

(2009) 05 GUJ CK 0049
In the Gujarat High Court
Case No : Criminal Appeal No. 496 of 2002

Naranbhai Bhulabhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2009) 2 GLH 755

Hon'ble Judges : Rajesh H. Shukla, J; Jayant Patel, J

Bench : Division Bench

Advocate : Sadhana Sagar, for the Appellant; K.P. Raval, APP for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present appeal is directed against the Judgement and Order passed by the learned Sessions Judge dated 07.05.2002 in Sessions Case No. 164/00, whereby the appellant-accused has been convicted for the offence under Sections 302 and 307 of the IPC and u/s 135 of the Bombay Police Act and the sentence has been imposed upon the appellant-accused of life imprisonment with the fine of Rs. 5,000/- for the offence u/s 302 of IPC and for 5 years imprisonment with the fine of Rs. 1,000/- for the offence u/s 307 of the IPC and for the imprisonment of 6 months with the fine of Rs. 600/- for the offence u/s 135 of the Bombay Police Act.

2. It appears that as per the prosecution case, the complaint was filed by one Kamuben on 23.10.2000 stating that her sister Niruben-deceased was having affair with one Naranbhai Bhulabhai Naika who was the brother of her late husband. The said accused-appellant and Niruben had also ran away from their family and thereafter since the accused was beating her, the deceased came back to her parents home where the complainant was staying. On the date of the

incident, i.e. on 07.02.2002, when the complainant and the deceased had gone for grazing cattle, the accused was there in the field of sugarcane and he came out and insisted the deceased to accompany with him. In response thereto, the deceased replied him that she won't come with him since he had beaten the deceased in past. Therefore, the accused-appellant got excited and abused her by saying that she may have affairs with some other person and therefore, she was not coming with him. Thereafter, the accused-appellant gave indiscriminate blows with the knife upon the deceased and as a result thereof, the deceased had fallen down. When the complainant Kamuben had intervened, she was also injured with the knife by the accused-appellant and the blows were given on the head and on the hand of the complainant. The complainant started shouting and at that time, the accused ran away from the field of sugarcane. Thereafter, the complaint was filed vide C.R. No. 114/00 with Vasda Police Station, Camp at Chapaldhara.

3. The aforesaid complaint was investigated and ultimately, the charge-sheet was filed against the appellant-accused. The learned Sessions Judge framed charge and tried the Sessions Case. The prosecution in order to prove the guilt of the appellant-accused, examined 13 witnesses whose details are mentioned by the learned Sessions Judge in the Judgement at para 5. The prosecution also produced 20 documentary evidences in support of its case and the details of such documentary evidence produced by the prosecution are referred to by the learned Sessions Judge in para 6 of the judgement. The learned Sessions Judge thereafter, also recorded the statement of the accused u/s 313 of the CRPC in which the accused has denied evidence against him. In the further statement, the accused has stated that he is innocent and by keeping false doubt and with vengeance, he has been falsely implicated in the present case.

4. The learned Sessions Judge thereafter, heard the prosecution as well as the defence and ultimately, found that the prosecution has been able to prove the case for the alleged offence under Sections 302 and 307 of the IPC read with Section 135 of the Bombay Police Act. Therefore, the learned Sessions Judge convicted the accused-appellant for the said offences. Thereafter, the learned Sessions Judge also heard the matter on the aspects of imposition of sentence and ultimately, has imposed the sentence as referred to hereinabove. It is under these circumstances, the present appeal before this Court.

5. We have heard Ms. Sadhana Sagar, learned Counsel appearing for the appellant as well as Mr. K.P.Raval, learned APP for the State.

6. We have gone through the entire evidence of the witnesses as well as the documentary evidence produced by the prosecution before the learned Sessions Judge. We have also gone through the Judgement and Order passed by the learned Session Judge.

