

(2009) 08 GUJ CK 0008
In the Gujarat High Court
Case No : Criminal Appeal No. 3 of 2004

Nareshbhai @ Nako Sindho

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 08 GUJ CK 0008

Hon'ble Judges : J.C. Upadhyaya, J; Bhagwati Prasad, J

Bench : Division Bench

Advocate : Sadhana Sagar, for the Appellant; L.B. Dabhi, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.C. Upadhyaya, J.—Challenge in this appeal is to the judgment and order rendered by learned Additional Sessions Judge, Fast Track Court, Bharuch on 17.12.2003 in Sessions Case No. 74 of 2002, whereby the appellant came to be convicted for the offences punishable u/s 302 of the Indian Penal Code ("IPC", for short) and Section 135 of the Bombay Police Act and was awarded the sentence to undergo R.I for life and fine of Rs. 500/- and in default of payment of fine, S.I for one month for the offence punishable u/s 302 of the IPC and S.I for one month and fine of Rs. 100/- and in default of payment of fine, S.I for five days for the offence punishable u/s 135 of the Bombay Police Act. Both the sentences were ordered to run concurrently.

2. The prosecution case in nutshell is that the incident occurred on dated 16.3.2002 at about 2 p.m. in the outskirts of Village Sarthan. Deceased Faridaben, in the outskirts of Village Sarthan was grazing her cattle and appellant allegedly assaulted upon deceased Faridaben and caused serious injury with knife on her neck, which resulted in her death. Ikrambhai Rehmanbhai, the husband of

deceased Faridaben lodged the first information report before police and the FIR came to the registered. During the course of investigation, statements of material witnesses were recorded, weapon knife was recovered at the instance of the accused. After collecting required material for the purpose of lodgment of chargesheet, chargesheet came to be filed in the Court of learned JFMC, Ankleshwar. Since the offence was exclusively triable by the Court of Sessions, learned JMFC, Ankleshwar committed the case to the Court of Sessions, Bharuch which was numbered as Sessions Case No. 74 of 2002.

3. The learned trial Judge framed charge against the accused at Exh.3, to which the accused did not plead guilty and claimed to be tried. The prosecution, therefore, examined 24 witnesses and produced documentary evidence. After the prosecution concluded its oral evidence, the learned trial Judge recorded further statement of the accused u/s 313 of the Cr.P.C. The accused in his further statement denied generally all the allegations levelled against him by the prosecution and stated that he was falsely implicated in this case. After appreciating the evidence on record and the submissions made on behalf of both the sides, learned trial Judge came to the conclusion that the prosecution successfully proved its case beyond any reasonable doubt against the accused and recorded his conviction for the offences punishable u/s 302 of the IPC and Section 135 of the Bombay Police Act and awarded the sentence as herein above referred to this judgment.

4. Learned advocate Ms. Sagar for the appellant accused submitted that the evidence adduced by the prosecution is shaky, untrustworthy and unreliable. The evidence of so-called eye-witnesses examined by the prosecution, if considered, would reveal that despite the fact that according to them, the incident took place on dated 16.3.2002, yet, their statements were recorded by police after 3 to 4 days and they admitted that during this period they did not tell anybody about the incident. The prosecution relies upon the evidence of extra judicial confession made by accused before the witnesses, but, their evidence also suffers from the said infirmities. The evidence reveals that during the course of investigation, number of persons were arrested as suspects, but, since no fruitful information was gathered by police, the appellant was wrongly implicated in this case. In the FIR, the accused is not named. Therefore, it is submitted that the appeal may be allowed.

5. Per contra, learned Additional Public Prosecutor Mr. Dabhi submitted that it is true that the statements of the witnesses who are examined by the prosecution as eye-witnesses have been recorded by the police after about 3 to 4 days from the date of the incident and there is also no dispute that till their statements came to be recorded, they did not inform anybody regarding the incident, but their evidence is cogent and convincing. The accused, after the incident made extra judicial confession before witnesses, though their statements were also recorded late by the Investigating Police Officer. It is further submitted that the weapon knife came to be recovered at the instance of the accused and the blood

of the deceased was found on the knife. Therefore, it is submitted that the appeal may be dismissed.

6. We have examined the record and proceedings in context with the submissions made by the rival sides.

7. Considering the evidence of first informant Ikrambhai PW-7 and the FIR, Exh.27, as his wife deceased Faridaben did not return to home, he undertook search and found the dead-body of his wife in the outskirts of village. In the FIR, Exh.27, the name of the accused does not figure and according to the first informant, some unknown person committed the murder of the wife.

