
(2011) 09 GUJ CK 0134
In the Gujarat High Court
Case No : Criminal Appeal No. 1264 of 2005

Ramjan Ishak Bava

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 09 GUJ CK 0134

Hon'ble Judges : Bankim N. Mehta, J;A.L. Dave, J

Bench : Division Bench

Advocate : Nisha M. Parikh, for the Appellant; K.L. Pandya, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—The present appeal arises out of the judgment and order dated 24.12.2003 rendered by the Sessions Court, Kutch at Bhuj, in Sessions Case No. 28/2003, convicting the Appellant for the offence of murder of Aamad Bharmal Butha allegedly committed at 17.20 hours on 27.2.2003, near Shilp Block Factory, by inflicting a knife blow on the neck of the deceased. He was sentenced to undergo imprisonment for life with a fine of Rs. 200/-, in default to undergo S.I for 3 months.

2. The brief facts of the case are that on the relevant date and time, present Appellant and the deceased had an altercation in respect of some transactions of the Appellant with the daughter and son-in-law of the deceased and the Appellant inflicted a knife blow on the neck of the deceased and then escaped. This incident was seen by first informant Sattar Hasam Khalifa, Naran Parbat Kerai, Rajesh Velji Bhanderi and Manji Devji Bhanderi. The deceased was taken to hospital in the vehicle of Manji Devji Bhanderi, where he was declared dead. F.I.R was lodged by the son-in-law of the deceased, on the basis of which, offence was registered and investigated. On completion of investigation, charge

sheet was filed in the Court of learned J.M.F.C. Mandvi, who, in turn, committed the case to the Sessions Court at Bhuj, where it was registered as Sessions Case No. 28/2003.

3. Charge at Exh.1/C was framed against the accused for the offences punishable u/s 302 of the Indian Penal Code ["Indian Penal Code" for short] and Section 135 of the Bombay Police Act. The accused pleaded not guilty to the charge and claimed to be tried.

4. Considering the evidence led by the prosecution, the trial Court came to the conclusion that charge u/s 302 Indian Penal Code was proved against the Appellant-accused and convicted him there for, while acquitted him for the offence punishable u/s 135 of the Bombay Police Act. The present appeal is preferred by the convict challenging his conviction for the offence punishable u/s 302 Indian Penal Code.

5. Heard learned advocate Mrs. Parikh for the Appellant and learned A.P.P. Mr. Pandya for the Respondent-State.

6. It is proved through the evidence of Dr. Madhavkrishna Maharajkrishna Lohra (PW.1 Exh.6) that the deceased died a homicidal death and there is No. dispute on that aspect.

7. First informant Sattar Hasam Khalifa is examined at Exh.8/C. Having scanned his evidence, we find that, initially, in examination in-chief he implicates the Appellant. However, during his cross-examination, he admits that he had not seen the Appellant inflicting blow on the deceased.

8. Witness Manji Devji Bhanderi, who is examined at Exh.9/C, also states in his examination-in-chief that he had seen Appellant Ramjan inflicting knife blow on the deceased. However, during his cross-examination he states that he does not know how the incident occurred and that he had reached the place after hearing a commotion and when he reached there, the deceased was lying on the floor. He has further stated that when the incident occurred, he was in the Factory Building along with Naran Parbat and Rajesh Velji.

9. Naran Parbat Kerai (PW.4 Exh.10/C) and Rajesh Velji Bhanderi (PW.5 Exh.11/C), both tell the same story. However, they have been projected as eye witnesses by the prosecution and, therefore, they have been declared hostile. However, during their cross-examination through the Public Prosecutor, they stick to their original version.

10. The panch witnesses have turned hostile and have not supported the prosecution case at all.

11. The sum total of the above discussion on evidence, as emerges from the record, is that there is No. reliable evidence to connect the Appellant with the crime, although it is proved that the deceased died a homicidal death. The trial Court has emphasized on the medical evidence that the injury found on the

person of the deceased was possible with muddamal knife. However, on going through the medical evidence, we find that the injury was possible with double edged weapon, whereas the muddamal weapon is a single edged weapon. Still, the trial Court observed that since there is No. evidence to indicate that the injury found on the person of the deceased was not possible with a single edged weapon, offence can be said to have been proved. This is where the trial Court has erred. In our opinion, the conviction recorded by the trial Court in absence of material to connect the accused with the offence cannot be upheld. Therefore, appeal merits acceptance.

12. The appeal is allowed. The judgment and order dated 24.12.2003 recording conviction and sentence of the Appellant, Ramjan Ishaq Bava, for the offence punishable u/s 302 of the Indian Penal Code, in Sessions Case No. 28/2003, is hereby set aside. The Appellant is acquitted of the charge levelled against him. Appellant Ramjan Ishaq Bava be set at liberty forthwith, if not required in any other case. Fine, if paid, be refunded to the Appellant.