7. It appears that the prime witness to the incident is Kamuben, P.W.1, whose deposition is at Exh.7. Not only that, she is the eyewitness to the incident, but

she is also injured eyewitness. She has sustained the injuries during the incident when the accused had given blows with knife to the deceased. As she intervened, the accused has also given blows with the knife to the said witness Kamuben, P.W.1. She has fully supported the case of the prosecution as stated in the complaint. She has stated of giving blows with the knife as well as with the log of wood by the accused to the deceased. She has identified the cloths which were put on by the deceased at the time when the incident had happened. She has also identified the accused-appellant who was present in the Court and she was knowing him personally because the accused-appellant is his brother-in-law (deceased husband's brother). She has also identified the knife and the log of wood and she has stated that the injury was caused to the deceased with the same knife and the same log of wood. She has also identified the cloths which were put by her at the time when she sustained injuries.

8. In the cross-examination, she has substantiated the examination in chief and has specifically stated that when the blows were given by the accused to her sister Niruben, she was at a distance of 2-3 feet only. She has also stated that by way of natural conduct, she tried to save her, but the accused also gave knife blows to her and therefore, she started running and the accused had also ran behind her and thereafter, the deceased had fallen down and she ran away. The defence has not been able to prove about anything contrary to disbelieve her capacity as injured eyewitness. The injury upon Kamuben, P.W.1 is supported by the deposition of the Doctor Santoshkumar Adhikari, P.W. 6 as well as the deposition of Dr. Vibhutiben, P.W.7, whose deposition are at Exh.15 and Exh.20 respectively. Dr. Vibhutiben, P.W.7 has stated that when she examined Kamuben, there were 7 injuries on her and she has also produced the injury certificate which is exhibited at Exh.21. The aforesaid shows that the injury upon the deceased eyewitness Kamuben is proved by the prosecution. Therefore, it has remained uncontroverted that Kamuben, P.W.1 is the injured eyewitness to the incident.

9. The injury upon the body of the deceased is proved by the deposition of Dr. Manharbhai Lallubhai, P.W.9, who has performed the postmortem, whose deposition is at Exh.27. As per the said witness, there were injuries found on the body of the deceased and two internal injuries on the forehead and head of the deceased, resulting into fracture in the skull. He has stated that the injuries on the head were sufficient to cause death of a human being in natural course. He has also opined that certain injuries could be caused with the knife and certain injuries could be caused with the log of wood which was shown to him.

10. The discovery of the knife, the recovery of the log of wood, inquest panchnama, have come on record and they support the case of the prosecution. The FSL report at Exh.39 supports the case of the prosecution inasmuch as the blood is found on the log of wood and also on the knife which is used for commission of offence. The evidence of the Investigating Officer and other witnesses are in corroboration to the case put forward by the prosecution for

commission of offence by the appellant-accused.

11. The learned Counsel for the appellant-accused first contended that the FIR is sent late to the Court concerned and therefore, there is a delay in forwarding of the FIR to the learned Magistrate which would be fatal to the case of the prosecution.

12. Whereas, the learned APP contended that such delay has not prejudiced the rights of the accused in any manner nor would in any manner adversely affect the case of the prosecution, more particularly when the incident is proved by ample evidence on record.

13. It appears that the said aspect is also properly considered by the learned Sessions Judge in its Judgement and more particularly at paras 38, 39 and 40. The learned Sessions Judge has recorded that after the registration of the complaint, the accused has been arrested on 24.10.2000 and the sitting of the Court at Vasda is not regular (sits on Monday of each month) and therefore, after the sitting, if the FIR is sent, it might have resulted into delay, but thereby, whether any prejudice is caused or not has to be examined. It has been rightly found by the learned Sessions Judge that considering the facts of the present case, and the evidence on record, for proving the case by the prosecution against the accused, it cannot be said that any prejudice is caused or that it has adversely affected the case of the prosecution. Further, it also appears that that when the registration of the FIR is not in dispute and it is not even the case of the defence that any record was fabricated in between or that there was any concoction of evidence, merely because the FIR was forwarded late, would not be sufficient ground to conclude as it is that the same would be fatal of the prosecution. Therefore, the contention raised by the learned Counsel for the appellant cannot be accepted.

