

(2008) 08 GUJ CK 0015
In the Gujarat High Court
Case No : Criminal Appeal No. 1023 of 2000

Navinbhai Nathubhai Nayaka Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 302

Citation : (2008) 08 GUJ CK 0015

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

Bench : Division Bench

Advocate : Rekha H. Kapadia, for the Appellant; Mukesh Patel, APP for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—Challenge in this appeal filed u/s 374 of the Criminal Procedure Code ("the Code" for short) is to the correctness of the judgment and order dated 11.10.2000 rendered in Sessions Case No. 39 of 1999 by the learned Additional Sessions Judge, Valsad at Navsari by which the sole Appellant ("the Accused" for short) has been convicted for the offence punishable u/s 302 of the Indian Penal Code ("IPC" for short) and sentenced to imprisonment for life and fine of Rs. 2000/- i.d., further SI for two years.

2. The prosecution case as disclosed from the FIR and unfolded during trial is as under:

2.1. P.W.1 Niruben Jivabhai, sister of the deceased Kalavatiben Jivabhai lodged a complaint before P.W.9, Jethalal Tribhovandas Patel, P.S.I. of Chikhli Police Station, wherein, it is, inter alia alleged that she along with her deceased sister, and Sarojben were doing miscellaneous labour work. The Accused Navinbhai Nathubhai Naika was working as a driver and was driving the tempo owned by Dhirubhai who was having an agricultural farm in the said locality. The Accused used to carry the labourers going to the farm of Vinodbhai. PW-1 Niruben and

her deceased sister also used to go to the farm of Vinodbhai in the tempo driven by the Accused. It is the further case of the prosecution that the deceased Kalavatiben and the Accused entered into a fanciful relation and crossed the barriers. As per the further case of the prosecution, deceased Kalavatiben become pregnant from the Accused and therefore she started pressing the Accused to solemnize the marriage.

2.3. As per the further case of the prosecution, as soon as the Accused came to know about the pregnancy carried by deceased Kalavatiben, the Accused was reluctant to recognize the pregnancy and was not inclined to solemnize the marriage with Kalavatiben and started avoiding the same. However, deceased Kalavatiben continued to put pressure upon the Accused to take the responsibility and perform the marriage. Since the Accused was tired of the constant demand of Kalavatiben for performing the marriage, on the fateful day, i.e. on 25th January 1999 at about 7:00 PM, the Accused came to the house of deceased Kalavatiben and informed that Vinodbhai had gone to Bangalore and his wife - Shethani is going out and therefore, she has called her for collecting the wages. Accordingly, deceased Kalavatiben left the house with the Accused for the purpose of collecting the wages from the wife of Vinodbhai. Deceased Kalavatiben had not returned in the night.

2.4. PW-1 Niruben Jivabhai had not inquired about the deceased Kalavatiben as she was to go to her sister's house. On the next day morning when Mukeshbhai, who is the inhabitant of the said locality, informed PW-1 Niruben Jivabhai about the dead body of a female lying in the outskirts of village near about the road approaching to Vanzana. PW-1 Niruben Jivabhai, therefore, rushed to the place, where the dead body was lying. She recognized the dead body as that of her sister Kalavatiben which had multiple injuries.

2.5. The aforesaid complaint was recorded by P.W.9-Jethalal Tribhovandas, PSI and accordingly, the offence was registered. The said complaint is on record at Exh.7. Thereafter he started investigation. During the course of the investigation, he held the inquest on the dead body of deceased Kalavatiben and thereafter sent the dead body for autopsy. He arrested the Accused after drawing the panchnama of his person in the presence of the panchas. During the course of investigation, the Accused had shown his willingness to show his clothes having blood stains and also the muddamal article scythe (dharia) used for committing the murder of Kalavatiben. On the basis of the information supplied by him, clothes as well as scythe were recovered and accordingly discovery panchnama was drawn in presence of panchas and the said muddamal articles were sent to FSL. He has also recorded the statement of witnesses. Thereafter he transferred the investigation.

2.6. On receipt of the FSL as well as the post mortem report, as the sufficient incriminating evidence was found against the Accused, charge sheet was filed against the Accused for the offence u/s 302 IPC, in the court of learned JMFC, Chikhli.

2.7. As the offence u/s 302 IPC is exclusively triable by a Court of Sessions, the learned JMFC, Chikhli committed the case to the Court of Sessions, Valsad at Navsari, where it was numbered as Sessions Case No. 39 of 1999.

