

(2014) 03 GUJ CK 0031
In the Gujarat High Court
Case No : Criminal Appeal No. 1393 of 2007

Ranjitsinh @ Rango @ Rangit Vakhatsinh APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209 313
Evidence Act, 1872 — Section 27 8
Penal Code, 1860 (IPC) — Section 201 302

Citation : (2014) 03 GUJ CK 0031

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Farhana Y. Mansuri, No. 1 through jail, for the Appellant; Maulik Nanavati, APP, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—The present appeal is at the instance of a convict-accused for the offence punishable u/s 302 of the Indian Penal Code and is directed against an order of conviction and sentence dated 18.9.2007 passed by the learned Additional Sessions Judge, Fast Track Court No. 10, Vadodara, in Sessions Case No. 198 of 2006. By the aforesaid order, the learned Additional Sessions Judge found the appellant guilty of the offence punishable u/s 302 of the Indian Penal Code and consequently sentenced him to suffer life imprisonment and a fine of Rs. 2,000/-. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for one month. However, the learned Additional Sessions Judge acquitted the accused-appellant of the offence punishable u/s 135 of the Bombay Police Act. It appears from the materials on record that in all three persons were put to trial including the accused-appellant. The charge against the original accused nos. 2 and 3 was of causing disappearance of evidence of offence punishable u/s 201 of the Indian Penal Code. However, the trial Court acquitted the original accused nos. 2 and 3 of the offence punishable u/s 201 of the Indian Penal Code.

2. CASE OF THE PROSECUTION:-

2.1 The deceased, namely, Narendrasinh P. Thakor, a resident of the Village-Angadh, situated in the District of Vadodara was at inimical terms with the accused. A month before the date of the incident i.e. 17th March 2006, a quarrel had ensued between the two and the accused is alleged to have threatened to kill the deceased. On 17th March 2006 at around 19:15 hours, a quarrel had ensued between the accused and the deceased at Angadh Bazar near a well known as Kotvav Vaga and in the said quarrel the accused is alleged to have inflicted injuries indiscriminately on the chest and stomach of the deceased with a knife, resulting in his death. It appears that the complaint, Exh. 34, was lodged on the very same day by one Jaswantsinh Ranjitsinh Thakor. The complainant, PW-9, has stated in his complaint that the deceased happened to be his cousin brother. He has further stated that he was serving in a factory at Nandesari GIDC. Due to the closure of the company, he was engaged in agricultural operations. The complainant has further stated that around one and a half months before the date of the incident, a quarrel had ensued between the accused and the deceased regarding a motor-cycle and at that point of time the accused had threatened the deceased to kill him. However, at that point of time, the deceased had not taken the threats of the accused seriously and thought fit to ignore the same. Accordingly, no complaint was lodged by the deceased against the accused at the relevant point of time. He has further stated in the complaint that on the date of the incident he was at his house, and at around 7:30 in the evening one Jitendrasinh Manharsinh Gohil came running and informed him that Narendrasinh had been stabbed to death by the accused near the Kotvav Vago well with a knife. On learning about the same, the complainant rushed at the place and saw that the deceased was lying flat on the road having sustained injuries on his chest and stomach. The complainant also saw that the deceased was bleeding profusely. At that point of time, one Sanjaybhai Natubhai Gohil, running a pan shop near the place of occurrence, informed the complainant that there was an altercation between the accused and the deceased and in the process the accused inflicted injuries on the chest and stomach of the deceased. The shop owner Sanjaybhai Natubhai Gohil also informed the complainant that the accused came at his shop and fled away on a scooter of one Bhailalbhai Gohil, a customer, who had come at his shop to buy few articles. The shop owner further informed the complainant that he, in turn, was told by one Kanubha Kalubha Rana that the accused and the deceased were fighting with each other at the bus stand. The accused at that point of time had dared the deceased to come ahead and thereafter would deal with him.

2.2 On the strength of the First Information Report, Exh. 34, the investigation had commenced. The inquest panchnama of the dead body of the deceased, Exh. 14, was drawn in presence of the panch witnesses. The scene of offence panchnama, Exh. 16, was also drawn in presence of the panch witnesses. The panchnama of collection of clothes from the body of the deceased, Exh. 18, was drawn in presence of the panch witnesses. The dead body of the deceased was

sent for postmortem examination and the postmortem report, Exh. 13, disclosed that the deceased had sustained around eight incised wounds and the cause of death assigned was shock due to stab injury on the chest and abdomen.

