

(2016) 03 GUJ CK 0069

In the Gujarat High Court

Case No : Criminal Appeal Nos. 1616, 1701 and 2037 of 2009

Sanjaybhai Ratilal Laliya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 120(B), Section 120B, Section 302, Section 34

Citation : (2016) 03 GUJ CK 0069

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Ashish M. Dagli, Advocate, for the Appellant; H.S. Soni, Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—1. Present appeals are preferred by the original accused Nos. 1, 4 & 5 - present appellants against the judgement and order of conviction and sentence dated 13.08.2009 passed by the Additional Sessions Judge, Bhavnagar in Sessions Case No. 308 of 2007. The original accused were ordered to undergo rigorous imprisonment for life & fine of Rs. 5000/- in default to undergo rigorous imprisonment for three years for offence under section 302 & 120(B) of Indian Penal Code. The accused were further ordered to undergo rigorous imprisonment for one year & fine of Rs. 100/- in default to undergo rigorous imprisonment for two months for offence under section 135 of B.P. Act.

2. It is the case of the prosecution that accused No. 1 was married to Nirmalaben 17 years prior to the date of incident out of which two children were born. It is the case of the prosecution that accused No. 1 wanted to get rid of the deceased as he suspected that she had illicit relations which led to frequent quarrels between the two. Accused No. 1 is alleged to have hired mercenaries for eliminating his wife. All the five accused alongwith another accused - Harish

Ramsevak Gupta had allegedly hatched a conspiracy to eliminate Nirmalaben - deceased. Accused No. 3 planned the execution and introduced accused persons to accused No. 1. Accused No. 2 received the money to eliminate the deceased. Accordingly, it is the case of the prosecution that accused mo. 5 and one Harish Gupta had secured employment in the factory of the deceased and thereafter had developed relation of brother with deceased. It is the case of the prosecution that on 25.08.2007, at about 03.15 pm, the deceased was taken from her factory in a Max vehicle bearing registration No. GJ-1-HL-1438 under the guise of taking her to Bagdana on the occasion of Rakshabandhan. It is the case of the prosecution that near Radheshyam Madhi situated on Taadach Bagdana Road, the deceased was done to death by causing injury with knife. Thereafter, the dead body was thrown on he way and thus the accused persons are said to have committed offence punishable under Sections 302, 120B and 34 of Indian Penal Code and also under Section 135 of B.P. Act.

2.1 Thereafter, a complaint was registered against unknown person on 26.08.2007. The vehicle was seized. During the course of investigation, the offence was registered against the original accused. After their arrest and necessary investigation, chargesheet was submitted against the accused. Ultimately, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced the following witnesses as oral evidence whose evidence have been read out before us:

2.3 The prosecution also relied upon various documents as documentary evidences which have been perused by us such as P.M. Note of deceased at Ex. 14, original FIR at Ex. 19, inquest panchnama at Ex. 24, panchnama of place of offence at Ex. 27, information of mobile No. 9924782618 at Ex. 80, arrest panchnamas of accused, station diary entry at Ex. 100, map of scene of offence at Ex. 111, FSL report at Ex. 112, FSL viscera report at Ex. 130, serological report at Ex. 136 etc.

2.4 At the end of the trial and after recording the further statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the trial court convicted the accused as aforesaid. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the accused have preferred the present appeals.

3. We have heard Mr. Nirad Buch, Mr. Ashish Dagli and Ms. Jani, learned advocates appearing for the original accused Nos. respectively. Learned advocates for the appellants made the following submissions:

"(I) The case is based on circumstantial evidence and that in absence of any eye witness in the present case, the trial court has erred in convicting the appellants on the basis of circumstantial evidence when the chain has not been completed

by the prosecution. Each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence and that the circumstance must be of an incriminating character.

(II) Out of the witnesses examined by the prosecution 22 witnesses including the colleague of the deceased have turned hostile.

(III) None has seen the deceased in company of accused persons. The last seen theory of accused with deceased is not established by the prosecution. The statement of the watchman of the company in which the deceased was working is not recorded.

(IV) No identification parade by any witness was conducted.

(V) Finding of the trial court in paras 91 & 97 about the illicit relation of appellant and cruelty in that regard is erroneous since no such evidence had surfaced during the investigation.

(VI) The mobile number 9376433335 was registered in the name of Bhavik Gandhi and according to P.W. 29 - Ajay Champaklal who was the colleague of deceased, the said mobile was his own number. Similarly, the mobile number 9426735124 belonged to accused - Ashish Ramsevakbhai. Mere call details do not connect the accused with the incident.

(VII) P.W. 30 who is the car washer has deposed that the police had brought Sanjay Ratilal to him during investigation and that before the incident he had never gone to P.W. 30. There was no identification parade either.

(VIII) Hiring the vehicle from P.W. 31 was not unusual as Sanjay used to regularly hire vehicle from the said witness. Moreover there is no proof of the vehicle (Max) plying between Gandhinagar and Bagdana.

(IX) P.W. 36 - Branch Manager admits that the accused No. 1 did not withdraw any amount in June-July-August 2007. He also admits that in fact the appellant had withdrawn Rs. 48000/- on 25.04.2007 and not on 24.04.2007.

(X) The FSL report does not implicate any accused in the crime as no articles belonging to accused persons contained blood of deceased. No blood stains were found in the vehicle allegedly used to carry the deceased."

