply he gives has to be recorded. If he replies in the affirmative, then only that portion of the panchnama can be read to corroborate the substantive evidence of the panch. If he replies in the negative, then that part of the panchnama cannot be read in evidence for want of substantive evidence on record. It is, therefore, imperative that the Public Prosecutor who conducts the trial should ensure that such a procedure is followed while examining the panch as a witness. At the same time, it is also necessary that the learned trial Judge also sees that panchnama is read over to the panch and thereafter the panchnama is exhibited after following the procedure as indicated above. If the Public Prosecutor and the learned trial Judge had followed this procedure in the present case, and if the panch witnesses had stated that the accused No. 1 had made such a statement as recorded in the two panchnamas Exhs. 51 and 53, then it would have been legally permissible for us to have taken into consideration the circumstance of discovery. The discovery evidence, by itself, is subsidiary and cannot sustain a conviction, but where there is plenty of other evidence to sustain the prosecution case, discovery evidence may be treated as a valuable piece of corroborative evidence."

3.1 He further submitted that in view of the above, the appellant could not have been convicted for offence under Section 302 of IPC and, at the most, he could have been convicted for offence under Section 201 of IPC. He, therefore, prayed that this appeal may be allowed by setting aside the impugned judgment.

4. On the other hand, Ms. C.M. Shah, learned APP appearing for the State has submitted that the order of conviction recorded against accused No. 2 is just and proper and she has supported the conviction recorded by impugned judgment. She submitted that the trial Court has rightly appreciated the evidence on record and convicted the accused. She has taken us through the evidence and contended that the trial Court has not committed any error in convicting the accused because as many as 10 witnesses were examined and 37 documents were produced in support of the prosecution case. She has also taken us through recovery panchnama and submitted that the knife was recovered at the instance of the present accused. She has also taken us through the medical evidence and submitted that the injuries in question can be caused by weapon and they were not caused in an accident. She has also taken us through the evidence of Megha Chauhan, PW-5, Exh.40, the complainant, and submitted that this witness has stated that there was blood in the jeep and there were injuries on the body of the deceased. This witness has also stated that the jeep was belonging to the present accused. Therefore, she has submitted that accused No. 2 is rightly convicted and this Criminal Appeal filed by accused No. 2 may be dismissed.

5. We have heard Mr. Ashish Dagli, learned advocate for the appellant-accused No. 2 and Ms. C.M. Shah, learned APP appearing for the State. We have also gone through the impugned judgment and the evidence on record. From the medical evidence, the cause of death of the deceased is shown to be cardio-respiratory arrest due to shock of injury to great vessel of heart. From the injuries mentioned in column No. 17 of the postmortem report, it is clear that the deceased had died due to injuries caused by knife and not due to an accident, and therefore, this is a case of murder. From the evidence of Megha Chauhan, PW-5, Exh.40, the complainant, it is clear that there was blood in the jeep and there were injuries on the body of the deceased. This witness has also stated that the jeep was belonging to the present appellant. In the evidence of PW-6, Akha Ruda, Exh.43, he has stated that he was knowing accused No. 2 and had seen the accused in the jeep along with the deceased when the air was filled in the tyres of their jeep. He has further stated that thereafter the jeep went towards Jilaarvandh and came back after ten minutes and went towards Bela-Nava Gam. Thereafter, after two and a half hours, the incident in question had happened. It is also stated by this witness that after coming to know about the incident, when they went to the place of incident, there was blood near the front seat of the jeep and the deceased was having injuries on his chest and neck and, therefore, it is clear that the accused was lastly seen along with the deceased and presence of accused No. 2 is proved beyond reasonable doubt. Even from the recovery panchnama it is clear that the knife was recovered at the instance of accused No. 2. In view of the very close proximity of the time between the

accused and the deceased being seen together and there being injury marks on the body of the deceased, it was necessary for the accused to offer a reasonable explanation, however, the accused had tried to mislead the prosecution by trying to establish that this was a case of accident. Applying the law consistently laid down by the Supreme Court, we are left with no doubt whatsoever that the circumstances proved by the prosecution, in the absence of any reasonable explanation on the part of the accused, cannot give rise to any other conclusion except that the accused is guilty of the offence. Therefore, in our view, the prosecution has proved its case beyond reasonable doubt against accused No. 2 and the trial Court has not committed any error in convicting accused No. 2 for the offence punishable under Section 302 of IPC. Therefore, this appeal is required to be dismissed.

6. For the foregoing reasons, this Criminal Appeal is dismissed. The impugned judgment and order dated 13.8.2008 passed by learned Additional Sessions Judge, Gandhidham-Kachchh, in Sessions Case No. 59 of 2006 is hereby confirmed so far as present appellant-accused is concerned. The period of sentence already undergone by the accused be given set off to him. The accused shall surrender before the jail authorities within a period of twelve weeks from today to serve out the remaining period of sentence. Bail bonds, if any, stands cancelled. Record and proceedings, if lying here, be sent to the Court below forthwith.