

(2009) 07 GUJ CK 0084
In the Gujarat High Court
Case No : Criminal Appeal No. 340 of 2003

Sanjay @ Thakur Purshottam Solanki	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135(2)
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 323

Citation : (2009) 07 GUJ CK 0084

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

Bench : Division Bench

Advocate : Yogesh S. Lakhani, for the Appellant; MG Nanavati, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—Feeling aggrieved and dissatisfied with the judgment and order rendered by learned Addl. Sessions Judge, City Civil & Sessions Court, Ahmedabad on 31.1.2003 in Sessions Case No. 160 of 2002, the original accused, who came to be convicted by virtue of the impugned judgment and order for the offences punishable under Sections 302, 307 of the Indian Penal Code ("IPC", for short) has preferred this appeal. The appellant - accused was sentenced to undergo imprisonment for life and fine of Rs. 100/- and in default of payment of fine, R.I for one week for the offence punishable u/s 302 of the IPC and R.I for three years and fine of Rs. 100/- and in default of payment of fine, R.I for one week for the offence punishable u/s 307 of the IPC. Both the sentences were ordered to run concurrently and the appellant - accused was given benefit of set-off.

2. The prosecution case in nutshell is that the incident occurred at about 9.30 p.m. on 18.12.2001, on a street situated on the rear side and the house of deceased - Haribhai Jivabhai Parmar. It is alleged the the appellant - accused,

carrying knife in his hand, came to the house of the deceased and inquired about Chimanbhai @ Raju Haribhai, the son of deceased. At that time, Chimanbhai @ Raju Haribhai, though available in the house, but was taking rest. Deceased Haribhai thereupon told the accused that since his son Chimanbhai @ Raju Haribhai was taking rest, accused may come to his house on next day morning, to which the accused got excited and left the house, but came near the backside door of the house and started quarelling with deceased Haribhai Jivabhai, and it is alleged that the accused inflicted knife blows on the chest and abdomen of deceased Haribhai. It is further the case of the prosecution that at that time, Kantaben, the wife of deceased Haribhai tried to intervene, but the accused pushed her and she fell down on the ground. Chimanbhai @ Raju Haribhai, the son of the deceased came out from the house and it is alleged that the accused inflicted knife blow on the chest and abdomen of Chimanbhai @ Raju Haribhai. Both the injured Haribhai and Chimanbhai were initially shifted to LG Hospital, Ahmedabad. Since the injuries sustained by Haribhai was serious in nature, he was shifted to V. Hospital for further and better treatment. However, Haribhai Jivabhai succumbed to the injuries, while he was under treatment in v. Hospital, Ahmedabad. Daughter of the deceased, Kapilaben Haribhai lodged the first information report to PI, Kagdapith police station, Ahmedabad regarding the incident, and the investigation came to be commenced.

2.1 During the course of police investigation, statements of material witnesses were recorded, clothes of deceased Haribhai and of injured Chimanbhai @ Raju Haribhai as well as of the accused came to be recovered. At the instance of the accused and in presence of panchas and Investigating Police Officer, muddamal weapon - knife came to be discovered. P.M. report and injury certificate of the injured came to be collected by the Investigating Police Officer. Required muddamal articles were sent for examination by FSL. After the investigation was concluded, chargesheet came to be filed against accused in the Court of Metropolitan Magistrate, Ahmedabad. Since the offence was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the City Sessions Court, Ahmedabad, which came to be registered as Sessions Case No. 160 of 2002.

3. The learned trial Judge framed charge against accused at Exh.2 for the offences punishable under Sections 302, 307, 323 of the IPC and Section 135(2) of the Bombay Police Act, to which the accused did not plead guilty and claimed to be tried. Thereupon, the prosecution adduced its oral and documentary evidence, and after the conclusion of the evidence, the Id.trial Judge recorded further statement of the accused u/s 313 of the Cr.P.C., and the accused denied generally all the allegations levelled against him by the prosecution and stated that because of rivalry, he was falsely implicated in this case. After appreciating the evidence on record and considering the submissions made on behalf of both the sides, the Id.trial Judge recorded acquittal of the accused for the offences punishable u/s 323 of the IPC and Section 135(2) of the Bombay Police Act, but recorded conviction for the offences punishable under Sections 302 and 307 of

the IPC and awarded the sentence as hereinabove referred in this judgment.

4. Learned senior counsel Mr. Lakhani for the appellant - accused submitted that the entire prosecution case depends upon the evidence of two witnesses, namely, the first informant Kapilaben Haribhai, examined at Exh.7 and Chimanbhai @ Raju Haribhai, examined at Exh.9. However, they both are closely related to the deceased, namely, the first informant Kapilaben is daughter and witness Chimanbhai @ Raju Haribhai is son of the deceased. That considering the evidence of Investigating Police Officer Mr. Algotar, it emerges that in connection with the incident, he recorded statements of about ten neighbours. However, in the chargesheet, he neither referred those neighbours as witnesses nor the prosecution examined them in this case. That thus, though the independent witnesses were available, the prosecution examined only the interested relative witnesses of the deceased.