2.3 On 20th March 2006, the accused was arrested and the panchnama, Exh. 19, of his person was drawn in presence of the two panch witnesses. The clothes worn by the accused were collected and sent to the Forensic Science Laboratory for chemical analysis. While in police custody after arrest, the accused expressed his willingness to point out the place where he had concealed the weapon of offence, i.e. the knife and accordingly, on 21st March 2006, a discovery panchnama, Exh. 23 of the weapon of offence was drawn in presence of the panch witnesses. The serological test report, Exh. 51, 52, 53 and 55 was received by the investigating officer. The statement of various witnesses were recorded. Finally, the charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate, First Class, Vadodara.

2.4 As the case was exclusively triable by the Sessions Court, the learned Judicial Magistrate, First Class, committed the case to the Sessions Court u/s 209 of the Code of Criminal Procedure. The Sessions Court framed the charge against the accused, Exh. 4 and statement of the accused was recorded. The accused did not admit the charge and claimed to be tried. The prosecution adduced the following oral evidence in support of its case.

PW-1

Dr. Anitasing Prashantsing

Exh. 10

Medical officer who performed the postmortem.

PW-2

Dilipsinh Bhagvansinh Gohil

Exh. 15

Panch witness

PW-3

Girish Himmatbhai Gandhi

Exh. 17

Panch witness

PW-4

Ranjit bhai Mohanbhai Parmar

Exh. 20

Panch witness

PW-5

Gopalkrishna Chhaganlal Panchal

Exh. 21

Panch witness

PW-6

Vikramsinh Udesinh Yadav

Exh. 24

Panch witness

PW-7

Raysing Jinabhai Rathod

Exh. 27

Panch witness

PW-12

Gurendrasinh Narpatsinh Mahida

Exh. 37

Panch witness

PW-13

Amrishkumar Champaklal Thakkar

Exh. 38

Panch witness

PW-14

Sanjay Natvarsinh Gohil

Exh. 39

Eye witness

PW-15

Kanubhai Kalubha Rana

Exh. 40

PW-16

Narendrabhai Ramanbhai Thakkar

Exh. 41

PW-17

Jitendrasinh Manharsinh Gohil

Exh. 42

PW-18

AmardipsinhVikramsingh Thakor

Exh. 43

PW-19

Ganpatsinh Mohabbatsinh Parmar

Exh. 44

PW-20

Indrasinh Chandrasinh Vadjiya.

Exh. 45

Investigating Officer

PW-21

Mohammedbhai Haji Noorabhai Sanosara

Exh. 49

Investigating Officer

2.5 The following pieces of documentary evidences were adduced by the prosecution.

1.

Yadi for postmortem

Exh. 11

2.

Postmortem report

Exh. 13

3.

Inquest panchnama

Exh. 14

4.

Scene of offence panchnama

Exh. 16

5.

Panchnama of collection of clothes
from the dead-body of the deceased

Exh. 18

6.

Arrest panchnama of the accused

Exh. 19

7.

Discovery panchnama and collection
of clothes of the accused.

Exh. 22

8.

Panchnama of the clothes of the accused.

Exh. 25

9.

Telephone vardhi.

Exh. 29

10.

Original complaint.

Exh. 34

11.

Muddamal dispatch note.

Exh. 50 to 52.

12.

Letter of the FSL.

Exh. 53 to 54.

13.

FSL report.

Exh. 55

2.6 After completion of the oral as well as documentary evidence of the prosecution, the statement of the accused-appellant u/s 313 of the Criminal Procedure Code was recorded in which the accused person stated that the complaint was a false one and he was innocent.

2.7 At the conclusion of the trial, the learned trial Judge convicted the accused-appellant for the offence punishable u/s 302 of the Indian Penal Code and sentenced him, as stated herein before.

2.8 Being dissatisfied, the accused-appellant has come up with this appeal.

3. SUBMISSIONS ON BEHALF OF THE ACCUSED-APPELLANT:-

3.1 Ms. Farhana Mansuri, the learned advocate appearing for the accused-appellant submitted that the trial Court committed a serious error in finding the accused-appellant guilty of the offence of murder punishable u/s 302 of the Indian Penal Code. Ms. Mansuri submitted that the trial Court committed a serious error in placing implicit reliance on the evidence of the so-called eye witnesses to the incident. According to Ms. Mansuri, none of the witnesses had witnessed the actual incident and are all got up witnesses. According to Ms. Mansuri, the incident in question had occurred at around 7:30 to 8 in the late evening hours and by that time it must have been quite dark. In such circumstances, it would be very difficult for any person to witness the incident, more particularly, when it is the case of the prosecution that the deceased was inflicted injuries by the accused near a well.