2.8. The learned Additional Sessions Judge, Valsad at Navsari ("the trial court" for short) to whom the case was made over for trial framed charge against the Accused for commission of offence punishable u/s 302 IPC. The charge was read over and explained to the Accused. The accused pleaded not guilty to the charge and claimed to be tried and, therefore, he was put to trial by the trial Court in Sessions Case No. 39 of 1999.

2.9. In order to bring home the charge levelled against the Accused, the prosecution has examined in all 9 witnesses and relied upon their oral testimonies, details of which have been given in paragraph 13 of the impugned judgment and order.

2.10. To prove the culpability of the Accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which have been given in paragraph 14 of the impugned judgment an order.

2.11. After recording of the evidence of the prosecution witnesses was over, the trial court recorded the further statement of the Accused as required u/s 313 of the Code. In his further statement the Accused denied the case of the prosecution in its entirety and stated that he is innocent. He has been falsely ropped in the murder trial. However, he has neither produced any evidence nor did he examine any witness in support of his defence.

2.12. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court has come to the conclusion that the prosecution has established that the deceased Kalavatiben had died a homicidal death. It is also held by the trial court that the prosecution has, on the basis of the circumstantial evidence, successfully established the complicity of the Accused for commission of the offence of murder of Kalavatiben. The trial court, therefore, convicted the Accused for the offence of murder of Kalavatiben punishable u/s 302 IPC and sentenced to suffer imprisonment for life and fine of Rs. 2000/- i.d. further SI of 2 years, which has given rise to the instant Criminal Appeal at the instance of the Accused, which he has filed from Jail.

3. Ms. Rekha Kapadia, learned advocate appointed by Free Legal Aid Committee for the Accused, has submitted that there is no eye witness to the incident. The prosecution has failed to prove the motive for committing the crime. The prosecution has failed to prove the fanciful relations between deceased Kalavatiben and the Accused. The panch witnesses of the discovery panchnama of the weapon scythe as well as the clothes worn by the Accused, have not supported the prosecution case, therefore, the prosecution could not prove the discovery panchnama. In sum and substance, according to her, this is a case of "no evidence" and the prosecution has not been able to establish the chain of circumstances to connect the Accused with the crime.

3.1. On the aforesaid premises, according to her, there is no eye witness to the incident, and the circumstantial evidence on which the prosecution has placed reliance, does not complete the chain of circumstances to connect the Accused with the crime and, therefore, by allowing the appeal, the impugned judgment and order passed by the trial court convicting the Accused for commission of the offence u/s 302 IPC and sentencing him for the said offence deserves to be quashed and set aside and the Accused may be acquitted of the offence with which he was charged. She, therefore, urged to allow the appeal.

4. Per contra, Mr. Mukesh Patel, learned APP has supported the judgment and order passed by the trial court and submitted that it is just and proper and does not require interference of this Court. He has further contended that no case is made out to take a view contrary to the view taken by the trial court. According to him, it is true that there is no eye witness to the incident of murder of Kalavatiben. However, there is a consistent evidence with regard to "last seen together", cordial and fanciful relations between deceased Kalavatiben and the Accused, deceased becoming pregnant by the Accused, discovery panchnama and the FSL report. All the circumstances unerringly lead to the conclusion that the Accused has committed the offence of murder of Kalavatiben. Therefore, the prosecution has established the complicity of the Accused for committing the offence of murder. On the aforesaid premises, he submitted that the appeal lacks merit and deserves to be dismissed. He, therefore, urged to dismiss the appeal.

5. We have considered the submissions advanced by Ms. Rekha Kapadia, learned Advocate of the Accused and Mr. Mukesh Patel, learned APP for respondent - State of Gujarat. We have also perused the impugned judgment and order and the set of evidence. 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 the cases in which sentence of imprisonment for life is imposed on the accused on the basis of circumstantial evidence, this Court has examined the entire evidence on record for itself independently of the trial Court and examined arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether it was the accused and none else who has committed the offence as alleged against him. We have also gone through the documents which are on record and forming part of the paper book.

6. At the outset, be it noted that so far as the homicidal death of Kalavatiben is concerned, no dispute is raised by the learned advocate for the Accused before this Court. It is submitted by the learned advocate of the Accused that Kalavatiben died a homicidal death. However, we have perused the evidence of P.W.2, Dr. Hinaben M. Patel at Exh. 13, who performed the postmortem on the dead-body of Kalavatiben and prepared the autopsy report which is on record at Exh.14.

6.1. A conjoint reading of evidence of PW-2 Dr. Hinaben M. Patel, at Exh.13 and autopsy report at Ex.14, there is no manner of doubt that deceased Kalavatiben had died a homicidal death. There were in all 23 external injuries on the dead body of Kalavati. They are stab wounds, Multiple contused abrasions, chop wounds, etc. Cause of death of the deceased was due to shock as a result of haemorrhage due to multiple injuries associated with smothering. In view of the aforesaid evidence, according to us, the trial court has rightly held that deceased Kalavatiben had died a homicidal death and we confirm the said finding of the trial court.