4.1 Drawing our attention to police vardhi, Exh.14 and police vardhi, Exh.36, Id.sr.counsel Mr. Lakhani submitted that the messages contained in both these vardhis were communicated from v. Hospital and LG Hospital respectively, to Kagdapith police station. It is submitted that in the vardhi, Exh.14, it is stated that one Amrutbhai brought Haribhai Jivabhai to the hospital. It is submitted that such important witness like Amrutbhai, who brought the deceased to the hospital, is not examined by the prosecution. Regarding the vardhi, Exh.36, which is sent from LG Hospital to Kagdapith police station, through head constable Jaydevsinh Kiritsinh regarding the message, which he received from Dr. B.D. Devani, it is submitted that the prosecution did not examine said head constable Jaydevsinh Kiritsinh nor Dr. B.D. Devani in connection with the message conveyed through the vardhi to the police station, wherein it is alleged that both deceased Haribhai Jivabhai and injured Chimanbhai @ Raju Haribhai were assaulted upon by accused Sanjay @ Thakur Parshottam Solanki as well as by other persons. Thus, the Id.sr.counsel Mr. Lakhani submitted that important witnesses, who informed about the incident to Kagdapith police station first in point of time before the lodgment of the FIR, have not been examined by the prosecution. Investigating Police Officer Mr. Algotar, in his evidence, admitted that he has not recorded the statements of those persons, whose names emerged in both the vardhis, Exhs.14 and 36 respectively, nor he has investigated about the allegation of other persons over and above accused, alleged to have been involved in the incident. Thus, Id. Sr. Counsel Mr. Lakhani submitted that the prosecution has suppressed the genesis of the incident and the investigation is unfair one.

4.2 Ld.sr.counsel Mr. Lakhani submitted that as per the evidence of first informant Kapilaben Haribhai, she was present in the hospital when her brother Chimanbhai @ Raju Haribhai was under treatment and her father Haribhai succumbed to the injuries during the treatment, yet, in none of the two vardhis, Exhs.14 and 36, the name of first informant Kapilaben Haribhai is revealed.

4.3 Ld. sr. counsel Mr. Lakhani further submitted that the deposition of first

informant Kapilaben and witness Chimanbhai @ Raju Haribhai are full of material contradictions and improvements, and it is not safe to base the conviction solely upon their evidence. Ultimately, Id. sr. counsel Mr. Lakhani for the appellant - accused submitted that the appeal may be allowed.

5. Per contra, the learned A.P.P. Mr. Nanavati, representing the State vehemently opposed this appeal and submitted that the evidence adduced by first informant Kapilaben and injured eye-witness Chimanbhai @ Raju Haribhai is cogent, clear, reliable and trustworthy. The trial Court rightly relied upon their evidence while recording the conviction of the accused. The evidence adduced by both these witnesses is corroborated by medical evidence on record as well as the report of FSL. Therefore, it is submitted that the appeal may be dismissed.

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

7. Re-appreciating and re-examining the entire evidence on record, it clearly transpires that the prosecution case rests upon the evidence of first informant Kapilaben Haribhai, examined at Exh.7 and Chimanbhai @ Raju Haribhai, examined at Exh.9. Considering their evidence, the incident occurred at about 9.30 p.m. on 18.12.2001, near their house. It further transpires that Kapilaben is daughter of deceased Haribhai, and Chimanbhai @ Raju Haribhai is the son of the deceased. At the time of the incident, first informant Kapilaben as well as witness Chimanbhai @ Raju Haribhai were residing in the same house along with their father - deceased Haribhai and their mother Kantaben. They both stated that at the time of the incident, they were present in the house. Thus, the presence of the witnesses in their own house is natural and the incident occurred during later evening hours at 9.30 p.m. It further transpires that the accused came to their house, carrying big knife, about 23 cm in length, and started quarreling. Chimanbhai @ Raju Haribhai was taking rest in the house and Haribhai, father of Chimanbhai told the accused to come to their house next day morning. It further emerges from their evidence that though the accused left the house, but, came near the backside door of the house and again started quarreling. Deceased - Haribhai tried to pacify the accused, but, according to the evidence of these witnesses, the accused pushed their mother Kantaben and Kantaben fell on the ground and when deceased Haribhai tried to lift Kantaben, the accused inflicted two blows of knife on the body of Haribhai and Haribhai sustained serious injuries in his chest and abdomen. Chimanbhai @ Raju Haribhai attempted to intervene, but, he was assaulted upon by the accused with knife and sustained injuries on his abdomen, both hands and back of his body. The accused, thereafter, left the place. Both Haribhai and Chimanbhai @ Raju Haribhai in injured condition, came to be removed to LG Hospital, Ahmedabad. Chimanbhai @ Raju Haribhai was admitted in the hospital, but Haribhai was shifted to V. Hospital, Ahmedabad for further and better treatment. Haribhai was in critical condition. Haribhai, during the course of his treatment, succumbed to the injuries. Kapilaben, daughter of the deceased lodged the FIR in Kagdapith

police station, Ahmedabad, which is produced at Exh.8.