3.2 Ms. Mansuri submitted that the First Information Report, Exh. 34, could not have been treated as the first information because there is evidence to indicate that information was conveyed to the police on telephone and a vardhi of such information was received at Chhani Police Station. Ms. Mansuri further submitted that all the eye witnesses examined by the prosecution are in one way or the other related to the family of the deceased and could be termed as highly interested witnesses. Ms. Mansuri submitted that although independent witnesses were available, they were not examined in the course of the trial and, therefore, adverse inference ought to have been drawn by the trial Court against the prosecution.

3.3 In such circumstances, referred to above, Ms. Mansuri urged to extend the benefit of doubt to the accused and acquit him of the offence of murder by allowing the appeal.

4. SUBMISSIONS ON BEHALF OF THE STATE:-

4.1 Mr. Maulik Nanavati, the learned Additional Public Prosecutor appearing for the State vehemently submitted that the trial Court rightly found the accused guilty of the offence of murder punishable u/s 302 of the Indian Penal Code. Mr. Nanavati would submit that there is cogent and convincing oral evidence on

record to establish the complicity of the accused in the crime beyond reasonable doubt. Mr. Nanavati submitted that the chain of events would indicate that it was none other than the accused appellant who inflicted injuries on the body of the deceased with a knife.

4.2 Mr. Nanavati submitted that only by reason of the fact that some of the witnesses examined by the prosecution are related to the deceased is no ground to reject the testimony if otherwise found to be true and trustworthy.

4.3 In such circumstances, Mr. Nanavati would submit that there being no merit in this appeal, the same deserves to be dismissed and the order of conviction and sentence be affirmed.

5. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this appeal is whether the trial Court committed any error in finding the accused-appellant guilty of the offence of murder punishable u/s 302 of the Indian Penal Code.

6. The PW-1, Dr. Anitasing Prashantsing in her evidence, Exh. 10, has deposed that on 17th March 2006, she was on duty at the primary health center of Koyali Taluka of District-Vadodara as a medical officer. At that point of time, in the night hours, a dead body of a person named Narendrasinh was brought with a police yadi for the purpose of postmortem examination. On 18th March 2006, i.e. on the next day at around 10 O'clock in the morning the postmortem was performed and the postmortem examination revealed the following external injuries on the body of the deceased as mentioned in the column no. 17 of the postmortem report, Exh. 13.

I. Just below nipple on the left side 8.5 cm from the midline oblique incised wound, upper end laterally, lower end medially-gaping, breadth- 0.75 cm, length-2.5 cm. Both end sharp, direction downwards towards midline and backwards, pierced both ventricles, size of left wound ventricle-2.5 cm., size of right wound-2 cm. size cut, 4 cm. away from midline.

II. Incised wound 8 cm. away from midline above and away from umbilicus-12.5 cm oblique, gaping, length 2.5 cm, depth-upto peritoneum, width-0.75 cm. direction downwards, backwards, towards midline, both ends sharp.

III. Incised wound both ends sharp, horizontal, at the level of umbilicus 14 cm. away from umbilicus on left side of abdomen, width-1 cm., length-2.5 cm., depth-upto peritoneum. Direction-backward towards midline.

IV. Incised wound, length 1.5 cm., width-0.75 cm., distance from midline 17 cm., skin deep at the back of III wound.

V. Laceration 16 cm. above and left to umbilicus and 7 cm. away from midline irregular, 3 cm X 2 cm.

VI. Lacerated wound 18 cms. above and away from umbilicus, 16 cm. from

midline, irregular 3 X 2 cm.

VII. 26 cm. away and above umbilicus, 20 cm. from midline lacerated wound, 4 X 3 cm.

VIII. 28 cm. away from midline, 20 cm. below nipple on left side, lacerated 3 X 2 cm.

IX. 35 cm. away from midline, 25 cm. below nipple, lacerated wound, 3 X 2 cm.

6.1 The cause of death, according to the PW-1, Dr. Anitasing, was shock due to stab injuries on the chest and abdomen.

6.2 The PW-1 has further deposed that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. On being shown the muddamal article no. 7, knife, the PW-1, Dr. Sing deposed that the injuries which were sustained by the deceased were possible with such a knife. In the cross-examination of the PW-1, Dr. Sing, a suggestion was made that the injuries which were found on the body of the deceased could have been caused by more than one sharp and pointed instruments. The PW-1 further deposed that it was true that the injury no. 1 could be caused if a person all of a sudden falls on a sharp object and the portion of the chest gets into contact with such an object. Nothing substantial could be elicited through the cross-examination of Dr. Anita Sing, the PW-1, so as to rule out the possibility of the deceased having sustained injuries with a knife.

