
(2016) 01 GUJ CK 0116
In the Gujarat High Court
Case No : Criminal Appeal No. 1570 of 2006

Nilesh Mansukhbhai Nagar

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 37(1)-135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 01 GUJ CK 0116

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

Bench : Division Bench

Advocate : Yogesh Lakhani, Senior Advocate and Bhavin J. Satwara, Advocate, for the Appellant; Chetna 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 29.06.2006 passed by the learned Presiding Officer, Additional Sessions Judge, 6th Fast Track Court, Gondal, Camp at Jetpur in Sessions Case No. 21 of 2005 whereby the appellant-original accused has been convicted for the offence punishable under Section 302 of Indian Penal Code and has been sentenced to undergo imprisonment for life and fine of Rs. 25,000/- and in default, simple imprisonment for one year, and for the offence punishable under Section 37(1)-135 of the Bombay Police Act, he has been sentenced to undergo imprisonment RI for a period of four months and fine of Rs. 500/- and in default, to undergo simple imprisonment for one month.

2. The facts giving rise to this appeal are as under:

"2.1 Dr. Gajera from Jetpur Government Hospital informed Jetpur City Police Station over phone at 19.30 hours on 26/12/04 that Satyanbhai Goswami has brought Mansukhbhai Naranbhai Nagar, aged 60 years, resident of Bokhla Darwaja, Jetpur, in unconscious and blood smeared state, to the government

hospital and he has suffered blows of sharp edged weapon on the abdomen and chest, and therefore, he has been referred to Rajkot Government Hospital for further treatment after giving him primary treatment. In this regard, P.S.O. on duty in the Jetpur City Police Station made Janva Jog Entry vide No. 488/04 dated 26/12/2004 and N.V. Pandor of Jetpur City Police Station was deputed to make further investigation. In this connection, P.S.I. Mr. Pandor went to Rajkot Government Hospital and complainant Mangalbhai Mansukhbhai Nagar, resident of Jetpur, had declared the facts of complaint in his presence on 27/12/04 that I have been residing with my father and wife Pritiben at the aforesaid place. I and my father Mansukhbhai do business in the shop, namely Yogi Seat Covers, at Kanakiya plot in Jetpur and earn livelihood. My mother's name is Jaswantiben, we are four brothers wherein Jayesh is the eldest brother, Kailashbhai is younger than him. Both brothers reside in Surat for business since last one year. Nileshbhai is younger than him, and I am the youngest one. I have two sisters wherein Alpaben is elder sister, who is now at matrimonial home in Ahmedabad, and Meenaben is younger than her, who is now at matrimonial home in Gondal. My father Mansukhbhai and my mother Jaswantiben were quarreling frequently over family matters and household work about fifteen years back from today. Therefore, my mother Jaswantiben and my brothers Jayesh, Kaushal and Nilesh had been residing downstairs in our house separately for the last fifteen years, and I, my wife Pritiben and my father Mansukhbhai had been residing upstairs separately, and our brothers and father were quarrelling frequently in respect of sharing of property (house) during this period. My two brothers Jayeshbhai and Kaushalbhai have gone to Surat for residing since last one year. As my brother Nilesh and my mother Jaswantiben had been telling my father Mansukhbhai frequently for the last one year, but my father had been denying to divide the house. Therefore, my brother Nilesh was frequently quarrelling with my father. When I and my wife Pritiben were present at my house at 7.00 or 7.15 hours in the evening on 26/12/04, I came to know through hearsay that someone has made deadly attack on my father Mansukhbhai Naranbhai with knife in front of Central Bank, and my father has been taken to Jetpur Government Hospital for treatment. Therefore, I immediately went to the government hospital and saw that my father Mansukhbhai had sustained injury on the abdomen and chest and was bleeding. Therefore, my father was under treatment. At that time, many persons gathered wherein someone said that this fatal injury has been caused to Mansukhbhai by his son Nileshbhai with knife. As I was engaged in the treatment of my father, I did not know as to who said the same. Thereafter, the doctor on duty referred my father to Rajkot for further treatment. At that time, my uncle Narotambhai Naranbhai Nagar and my friend Kiritbhai Durlabhbhai were present and they brought my father to Rajkot Government Hospital by ambulance, and at that time, doctor on duty declared my father Mansukhbhai Naranbhai Nagar dead. The cause of this incident is such that my father, my mother and three brothers got separated due to family disputes about fifteen years back from today, and thereafter, my brother Nileshbhai was frequently quarreling regarding partition of our house. Therefore, my father was denying partition of this house.