8. Considering the evidence adduced by first informant Kapilaben and witness Chimanbhai @ Raju Haribhai, it clearly transpires that both are eye-witnesses to the occurrence. In the incident Chimanbhai @ Raju Haribhai sustained serious bodily injuries. Under such circumstances, Chimanbhai @ Raju Haribhai is injured eye-witness. Both these witnesses were succinctly cross-examined at length on behalf of the accused, but, considering their cross-examination, nothing emerges, which would render their evidence untrustworthy and doubtful one. Their evidence is corroborated by the medical evidence adduced by the prosecution in this case. Prosecution examined Dr. Pratik Ravjibhai Patel at Exh.21, who performed postmortem and the P.M. report of the deceased is produced at Exh.22. Considering medical evidence, it clearly transpires that five external injuries of the nature of the stab wound and incised wound were there in the body of the deceased, which caused corresponding internal injuries to thoracic cavity and lungs and abdominal cavity. It is opined by Dr. Patel that the cause of death is shock and hemorrhage, as a result of stab injuries sustained by the deceased. Dr. Patel in his evidence opined that the injuries were sufficient in ordinary course of nature to cause death.

8.1 Regarding the injuries sustained by injured witness Chimanbhai @ Raju Haribhai, the prosecution examined Dr. Vipul Gurjar at Exh.32 and the injury certificate is produced at Exh.33. It clearly transpires that the injured Chimanbhai @ Raju Haribhai sustained serious injuries in his abdomen and other parts of his body and the injuries according to Dr. Gurjar can be caused by sharp cutting instrument like knife.

9. Furthermore, considering the evidence on record, it transpires that the blood stained clothes of deceased Haribhai, of injured Chimanbhai @ Raju Haribhai and of the accused came to be seized. It further transpires considering the evidence of Investigating Police Officer Mr. Algotar, the muddamal weapon - knife came to be discovered at the instance of the accused in presence of panchas. Perusing the record of the case, it transpires that the clothes and the weapon - knife were sent to FSL for examination and considering the serological report, Exh.20, it transpires that the blood stains detected on the clothes of the accused as well as on the muddamal weapon - knife were reported to be of blood group - "B" of the deceased and the injured.

10. Thus, the evidence of the eye-witnesses, out of which one is injured eye-witness, adduced by the prosecution is duly supported by medical evidence as well as by FSL evidence. It is true that considering the evidence of Investigating Police Officer Mr. Algotar, he recorded statements of neighbours during the course of his investigation and it is true that none of the neighbours came to be examined as witness in this case by the prosecution. However, there cannot be any dispute that it is not the quantity of evidence, but it is the quality of evidence that carries importance in criminal case. In the instant case, as stated above, the presence of both the eye-witnesses at the time of the incident, in

their own house, is natural. One of the witnesses namely Chimanbhai @ Raju Haribhai sustained injuries in the incident. The incident occurred near their house, as the accused had come to their house at the time of the incident carrying big knife with him. It is true that both the witnesses are closely related to the deceased. However, mere fact that they are in relation with the deceased would not make their evidence doubtful or unreliable. Considering the evidence on record, there is nothing that either the first informant Kapilaben or the injured witness Chimanbhai @ Raju Haribhai had any animosity with the accused in this case. It is true that considering the vardhi, Exh.36, it is stated that both the injured Haribhai and Chimanbhai @ Raju Haribhai were assaulted upon by accused Sanjay @ Thakur Parshottam Solanki and others. It was vehemently submitted on behalf of the appellant that regarding the involvement of other persons in the incident, no investigation was made by the Investigating Police Officer and, therefore, it creates doubt about the involvement of the accused in the crime and that, thus, the prosecution is suppressing the origin or genesis of the incident. Re-appreciating and re-analysing the entire evidence on record, we find that the involvement of only the appellant - accused in the incident is established by the prosecution beyond any reasonable doubt. We do not find any cogent and reliable evidence on record to come to the conclusion that over and above the accused, the deceased and the injured were also assaulted upon by other persons. Considering the vardhis, Exhs.14 and 36, it nowhere transpires that the source of information was either the first informant Kapilaben or injured eye-witness Chimanbhai @ Raju Haribhai. Perusing the impugned judgment rendered by the trial Court, it transpires that the above submission was made even before the trial Court, and we are of the considered opinion that the trial Court by assigning cogent and convincing reasons, rightly discarded the submission made on behalf of the accused regarding the hospital vardhi.

11. In light of the entire above discussions, we are of the opinion that the learned trial Judge did not err in appreciating the evidence on record and in coming to the conclusion that the prosecution successfully proved its case beyond reasonable doubt against the appellant - accused regarding the commission of offences punishable under Sections 302 and 307 of the IPC. The appeal, therefore, deserves dismissal.

12. For the foregoing reasons, the appeal stands dismissed.