14. It was next contended by the learned Counsel for the appellant-accused that the eyewitness Kamuben is non-trustworthy inasmuch she has stated in the cross-examination that when she reached at the home, she was unconscious and she is not aware as to when the police came and when her thumb impression was taken on the complaint and she has stated that the police might have taken it when she was unconscious. It was therefore submitted that if the complainant-witness was not in conscious condition, she could not have recorded the complaint and therefore, the complaint filed by her cannot be believed at all. It was further submitted that in the complaint, there is no reference to any blow with the log of wood, but there is only reference to the blows given with the knife. Therefore, the case of the prosecution for causing injury also with the log of wood is unbelievable and cannot be accepted.

15. It was also submitted by the learned Counsel for the appellant-accused that when Kamuben-P.W.1 was examined by the Doctor, in the history given to the Doctor, she has not specifically stated the name of the appellant-accused and she has only stated of alleged ?Sphysical assault??. It was therefore submitted that

such would also be fatal to the case of the prosecution and the benefit be given to the accused.

16. It is true that in the cross-examination, the said injured eyewitness has stated that she was in unconscious condition, but her deposition is required to be appreciated and understood for examining the case of the prosecution in light of medical evidence, and more particularly the evidence of Dr. Santoshkumar Adhikari, P.W.6 and Dr. Vibhutiben Patel, P.W.7. In the deposition of Doctor Santoshkumar Adhikari, P.W.6, he has stated that Kamuben was brought by Chetnaben. Further, in the deposition of Vibhutiben Patel, P.W.7, she has specifically stated that she was in full conscious condition. Not only that, but in the deposition of Miya Ibrahim, P.W.11, he has confirmed that the statement was recorded by the police of Kamuben.

17. In the deposition of Mohammed Ali Karim Saiyed, P.W.12, Investigating Officer, has stated that Kamuben was in conscious condition and as per her say, the complaint is recorded. Under these circumstances, it appears that Kamuben was in conscious condition during which the complaint was recorded and thereafter, because of the injury, she could be in unconscious condition.

18. The statement made by any witness cannot be appreciated in piecemeal by picking one sentence only as against the reliable and uncontroverted evidence of other witnesses. Further, the injury is proved upon the body of the said witness Kamuben. Her capacity as eyewitness to the incident for giving blows by the appellant-accused to the deceased is not controverted in any manner. Under these circumstances, it is not possible to accept the contention of the learned Counsel for the appellant-accused that the deposition of Kamuben, P.W.1, eyewitness, deserves to be discarded.

19. It is not that in every case, details of the incident must be reflected in the complaint. It is true that in the complaint, there is reference to the blow given with the knife, but thereby, the prosecution is not barred from leading the evidence, if it has transpired in further investigation that the other material or weapon or any item was also used for commission of offence for giving blow to the deceased by the accused. Log of wood has come out in the further statement during the investigation. The log of wood is found from the scene of offence. Not only that, but it contained the bloodstain even as per FSL report. The aforesaid circumstances clearly goes to show that the log of wood was also used for commission of offence together with the knife by the accused. Therefore, merely because it was not mentioned at the first instance in the complaint, the same would not result into making the case of the prosecution fatal nor the benefit as sought to be canvassed can be made available to the appellant-accused.

20. It is true that in the certificate of Doctor Santoshkumar Adhikari, at Exh.16, there is only reference to the alleged assault and the name is not specifically given of the accused. But the pertinent aspect is that in the medical papers at Exh.19, page 155, it has been mentioned as 'Alleged physical assault' by

Naran Bhall at 11.00 AM on 23.10.2000. Not only that, but in the police Yadi at Exh. 18, forwarded to the Doctor by the Police Officer, there is already reference to the complaint vide C.R. No. 114/00 and the examination of Kamuben in this regard. Therefore, it cannot be said that merely because in the certificate at Exh.16, the name of the accused is not mentioned, it would be fatal to the case of the prosecution as sought to be canvassed on behalf of the appellant-accused. Hence, the contention raised by the learned Counsel for the appellant-accused cannot be accepted.