8. It seems that the prosecution examined PW-8 Usman Khan and PW-9 Ismail in capacity as eye-witnesses and PW-10 Mehmood, who stated that he had seen accused near the place of the incident carrying bloodstained knife. We have examined the evidence of PW-8 Usman Khan and PW-9 Ismail. They stated that they saw the accused causing injury with knife to one lady in the outskirts of their village, but considering their evidence, their statements came to be recorded by the police on 19/20.03.2002 and they admitted in their evidence that from dated 16.3.2002 when they saw the incident, till their statements were recorded after 3 to 4 days thereafter, they did not inform anybody in the village that they have seen the commission of the offence by the appellant. They explained that because they were afraid, they did not inform to anybody, but they also admitted that during those 3 to 4 days, they used to go to their agricultural fields and they further admitted that they had not received any threat from the appellant. Considering their evidence we are of the considered opinion that their evidence is not cogent, trustworthy and reliable, so as to base conviction on their testimonies.

9. The prosecution examined PW-11 Altaf and PW-12 Safiq to prove that the appellant confessed his guilt before them and had made extra judicial confession. We have examined their evidence. Their evidence also suffers from the same infirmities as attached to the evidence of the eye-witnesses discussed above. According to them, after the appellant confessed the guilt before them, since 3 to 4 days thereafter, they did not inform anybody about this fact and their statements were also recorded late by the police. There is nothing that they are friends or relatives of the appellant, so that the appellant can confide in them to confess the guilt of the serious offence of murder before them. Considering their evidence, the appellant only stated to them that he has committed murder. They admitted in their evidence that they did not inquire as to who came to be murdered by the appellant and why and how he committed the murder. Considering the evidence of PW-16 Idriskhan, he states that so many persons from the village came to be arrested by police as suspects in connection with this case. Even the Investigating Police Officer, PI Karanjia PW-24 admits this fact.

10. The prosecution examined PW-18 Mukesh and PW-19 Lalo and according to their evidence, both these witnesses along with the appellant were grazing their

cattle in the outskirts of their village, and at that time the appellant told these witnesses that the wife of first informant Ikram was alone and let them have sex with said lady, to which both the witnesses denied. Then they returned to their village. Even their statements were recorded after about 4 to 5 days thereafter by the police. They admit that till their statements came to be recorded, they did not inform anybody about the incident. PW-18 Mukesh admits in his cross-examination that he has not stated in his statement before police that the appellant suggested to them to have sexual intercourse with the lady. He further admits that since both of them refused to the proposal, thereafter, all the three namely, Mukesh, Lalo and the appellant along with their cattle came back to their home. Evidence of PW-19 Lalo also runs on the same line. Further in his cross-examination, he states that during the late evening, he came to know that wife of Ikram was murdered by somebody.

11. Thus, the witnesses whose evidence is relied upon by the prosecution as well as relied upon by the trial Court in the impugned judgment while recording the conviction of the appellant, is untrustworthy, shaky and doubtful one. We are of the considered opinion that it is not safe to rely upon their evidence to record the conviction of the appellant for the offence of murder. Investigating Police Officer PW-24 PI Karanjia in his evidence admits that statements of the above referred witnesses were recorded late. However, the learned Additional Public Prosecutor Mr. Dabhi submitted that weapon knife came to the recovered at the instance of the appellant and the FSL evidence reveals that the blood of the deceased was found on the knife. In this connection considering the evidence of panch witnesses, they did not support the contents of the discovery panchnama. Even considering the evidence of I.O. PW-24 PI Karanjia, the evidence regarding the discovery of knife appears to be shaky and not in conformity with the required ingredients u/s 27 of the Evidence Act. Moreover, when the substantive evidence adduced by the prosecution is found doubtful, conviction cannot be based on the solitary evidence of discovery panchnama.

12. In light of the entire above discussions, we are of the considered opinion that the prosecution failed to prove its case beyond any reasonable doubt against the appellant accused. The appellant accused is entitled to get the benefit of doubt. The impugned judgment and order recording the conviction of the appellant deserves to be set-aside.

13. For the foregoing reasons, the appeal is allowed. The judgment and order recording conviction of the appellant by learned Additional Sessions Judge, Fast Track Court No. 1, Bharuch on 17.12.2003 in Sessions Case No. 74 of 2002 for the offences punishable u/s 302 of the Indian Penal Code and Section 135 of the Bombay Police Act and the sentence awarded to the appellant thereunder, are set-aside. The appellant is acquitted of all the charges levelled against him. The appellant be released from jail forthwith, if no longer required in connection with any other case. Fine, if paid, be refunded to him.