7. Now the next question which is required to be examined is, as to whether the Accused has committed the offence of murder of Kalavatiben punishable u/s 302 IPC.

8. So far as the instant case is concerned, there is no eye witness to the incident of killing deceased Kalavatiben. The whole case of the prosecution has rested on the circumstantial evidence.

9. It is settled principle of law that in order to sustain conviction on the basis of circumstantial evidence, prosecution must fulfill three conditions:

(a) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(b) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(c) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation of any other hypothesis than that of the guilt of the accused. Further, in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

The above principles are laid down by the Supreme Court in the case of Jaharlal Das Vs. State of Orissa,

10. It is also one of the settled principles of law that witnesses may tell lies but not circumstances. The Court must adopt cautious approach for basing conviction on circumstantial evidence. The Supreme Court has reiterated it in the case of State of Haryana Vs. Ved Prakash,

11. The Supreme Court in the case of Ram Kumar Madhusudan Pathak Vs. State

of Gujarat, has aptly and elaborately laid down the principles as to which are the circumstances establishing guilt of the accused.

12. The Supreme Court in the very well known case of Sharad Birdhichand Sarda Vs. State of Maharashtra, , has laid down following five principles to base conviction on the circumstantial evidence:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

13. In the case of Jaipal Vs. State of Haryana, , the Supreme Court has held that merely because the accused could have had a motive for causing death of the deceased it would not by itself be enough to sustain the finding of guilt against him.

14. In the latest decision of the Supreme Court in the case of Swamy Shraddananda alias Murali Manohar Mishra v. State of Karnataka AIR 2007 SCW 4513, the Supreme Court has said that law in this behalf is no more res-integra and also reiterated the five principles enunciated by the Supreme Court in its previous decision in the case of Sharad Birdhichand Sarda (supra) to base conviction on circumstantial evidence.

15. Keeping in forefront the aforesaid principles elucidated by the Supreme Court, we may now advert to the evidence adduced by the prosecution to find out whether the prosecution has successfully established the chain of circumstances to connect the accused with the crime and to base conviction on the basis of the circumstantial evidence adduced by it.

16. To prove the case against the accused on the basis of circumstantial evidence, the prosecution has pitted the following circumstances against the accused:

(i) There was a cordial and fanciful relation between the deceased and the Accused.

(ii) Deceased became pregnant by the Accused, therefore, deceased Kalavatiben wanted to marry the Accused. Therefore, the Accused made his mind to kill her.

(iii) On the previous day of the murder of Kalavatiben, Accused had taken Kalavatiben with him and thereafter Kalavatiben was not seen alive by anybody and her dead body was found. In this connection the Accused has not given any explanation.

(iv) While assaulting Kalavatiben, the Accused has also received injuries, including nail mark injuries, which also proved that the Accused has committed the murder of Kalavatiben. In this connection also, the Accused has not given any explanation.

(v) Recovery of clothes worn by the Accused and the weapon scythe at the instance of the Accused having blood stains "A" group which is similar to the blood group of deceased Kalavatiben, as per the FSL report.

17. To establish the first two circumstances, the prosecution has mainly relied upon the evidence of P.W.1, Niruben Jivabhai at Exh. 5 and PW-3 Jyotiben Amratbhai at Exh.15. PW-1 Niruben Jivabhai, who has lodged the complaint, inter alia testified that her deceased sister Kalavatiben had cordial and fanciful relations with the Accused and from the said fanciful relations, her deceased sister Kalavatiben became pregnant and therefore, her deceased sister Kalavatiben pressurized the Accused to marry her which was disliked by the Accused. Initially, the Accused was willing to marry her deceased sister Kalavatiben. But after she became pregnant, the Accused refused to marry her. The Accused wanted to abort the pregnancy but deceased Kalavatiben refused to do the same, therefore, they quarreled with each other. Similar is the version of PW-3 Jyotiben Amratbhai at Exh.15.

17.1. It may be noted that both the above named witnesses were cross-examined at length but nothing substantial could be brought out which would impeach the credibility of their evidence. According to us, their evidence is unimpeachable, inspired confidence and trust worthy and there is no reason to disbelieve the evidence of these witnesses. The prosecution has established that the Accused and deceased Kalavatiben had cordial and fanciful relations and out of that relation deceased Kalavatiben became pregnant and refused to abort the pregnancy. Therefore, the prosecution has established the first two circumstances against the Accused for committing the murder of Kalavatiben.