7. Thus, in our opinion, the prosecution could successfully established that the injuries which were inflicted on the body of the deceased were incised wounds and were caused by a sharp cutting object like a knife, which was used in the commission of the offence.

8. The PW-8, Rameshbhai Rathwa, Exh. 28, has deposed that past four years he was serving as a police constable at Chhani Police Station of Vadodara and last for around one and a half years was serving at Nandesari Police Chawki falling within the jurisdiction of Chhani Police Station. On 17th March 2006, he was on duty at Nandesari Police Chawki attending telephones from 8.00 in the morning upto 20 hours in the night. At around 19.45 hours, he received a telephone vardhi from one Dilipsinh Bhagvansinh Gohil of Village-Angadh that a fight had ensued at Modhwada Falia, near a well, and in the said fight one Ranjit @ Rango Vakhatsinh Gohil had inflicted injuries on one Narendrasinh Pravinsinh Gohil with a knife and had committed his murder. He has deposed that he made a note of such vardhi in the telephone vardhi book and informed about the same to the PSO, Shri Baria of Chhani Police Station. During the course of his deposition, he produced the original telephone vardhi book as well as the xerox copy of the said vardhi and identified the same to be in his own hand-writing. The same was taken in evidence as Exh. 29. Nothing substantial could be elicited through the cross-examination of the PW-8 so as to render his evidence about receipt of such telephone vardhi on 17th March 2006 at 19:45 hours doubtful in any manner.

9. The PW-9, Jasvantsinh Ranjitsinh Thakor, who is the original first informant, in his evidence, Exh. 33, has deposed that the deceased happened to be one of his relatives and was residing in the neighbourhood. He has deposed that on 17th March 2006 at around 6:30 in the evening, the accused had inflicted injuries on the body of the deceased with a knife near a well and at that point of time he was at his house. The PW-9 has further deposed that before one and a half months, a quarrel had ensued between the accused and the deceased regarding a motor cycle of one Ranvirsinh Harinsinh. The owner of the motor cycle happened to be the friend of the accused and, therefore, the accused had threatened the deceased that he would kill him within a month. The PW-9 has further deposed that at the time of the incident, he was having food at his house and one Jitendrasinh Manharsinh (PW-17) came at his house and informed him that his uncle's son Narendra had been stabbed to death by the accused. The PW-9 immediately rushed at the place of occurrence and found that the deceased was lying flat on the ground having sustained injuries on his abdomen and chest. Blood was oozing from the injuries and his cousin had succumbed. The PW-9 proved the First Information Report, Exh. 34. In his cross-examination, he deposed that when the police arrived at the place of occurrence at that point of time the police first talked with Dilipsinh Bhagvansinh and whatever was stated by Dilipsinh Bhagvansinh was taken down by the police. He further deposed that in the First Information Report, he had stated the time of incident to be 6:30 whereas the police had arrived at the place of occurrence at around 11 O' Clock in the night. The PW-9, Jasvantsinh Thakor is not an eye witness to the incident but being the cousin brother of the deceased had thought fit to go to the police station and lodge a report as regards the incident. Nothing substantial could be elicited through the cross-examination of the PW-9 so as to render his overall deposition doubtful or improbable in any manner. From the evidence of the PW-9, it is well established that about a month before the date of the incident, a quarrel had ensued between the accused and the deceased in connection with a motor cycle and the accused had threatened the deceased to kill him within a month. While at his home, one Jitendrasinh Manharsinh, the PW-17, came running and informed him that the accused had inflicted injuries on the deceased with a knife. He denied the suggestion that it was not known to any person till late night as to who was the assailant. He also denied the suggestion that the information which was conveyed by Dilipsinh to the police was quite contrary to what he had conveyed in his First Information Report. He also denied the suggestion that at a later stage the accused was falsely implicated in the crime.

10. The PW-10, Gopalsinh Devisinh, examined by the prosecution is an important witness as he had actually witnessed the incident. The PW-10, in his evidence, Exh. 35, has deposed that he was serving in a factory, namely, ABS Plastic at Nandesari GIDC on contract basis. The duty of this witness was in three shifts. On 17th March 2006, the PW-10, Gopalsinh Devisinh, was at his house as he had not gone to work. At around 7 O' Clock in the evening on the date of the incident, he was standing besides the pan parlour of one Sanjaybhai Natubhai.