4. Mr. H.S. Soni, learned APP appearing for respondent State has supported the order of the trial court and has submitted that the trial court has gone into the evidence in detail and has come to the conclusion that the appellants are guilty of the offence so convicted of. He has submitted that considering the barbaric act committed by the accused which has been proved beyond reasonable doubt, the trial court has rightly convicted the accused. He also submitted that the sentence imposed upon the accused is just and proper and does not deserve to be reduced or quashed.

5. We have gone through the judgement and order passed by the trial court. We

have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant and the State. Learned advocate for the appellants does not dispute the factum that the death of the deceased was a result of culpable homicide. From the nature of injuries sustained by the deceased and the medical reports, it is clear that the death was certainly an act of culpable homicide. Therefore, the main question that falls for our determination in these appeals is as to whether the accused could have been convicted for the offence of murder punishable under Section 302 IPC.

5.1 The case is based on circumstantial evidence in the absence of any eye witness. There is no direct evidence implicating the appellants. It is trite that all the proved circumstances must provide a complete chain, no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

5.2 In the present case, around 22 witnesses have been declared hostile as they have not supported the case of the prosecution. The panchas of the recovery panchnama Ex. 33 and Ex. 57 have turned hostile and therefore recovery of amount from the house of accused No. 1 is not proved. When police has recovered Rs. 60000/- from the house of Sanjay - accused No. 5, the accused was not present in the house and Champaben Ratilal Patel has been shown as witness No. 43 in the chargesheet but she has not been examined by the prosecution. Therefore the alleged recovery from the house of accused No. 5 also cannot be said to have been proved. P.W. 8 - Mr. H.V. Shah (Ex. 31) and P.W. 19 - Rajubhai Bharwad (Ex. 54) have deposed that on 06.09.2007, at the instance of police they had signed the discovery panchnama at Ex. 32. They have further stated that the ransom amount of Rs. 1,05,000/- was not discovered from the house of accused No. 4 - Ashishbhai Gupta. In fact out of 24 panch witnesses examined by the prosecution except 2 panch witnesses all other panchas have turned hostile. Thus it cannot be said that the panchnamas including the recovery and discovery panchnamas have been proved by the prosecution beyond reasonable doubt.

6. It is required to be noted that the motive behind the alleged incident is stated to be illicit relation of accused No. 1 with his colleague and harassment meted out by him to the deceased. According to the testimony of P.W. 24 - Bhagwanbhai Patel (Ex. 67) who is the paternal uncle of deceased, accused No. 1 had illicit relations with his colleague because of which the deceased was subjected to cruelty and harassment by him and his mother. According to P.W. 25 - Shaileshbhai Patel (Ex. 68) who is the brother of deceased, the deceased had informed him that accused No. 1 had illicit relation with his colleague. Similarly, accordingly to P.W. 26 - Khemabhai Patel (Ex. 69), who is the father of the deceased, the deceased was subjected to cruelty and harassment by accused No. 1 and his mother for last ten years. He has deposed that they would demand money frequently and that accused No. 1 had illicit relations with his colleague

and that he used to harass the deceased. He has stated that in the past also the deceased had come down to stay at her parental house but thereafter due to intervention of the members of the society, she returned to her matrimonial house.

7. Even if the motive behind the alleged incident is said to have been proved, we are of the view that the prosecution has failed to prove the presence of appellants at the scene of offence at the time of incident. No witness is examined who had seen the deceased going with the appellants in the alleged vehicle. From the evidence on record, we are of the opinion that there is no direct evidence to conclude that the accused No. 5 had inflicted knife blows on deceased and committed her murder and thereafter threw her body near Radheshyam Madhi as is the prosecution case. It appears that the entire case was made out after the arrest and remand of accused No. 1. It is also required to be borne in mind that the clothes or articles belonging to the accused did not have any blood stains which matched the blood group of the deceased.

7.1 The last seen theory has not been proved by the prosecution beyond reasonable doubt. No witness has been examined by the prosecution who had seen the deceased going from her work place with the accused. The watchman of the workplace where the deceased was working has not been examined. The prosecution has not been able to prove beyond reasonable doubt the withdrawal of amounts if any from the account accused No. 1.

8. There is no eye witness who has narrated the entire chain of events or had seen the accused committing the alleged offence or had last seen the accused together with the deceased. Learned advocate for the accused has been able to successfully create a clout in the mind of the court regarding the involvement of the accused in the alleged offence. There is no clinching evidence which points a finger directly at the accused. We clarify that though the court strongly feels that the accused may have committed the alleged offence, but in absence of any clinching evidence to prove their guilt, we are required to grant benefit of doubt to the accused. This court is not exonerating the accused of the charges but only because the prosecution has not been able to adduce sufficient evidence to nail the accused and because the prosecution has not been able to complete the chain of links, benefit of doubt is being granted to the accused.

9. For the foregoing reasons, appeals are allowed. The order of conviction and sentence dated 13.08.2009 arising from Sessions Case No. 308 of 2007 passed by the Additional Sessions Judge, Bhavnagar is quashed and set aside. The appellants - original accused Nos. 1, 4 & 5 are acquitted of the charges levelled against them giving benefit of doubt. Since they are on bail, their bail bond shall stand cancelled. R & P to be sent to the trial court forthwith.