21. At this stage, we may refer to the decision of the Apex Court in the case of Bishna @ Bhiswadeb Mahato and Others Vs. State of West Bengal, and more particularly, the observations made by the Apex Court at para 37 of the said decision, wherein it has been observed as under:

The testimony of an injured witness vis-a-vis improvement and inconsistencies in their evidence as regards the part played by each of the accused may not itself be a ground to disbelieve the witnesses when having regard to prove the injuries on them it would have been impossible to give a detailed ground of the incident.

22. Therefore, when the blows were also given to the injured eyewitness Kamuben P.W.1 with the knife, by the appellant accused, if she has not specifically referred to the assault given with the log of wood also in the complaint, the case of the prosecution which otherwise is proved by the other ample material on record for use of log of wood for commission of the offence in addition to the knife, cannot be disbelieved. Hence, the said contention of the learned Counsel for the appellant-accused deserves to be rejected.

23. The learned Counsel for the appellant-accused next contended that no blood is found on the way from the scene of the offence until the house of Kamuben. She submitted that if in the injured condition, Kamuben has reached to the home, it is impossible to believe that blood spot would not be there on the way. She submitted that as per the case of the prosecution, and more particularly from the deposition of the Investigating Officer, Mohammed Ali Karim Saiyed, P.W.12, in the cross-examination, he stated that he has not seen the blood spot at either place. Therefore, she submitted that the story put forward by the prosecution is unbelievable and the benefit would go to the appellant.

24. Merely because the blood spot has not come on record from the scene of the offence, till the house of Kamuben, that itself would not be sufficient ground to discard the case put forward by the prosecution against the accused.

25. It appears from the deposition of the Investigating Officer, which has been pressed in service by the learned Counsel for the appellant-accused that the Investigating Officer did not refer to the blood spot because he did not draw panchnama of the other places viz. the way from the scene of offence until the house of the Kamuben. The said witness-Investigating Officer in his deposition at para 6 has referred to the blood spot which are found at the scene of the offence for which the panchnama is drawn and also at the place where Kamuben was

found lying at the Ota at her home. Therefore, merely because he has stated that he did see the blood spot at the other places, would not be a valid aspect to disbelieve the case of the prosecution, more particularly when at the scene of the offence, the blood spots were found and the other evidence shows the involvement of the accused for commission of the offence. Therefore, the said contention cannot be accepted.

26. The learned Counsel for the appellant-accused next contended that the blood group of the deceased has not come on the record in the FSL report and therefore, though the blood group in the FSL Report is found of a human being, it cannot be concluded that the deceased was having 'SA' blood group nor the FSL report can be read to corroborate the case of the prosecution. It was submitted that aforesaid is deficiency in investigation by the prosecution and the benefit should be made available to the appellant-accused since the doubt has arisen about the group of the blood of the deceased.

27. It is true that the blood group of the deceased has not been sent to FSL for investigation and therefore, in the FSL report, there is no reference to the group of the blood of the deceased. However, the FSL report does show that on the cloths of the deceased, the blood found was of A-Group. On the log of wood as well as on the knife, the same blood group is found at the scene of the offence. Further, such incriminating circumstance and the material are not at all explained by the accused in the statement u/s 313 nor the case of the defence at any stage is that the blood of A Group was of the accused or of any other person.

28. Under these circumstances, if the FSL report is considered keeping in view the other evidence led by the prosecution, viz. of the injured witness, Kamuben, P.W.1, evidence of the Dr. Manharbhai Lallubhai, P.W.9, and the recovery of the log of wood and the discovery of the knife, it is apparent that the deceased had the blood group of 'SA' which is found from the cloths of the deceased and the same group is found on the weapon knife as well as the log of wood used for commission of offence. Under these circumstances, it is not possible to accept the contention that merely because the blood group of the deceased was not taken and sent to FSL for deciding the same, it would be fatal to the case of the prosecution.

29. In view of the aforesaid, we find that the prosecution has been able to prove the case against the appellant-accused for the offence u/s 302 as well as u/s 307 of IPC and also for the offence u/s 135 of Bombay Police Act, and the learned Sessions Judge has rightly convicted the appellant-accused and has imposed sentence of life imprisonment and has rightly imposed the sentence for the concerned offence/s.

30. In the result, we find that the appeal is meritless. Hence, dismissed.