The parlour of Sanjaybhai Natubhai is next to the well. This witness has deposed that while he was standing near the pan parlour he witnessed that the deceased and the accused were proceeding towards the well fighting with each other. The deceased was first to reach near the well followed by the accused. He has further deposed that at that point of time the deceased had come on a Hero Honda motor cycle. Thereafter, the deceased and the accused once again started fighting with each other and at that point of time the PW-10, Gopalsinh was standing near the cabin. According to the PW-10, a quarrel between two must have continued for around ten minutes and thereafter when the PW-10, Gopalsinh, went a little near, he saw that the accused had inflicted injuries with a knife on the abdomen and chest of the deceased and the deceased was bleeding profusely. Thereafter, according to the PW-10, the accused ran away on a scooter of one Bhailalbai. By that time, one Dilipsinh Bhagvanbhai also reached the place of occurrence. The PW-10 has deposed that Dilipsinh, who was popularly being called as "Sukhdev kaka", immediately informed the Nandesari Police Station on telephone about the incident. The PW-10 identified the muddamal article knife as the weapon of offence. In the cross-examination of the PW-10, a suggestion was made and denied that after arrival of the deceased on a motor cycle, the accused had not come at that place. A contradiction in the form of omission was brought on record by the defence by putting a suggestion which was accepted to be true that the PW-10 in the police statement had not stated that while standing near the cabin he had seen the deceased and the accused coming near the well from the side of the bus stand fighting with each other. This witness has also deposed that after the incident, he had arrived at the place of occurrence.

11. From the evidence of the PW-10, it appears that on the date of the incident he was standing near the pan parlour of one Sanjaybhai Natubhai and he witnessed the accused running away from the place of occurrence on the motor cycle of one Bhailalbai.

12. In such circumstances, we shall now consider the evidence of Sanjaybhai Natubhai, the owner of the pan parlour and Bhailalbai, on whose scooter the accused is alleged to have fled from the place of occurrence after inflicting the injuries on the body of the deceased.

13. Bhailalbai Gohil has been examined by the prosecution as the PW-11. In his evidence, Exh. 36, he has deposed that he was serving at Anand in Amul Dairy on contract basis and was residing in an agricultural farm of his own situated at Navapura road of Village-Angadh. He has deposed that he owned a scooter bearing registration no. GJT-1240. Everyday from his house, he was reaching Nandesari Railway Station on the scooter and after parking his scooter would board the train to reach Anand. In the evening, he would return in a train to Nandesari and then reach home on his scooter. The PW-11 has deposed that the deceased was known to him. He has deposed that the incident occurred on 17th March 2006 in the evening hours and at that point of time he was at the pan

parlour of Sanjaybhai Natubhai Gohil. He had parked his scooter near the pan parlour. While he was buying pan and cigarette, all of a sudden he heard the start of his scooter and saw that one person fled away on riding the same. He was not able to identify that person who fled away on his scooter but he learnt from the people who had gathered at the place of occurrence that it was Ranjit, the accused, who had fled away on scooter. He tried to chase him but remained unsuccessful. The PW-11 has further deposed that after witnessing the person who fled away on his scooter he noticed one person lying flat on the ground about 150 feet far from the cabin of Sanjaybhai. The PW-11 has deposed that after reaching home he learnt that his scooter had been abandoned at Navapura road.

14. From the evidence of the PW-11, it appears that after committing the crime the accused ran away on the scooter of the PW-11, which was parked near the pan parlour of Sanjaybhai. Immediately, the people who had gathered informed the PW-11 that it was none other but Ranjit, the accused, who had fled away. As we have discussed the oral evidence of the PW-11, who has deposed about his presence at the pan parlour of Sanjaybhai Natubhai, it is necessary to look into the evidence of the PW-14, Sanjay Natvarsinh Gohil, the owner of the pan parlour, where the incident occurred.