17.2. So far as the third circumstance is concerned, the prosecution has relied upon the evidence of PW-1 Niruben Jivabhai at Exh.5. She has inter alia testified that on the day of incident, she and her sister Kalavatiben had returned to their residence after labour work. At 7:00 pm the Accused came to their house and took deceased Kalavatiben with him for the purpose of receiving the wages from the house of Vinodbhai. Kalavatiben, therefore, accompanied the Accused. Kalavatiben, thereafter had not returned to the house and on the next day her dead body was found naked in Rankuan Bazaar Faria with multiple injuries on her body. On this aspect also PW-1 Niruben Jivabhai was cross-examined but nothing substantial has been brought out from her evidence which would impeach her

credibility. The Accused has not given any plausible reason or explanation to the fact that where Kalavatiben had gone after he had taken her with him. It is for the Accused to explain this circumstance. Since the Accused failed to explain this circumstance and was found lastly in the company of Kalavatiben, is the very important circumstance, which leads to the conclusion that the Accused has committed the murder of Kalavatiben.

17.3. Now, so far as the fourth circumstance is concerned, the Accused has also received injuries on his body. In this connection, the prosecution has relied upon the evidence of PW-4 Ramchandra Pandharinath Patil, Medical Officer, who has testified that the Accused was brought to him for medical check up. During his check up he has noted four injuries on the person of the Accused. First one on the chest, second one on the right arm, third one on the left cheek and the fourth one on the little finger of right hand. He has also testified that the injuries sustained by the Accused were infact nail marks, therefore, possibility cannot be ruled out that while assaulting Kalavatiben, Kalavatiben must have resisted and because of the same, the Accused must have received the aforesaid four injuries on his person. PW-4 Ramchandra Pandharinath Patil, Medical Officer, has also issued medical certificate in this regard which is on record at Exh.18.

Therefore, this is also one of the important circumstances, which goes against the Accused. The Accused could not explain as to how he has received the aforesaid four injuries on his person and that too with the nails.

17.4. Now the fifth circumstance is the discovery of the clothes and weapon scythe recovered at the instance of the Accused, stained with "A" blood group, which is similar to the blood group of deceased Kalavatiben. In this connection, the prosecution has examined and relied upon the oral testimony of PW-5 Kantubhai Jivanbhai Patel at Exh.21 - panchwitness of panchnama Exh.22 and Exh.23. Exh.22 is the panchnama of the person of the Accused whereas Exh.23 is the discovery panchnama of the weapon scythe as well as clothes worn by the Accused. It may be noted that PW-5 Kantubhai Jivanbhai Patel has not supported the prosecution case and therefore he was declared hostile. However, the fact remains that the contents of the panchnama have been proved from the oral testimony of PW-9 Jethalal Tribhovandas - Investigating Officer. It is duly proved that when the Accused was arrested, he was having four injuries on his person, and the clothes worn by him were stained with blood. FSL report at Exhibits 31 and 32, in terms certified that deceased Kalavatiben was having "A" blood group, and blood stain of similar blood group was found on the clothes of the Accused and the weapon scythe. On the basis of this circumstance also, the prosecution has successfully established the complicity of the Accused for committing the murder of Kalavatiben.

18. On over all reappraisal of the evidence of the prosecution witnesses, all the above mentioned five circumstances which are pitted against the accused are established and the prosecution has been able to immaculately establish that the Accused has committed murder of Kalavatiben. Therefore, the trial court has

rightly convicted the Accused for commission of murder of Kalavatiben.

19. Suffice it to say that the trial Court has given cogent and convincing reasons for recording the conviction against the Accused. Ms. Rekha Kapadia, learned advocate of the Accused is unable to dislodge the said finding, ultimate conclusion and the resultant order of conviction.

20. We find ourselves in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court against the Accused, as according to us no other finding, conclusion or order except the one reached by the trial court is possible on the evidence adduced by the prosecution and on the facts and in the circumstances emerging from the record of the case.

21. Seen in the above context, the Appeal lacks merit and deserves to be dismissed.

22. For the foregoing reasons, the Appeal fails and accordingly it is dismissed, the result of which is that the judgment and order dated 11.10.2000 rendered in Sessions Case No. 39 of 1999 by the learned Additional Sessions Judge, Valsad at Navsari by which the Accused has been convicted for the offence punishable u/s 302 IPC and sentenced to imprisonment for life and fine of Rs. 2000/- i.d., further imprisonment for two years, is hereby confirmed and maintained.

23. Muddamal articles to be disposed of in terms of the directions contained in the judgment and order of the trial court.