For all these reasons, as Nileshbhai caused fatal injuries on the abdomen and chest of my father with knife near Central Bank on 26/12/04, and my father Mansukhbhai Naranbhai Nagar, aged 60 years, resident of Jetpur, died during the course of treatment, it is my lawful complaint against my brother Nilesh.

2.2 That the original complainant Mangalbhai Mansukhbhai personally declared the fact of the aforesaid complaint in presence of ASI Mr. N.V. Pandor, he noted the fact of the complaint as he dictated. As it was forwarded to Jetpur City Police station with his report for legal procedure, PSO Head Constable Mr. V.M. Patgir who recorded the complaint and registered an offence under Section 302 of the IPC and Section-37(1)-135 of the B.P. Act vide I-C.R. No. 196/04 of Jetpur Police Station. Necessary investigation was carried out and the statements of witnesses were recorded. At the end of investigation, chargesheet was filed against the accused before the trial court. However, being a sessions triable office, 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 has produced the following documentary evidence.

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. Y.S. Lakhani, learned Senior Advocate for the appellant-has taken us through the crucial evidence in the complaint to the effect that whether who was residing with the deceased and there were other family members residing with the deceased. It is stated that the brothers and sisters were supporting the mother and contended that the material witness is the complainant but it is stated in the complaint that he was informed by the police. However, in the evidence it is stated that the police had informed regarding the attacked by the accused on the deceased. He has also taken us through the cross-examination of the said witness and contended that he is not the eye-witness and had not disclosed the source of information and the knowledge to him. It is further stated by learned counsel for the appellant that the majority of the witnesses have turned hostile and the mother namely widow of the deceased has also not supported the case of the prosecution though she has not been declared hostile but have not brought anything against the appellant. The crucial witness is Hiren Pravinbhai Jobanputra P.W. No. 6 Exh. 13 claiming to be eye-witness but he is turned hostile.

Learned counsel for the appellant has further taken us through the evidence of the other witnesses and contended that the evidence which has come on record does not support the case of the prosecution. It is further submitted that the prosecution case is based upon circumstantial evidence and therefore prosecution has also failed to establish the chain of circumstances leading to the guilt of appellant. He, therefore, submitted that the appellant deserves to be acquitted by granting him benefit of doubt.

7. However, at the time of admission, this Court on 04.07.2007 in para 4 it has been observed as under:

"It is mainly argued by the learned counsel for the applicant that the present applicant is totally innocent and has been falsely involved into the crime in question as there was property dispute between the complainant and the applicant-accused, who are real brothers. He has also argued that there is not an iota of evidence to connect the applicant with the crime in question, then also, the court below has convicted him on the basis of hearsay evidence as well as on the basis of statement of witnesses before the Investigating Officer. In this regard, he has taken us through the relevant observations and finding given by the court below in the judgment along with the evidence of two star witnesses i.e. P.W. No. 1 viz., Mangalbhai Mansukhbhai Nagar, Exh. 7, who is the complainant and brother of the applicant and P.W. No. 6 viz. Hiren Pravinbhai Jobanputra, Exh. 13 and argued that even at the time of awarding sentence, court has imposed huge fine of Rs. 25,000/- as a result of which, the applicant if released on bail, then also, he could not come out of custody. It is also argued that the applicant is a cobbler by birth and vocation and is a poor person and, hence, it is requested that he may be released on bail by suspending fine so that he can come out from the jail."

8. Ms. C.M. Shah, learned APP has 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.

9. 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 direct evidence available to connect the appellant-accused with the offence in question and the so-called eye-witness to the alleged incident has turned hostile. It is also required to be noted that the entire prosecution case is based upon circumstantial evidence. Further no corroborative piece of evidence is available on the record of the case, and in that view of the matter, 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.

10. In the result, the appeal is allowed. The impugned judgment and order dated 29.06.2006 passed by the learned Presiding Officer, Additional Sessions Judge, 6th Fast Track Court, Gondal, Camp at Jetpur in Sessions Case No. 21/2005 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 bond stand cancelled. Records & proceedings, if lying here, be sent to the Court below forthwith.