15. The PW-14, Sanjaykumar Natvarsinh Gohil, in his evidence, has deposed that on 17th March 2006 he was present at his pan parlour and at that point of time he saw that the accused and the deceased were coming from the direction of the bus stand and started fighting with each other opposite his shop. The PW-14 has deposed that while they were fighting with each other there were two or three customers and, therefore, his attention was towards his customers. He has deposed that thereafter the accused came near his pan parlour and started a scooter of one of his customers, namely, Bhailalbai, and at that point of time he had a knife in his hand. The accused proceeded towards the primary school. He has deposed that at that point of time Bhailalbai was also present at his pan parlour. The PW-14 has deposed that Bhailalbai raised shouts and asked the accused to stop but the accused ran away. The PW-14 has further deposed that he noticed that at the place where the deceased and the accused were fighting with each other the deceased was lying flat on the ground and had sustained injuries on the abdomen and was bleeding profusely. Thereafter, many people arrived at the place of occurrence and he heard through those people that the accused and the deceased were also seen fighting near the bus stand and all those people had asked them not to fight and leave the place. In his cross-examination, he has deposed that Bhailalbai had bought pan and bidi and nothing else. From the very first question put by the defence in his cross-examination of the PW-14 the presence of Bhailalbai is well established. The oral version of the PW-14, Sanjaykumar Gohil is corroborated with the evidence of Bhailalbai Gohil, the PW-11. From the cross-examination of this witness, nothing substantial could be elicited so as to render the version of this witness improbable or untrustworthy in any manner. He denied the suggestion that he

had not witnessed the accused running away on the scooter of Bhailalbhai with a knife in his hand.

16. We shall now look into the evidence of one other eye witness, the PW-16, Narendrabhai Ramanlal Thakkar. Narendrabhai Thakkar, in his evidence, has deposed that the incident in question had occurred opposite his shop situated near the Kotvav Vaga well in Village-Angadh. He has deposed that he was running a shop in the name of Jay Jalaram Provision Store. He has deposed that the incident occurred at round 7 O' Clock in the evening while he was sitting at his shop. The PW-16 has deposed that the deceased came on a motor cycle and parked it near his shop. Thereafter, the accused came over there and both had a fight with each other. On hearing the commotion the PW-16 came out of his shop and saw that the accused drew out a knife from his pocket and attacked on the deceased. He has further deposed that he was shocked to witness the incident as on sustaining the injuries the deceased fell down in a pool of blood. The PW-16 thereafter returned back to his shop. He has further deposed that he saw the accused picking a scooter which was parked near a pan parlour and fled away riding the same. By that time, many people gathered at the place of occurrence. Nothing substantial could be elicited through the cross-examination of this witness. On the contrary, the PW-16 appears to be an independent witness. He was running a provision store and the incident occurred just opposite his shop. He also confirms in his deposition what has been deposed by the PW-14, Sanjaykumar Gohil and the PW-11, Bhailalbhai.

17. Thus, from the sequence of events, as narrated by the witnesses to the incident, the prosecution has been able to establish beyond reasonable doubt that on the date of the incident at two places the accused and the deceased were found fighting with each other. Immediately, thereafter the deceased is found lying near a well having sustained multiple injuries on his body. Three witnesses have deposed about the actual incident being witnessed by them. In no manner, they could be termed as interested witnesses or unreliable witnesses. All the three witnesses have also deposed about the accused running away from the place of occurrence by riding the scooter of one Bhailalbhai which was parked near the pan parlour of Sanjaykumar Gohil.

18. On 20th March 2006 i.e. after three days from the date of the incident, the accused was arrested. After his arrest while in police custody he expressed his willingness to point out the place where he had concealed the weapon of offence in presence of the panch witnesses. Accordingly, a panchnama was drawn u/s 27 of the Evidence Act. It is true that the panch witnesses of the discovery panchnama of the weapon of offence have not supported the case of the prosecution and failed to prove the contents of the panchnama. However, the investigating officer, the PW-21, Mohammedbhai Sanosara, in his evidence, Exh. 49, has deposed about such panchnama and the discovery of weapon pursuant to the statement made by the accused. Over and above the oral evidence by virtue of Section 8 of the Evidence Act, the conduct of the accused person is

relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the weapon of offence was concealed would be admissible as conduct u/s 8 of the Evidence Act irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act or not. [See A.N. Venkatesh and Another Vs. State of Karnataka,].

19. Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation u/s 313 of the Criminal Procedure Code except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstance that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. In the present case also, although a number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him.

20. In overall view of the matter, we hold that the prosecution has been able to establish the case against the accused beyond reasonable doubt. We find no reason to extend any benefit of doubt in favour of the accused as urged by Ms. Mansuri, the learned advocate appearing for the accused-appellant, more particularly, after re-appreciating the oral evidence of the witnesses on record. Resultantly, the appeal fails and is hereby dismissed. Order of conviction and sentence imposed by the trial Court is hereby affirmed.