
(2016) 01 GUJ CK 0029
In the Gujarat High Court
Case No : Criminal Appeal No. 1040 of 2008

Naranbhai Ranchhodbhai Bhaliya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 01 GUJ CK 0029

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : H.M. Prachchhak, Advocate, for the Appellant; C.M. Shah, Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—1. This appeal is filed against the judgment and order dated 26.12.2007 passed by the learned Addl. Sessions Judge and Presiding Officer, Fast Track Court No. 1, Amreli, Camp at Rajula in Sessions Case No. 65 of 2006 whereby, the appellant, original accused, has been convicted for the offence punishable u/s. 302 IPC and has been sentenced to undergo imprisonment for life and fine of Rs. 5000/- and in default, RI for a further period of one year.

2. The complainant herein, Monghiben, wf/o. Kikabhai Arjanbhai Shiyal, was residing along with her family in Village Visaliya, Taluka Rajula and her family was earning their livelihood by doing agriculture and labour work. It is the prosecution case that Poonabhai, who happens to be the youngest amongst the seven brothers of Kikabhai, had love affair with the daughter of Naranbhai Ranchhodbhai and had married her, which was to the dislike of Naranbhai. In connection with the said incident, complaint was also filed against Kikabhai before about two years prior to the alleged incident. The complainant and her family were residing in the agricultural field of the appellant herein by sharing the produce from the field with him.

2.1 On 19.04.2006 at around 0500 hrs. Kikabhai left for the field of Jivrajbhai Patel on his motor-cycle. At around 1100 hrs., one of their relatives, Dhirubhai, came and informed the complainant that Kikabhai has been killed and the dead body is lying in the field. When they reached the place, they noticed Kikabhai in a badly bruised condition with severe injuries on the head and face.

2.2 A blue colored footwear was found lying on the ground at some distance from the dead body and under the belief that it belonged to the appellant herein, a complaint in connection with the aforesaid incident was lodged with Rajula Police Station vide I-C.R. No. 60/2006 against the appellant. Necessary investigation was done and statements of witnesses were recorded. At the end of investigation, charge-sheet was filed against the accused before the trial Court. However, being a sessions triable offence, the case was committed to Sessions Court and trial was initiated.

3. During the trial, the prosecution had examined the following witnesses;

4. The prosecution had also produced and relied upon several documentary evidence, particularly, the complaint at Exh. 10, discovery panchnama at Exh. 18, panchnama regarding seizure of clothes of the dead body at Exh. 19, map of scene of offence at Exh. 23, arrest panchnama at Exh. 27, inquest panchnama at Exh. 30, panchnama of scene of offence at Exh. 32, post mortem report at Exh. 35, FSL Report at Exh. 42 and Serological report at Exh. 43.

5. At the end of trial, the Court below recorded further statement of accused u/s. 313 of Cr.P.C. and thereafter, passed the impugned judgment and order, which has led to the filing of present appeal.

6. Mr. H.M. Prachchhak, learned counsel for the appellant, submitted that the prosecution case is based upon circumstantial evidence and the prosecution has failed to prove the aspect of "last seen together", which is essential in such cases. There is no eye-witness to the alleged incident. Further, the prosecution has also failed to establish the chain of circumstances leading to the guilt of appellant. He submitted that though the prosecution has strongly pleaded about motive, the same has not been proved by any cogent and reliable evidence. He, therefore, submitted that the appellant deserves to be acquitted by granting him benefit of doubt.

6.1 Learned counsel Mr. Prachchhak further submitted that the Investigating Officer had not collected the blood sample of accused to ascertain its blood group. On account of this lacuna, it would be difficult to ascertain as to whose blood was found on the muddamal articles, including the clothes and weapon alleged to have been used in the commission of crime.

6.2 Learned counsel further submitted that there is serious discrepancy about the time of death. As per the informant, the deceased was killed some where between 1030 to 1100 hrs. The Medical Officer performed the post-mortem at around 1530 hrs. However, in his deposition, the Medical Officer has categorically

deposed that death took place before about 12 hours, meaning thereby, that the prosecution has failed to prove the specific time of death.

7. Ms. C.M. Shah, learned APP, supported the impugned judgment and order and submitted that the Court below has appreciated the evidence on record in its proper perspective and has rightly convicted the accused for the crime in question. She, therefore, submitted that the present appeal deserves to be dismissed.

8. We have heard learned counsel for both the sides and perused the documents on record. It is a matter of fact that there is no eye-witness to the alleged incident and that the entire prosecution case is based upon circumstantial evidence. There is also no dispute about the fact that deceased died a homicidal death. The prosecution has placed heavy reliance upon the testimonies of Dahyabhai Nanbhai (PW-3) and Kalabhai Poonabhai (PW-4) to establish the aspect of "last seen together".

9. Having minutely examined the testimonies of these two witnesses, we are afraid to find that neither of these witnesses could prove that the appellant was lastly seen in the company of deceased. The only fact that has come out is that the witnesses had seen the appellant passing by the scene of offence with a "T" shaped iron rod in his hands prior to the commission of crime. The evidence of neither of the witnesses establish that at the time when the appellant was passing through the area with the weapon in question, the deceased was seen in his company.

10. In our opinion, the mere fact that the appellant was seen passing by the area with the weapon in question is not sufficient to arraign him as an accused, particularly, when the prosecution has failed to establish that the blood found on the muddamal weapon, clothes, etc. were that of the deceased or appellant since it has come on record that prosecution has not collected the blood sample of accused to prove the blood group. Therefore, it could not be said with certainty as to whose blood was found on the muddamal weapon, clothes, etc..

11. We also find serious discrepancy in the manner in which the prosecution conducted the case before the Court below. In the charge (Exh. 1) as also in the deposition of witnesses, the Court below has recorded the muddamal weapon to be Axe in place of "T" shaped iron rod. Even if the above discrepancy is ignored, the fact remains that prosecution has miserably failed to prove the chain of circumstances leading to the guilt of appellant.

12. Another notable aspect is the evidence of Dr. Babubhai Aalabhai Kalsariya (PW-13), who has performed the post mortem. The Medical Officer categorically deposed that he received the dead body on 19.04.2006 at around 1530 hrs. and he performed the post mortem between 1550 hrs. to 1710 hrs. As per the prosecution case, the deceased was killed on 19.04.2006 at around 1100 hrs., meaning thereby, that the Medical Officer had received the dead body after about 0430 hours from the time of commission of crime.

13. However, it is relevant to note that the Medical Officer has deposed with certainty that death had taken place before about 1200 hours. If that is true, then the entire prosecution case would split into parts leaving aside the prosecution duty of establishing the chain of circumstances leading to the guilt of accused. On the one hand, it is presented that deceased was killed at around 1100 hrs. and dead body was received by the Medical Officer after about 0430 hours, whereas, on the other hand, the Medical Officer categorically states that deceased was killed before about 1200 hours.

14. Under medical jurisprudence, the normal duration for setting-in of rigor mortis is around 1200 hrs. Even if we believe that rigor mortis might have set-in at a faster pace on account of the exposure of dead body to broad day sun-light, it is difficult to accept by no stretch of imagination that the phenomenon would have set-in within 0430 hours since the duration between the timing of alleged incident and the receipt of dead body by the Medical Officer is around 0430 hours only. Considering the medical evidence on record, the entire prosecution story appears to be doubtful since the prosecution could not prove beyond doubt the actual time of death of deceased.

15. Further, the prosecution has also failed to prove motive behind the commission of alleged offence. In cases based on circumstantial evidence, the aspect of motive is very important. The prosecution has to prove motive behind the commission of crime. In the present case, except the past incident of love-affair between the brother of deceased and the daughter of accused before about two years, which, ultimately, culminated into their marriage and birth of a child, there is nothing on record to establish that there was any motive behind the commission of crime. Further, the discovery panchnama also does not support the prosecution case.

16. Moreover, important witnesses, namely, Dhirubhai, who was the first informant and Raniben, who had seen the quarrel between the deceased and appellant, have not been examined by the prosecution. Under the circumstances, we find that the Court below has committed serious error in law and on facts in convicting the appellant for the crime in question. In our opinion, considering the serious discrepancies in the prosecution case, benefit of doubt deserves to be given to the appellant by acquitting him of all the charges framed against him.

17. For the foregoing reasons, the appeal is allowed. The impugned judgment and order dated 26.12.2007 passed in Sessions Case No. 65/2006 is quashed and set aside. The appellant, original accused, is acquitted of all the charges framed against him, by granting him the benefit of doubt. The appellant is on bail and therefore, his bail bonds stand cancelled. Records & proceedings, if lying here, be sent to the Court below forthwith.