
(2012) 03 GUJ CK 0107
In the Gujarat High Court
Case No : Criminal Appeal No. 326 of 1992

State of Gujarat

APPELLANT

Vs

Bharwad Vellabhai Bhalabhai and 1

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 114, 302

Citation : (2012) 03 GUJ CK 0107

Hon'ble Judges : R.R. Tripathi, J;G.B. Shah, J

Bench : Division Bench

Advocate : L.R. Pujari, APP, for the Appellant; K.B. Anandjiwala for Opponent : 1
- 2, for the Respondent

Judgement

Honourable Mr. Justice Ravi R. Tripathi

1. Present appeal is filed by the State of Gujarat u/s 378 of the Code of Criminal Procedure, being aggrieved by the judgment and order dated 13.01.1992, passed by the learned Sessions Judge in Sessions Case No. 39 of 1990, recording acquittal for the offences punishable under Section-302 read with Section-114 of the Indian Penal Code. Learned APP, Mr. L.R. Pujari, submitted that the learned Judge committed an error in not believing the case of the prosecution and not convicting the accused of the charges levelled against them. Learned APP, Mr. Pujari, invited attention of this Court to the case of the prosecution, which is set out in Paragraph-2 of the judgment, which is reproduced hereunder for ready perusal;

The case of the prosecution is that Jesangbhai Bhurabhai is doing the business of animal husbandry at Sayala. Out of his 11 children, Vibho was one. Jesangbhai Bhurabhai has three brothers, namely Rajabhai, Rukhadbhai and Gangda, who has a son, namely Shardul. Jasuben is the wife of Shardul and Sukho is the son of Jasuben, who resides with the complainant Jesangbhai. Accused No. 2, Bhalabhai, is the son of Rajabhai, who is uncle of the complainant-Jesangbhai,

and accused No. 1 is his son. Thus, accused Nos. 1 and 2 are the father and son. Jesangbhai Bhurabhai has two brothers Bhikhabhai and Popatbhai. Bhikabhai has three sons, out of which one Hirabhai is a witness in this case and other two are Jivabhai and Kukabhai. Popatbhai has five sons, namely Vitthalbhai, Valiyabhai, Ravjibhai, Ukabhai and Chelabhai, who is a witness in this case. The other sons of Jesanbhai are named Vaghabhai, Gagjibhai and Devabhai. Popatbhai Bhurabhai and Bhalabhai, the sons of accused No. 2, had fought when they had gone for grazing the cattle or for some other work, on the outskirts of village. Vala and Gagji had informed about the same to Jesangbhai and Bhurabhai. But, since they are all relatives, a settlement was arrived at with the intervention of the elders of the family. After about 10 days thereafter, accused No. 1 and Gagji fought with each other on the outskirts. It is being suggested that the scuffle might have taken place. Accused No. 1 had, therefore, lodged a police complaint. Gagji informed Jesangbhai Bhurabhai about the same, after coming home, but, he had no information about the police complaint. But, when the police came to arrest Vitthal and Raghu, only then, they came to know about the police complaint. Since, they are all relatives, the attempts for settlement were begun. For the said purpose, they all gathered at Matajina Madh, out side Rampur Darvaja at Sayala, at night, and there were elders of caste also present, such as Uka Dahan, Ranchod Kheta, Vasram Kheta, Gokal Mer, Popat Pancha, Ratna Mera, Hira Mohan. All the elders advised for an amicable settlement between the brothers and the accused showed the willingness to settle the issue, if Rs. 5,000/- are given towards treatment and expenses. However, the elders of the caste opined that the sum asked by the accused was on higher side. However, after some bargaining, the accused stated that they should get, at least, Rs. 3000/-. However, that amount also appeared to be on higher side to the Panchas and Jesingbhai and after a prolonged discussion Rs. 1000/- was agreed to be paid by Jesingbhai to the accused. However, the accused did not agree to the same and stated that such settlement was not acceptable to them and that they are not agreeable to such a settlement and saying so they left the place. When they left the place along with their iron ring sticks, it was the time of about 12:00 night. After about quarter of an hour, Jesangbhai Bhurabhai and his son Vibho left for their home from Matajina Madh, with empty hands and the others also left for their respective homes. While Jesanbhai Bhurabhai and his son Vibho were passing by Khadi Bhandar, situated on Surendranagar-Botad main road, at that time the accused attacked them with their iron ringed sticks. Accused No. 1 delivered a stick blow, which landed on the head of Vibha and accused No. 2 delivered second blow, which also landed on the head of Vibha. Then, accused No. 1 again delivered a stick blow, which again landed on the head of the Vibha and Vibho fell down there and then. Thereafter, the accused ran after Jesangbhai Bhurabhai, who started running towards his home, shouting for help saying that Vibha is being beaten. At that time, Hirbhai Bhikhabhai and Chelabhai Popatbhai, who were sitting on the otta of Khadi Bhandar casually talking, rushed towards the spot. Jesangbhai Bhurabhai called Ukabhai Popatbhai and Sukha Jala and when they reached to the place of incident, they found that Vibha had expired.

At that time, a by passing auto-rickshaw was stopped and the Vibha was taken to the hospital with a hope that he might survive. Doctor examined him and said that Vibha had expired. Hence, Jesangbhai Bhurabhai straight away went to the police station and gave complaint that, in the light of tube light near Khadi Bhandar, he had seen the son of his uncle and his son being beating his son. On complaint being registered with Sayala Police Station, police officials begin the investigation, drew panchnama and recorded the statements of the concerned witnesses and on completion of the same filed a charge sheet against the accused persons in the Court of Judicial Magistrate, Sayala.

2. The prosecution, to establish its case, led the following oral as well as documentary evidence:

ORAL EVIDENCE

- (1) Jesangbhai Bhurabhai, P.W.-1,(Exhibit-8)
- (2) Hirabhai Bhikhabhai, P.W.-2,(Exhibit-10)
- (3) Chelabhai Popatbhai, P.W.-3,((Exhibit-11)
- (4) Dr. Ghanshyambhai Chaturbhai Motka, P.W.-4,(Exhibit-12)
- (5) Batuksinh Rupsinh, P.W.-5,(Exhibit-18)
- (6) Pravin Chandulal, P.W.-6,(Exhibit-20)
- (7) Anwarmiyan Musamiyan Kazi, Head Constable, P.W.-7,(Exhibit-30)
- (8) Ammanullakhan Imrankhan Pathan,P.W.-8,(Exhibit-32)

DOCUMENTARY EVIDENCE

- (1) List of Muddamal (Exhibit-2),
- (2) Charge-sheet (Exhibit-3)
- (3) Post-mortem note of the deceased Vibha Jesing, (Exhibit-13)
- (4) Certificate showing cause of death, (Exhibit-14)
- (5) Police Yadi(Exhibit-15)
- (6) Injury Certificate of the Vela Bhala (Exhibit-16)
- (7) Injury Certificate of the Vela Bhala (Exhibit-17)
- (8) Panchnama(Exhibit-19)
- (9) Inquest Panchanam, Mark 7/2 (Exhibit-22)
- (10) Panchnama of Seizure of Clothes (Exhibit-23)
- (11) Panchnama of Seizure of Clothes of the deceased (Exhibit-24)
- (12) FSL report, Mark 7/11(Exhibit-26)

(13) Map of the place of incident, Mark 7/13 (Exhibit-28)

(14) A copy of Entry No. 13/90(Exhibit-31)

(15) A copy of FIR being C.R. No. 79/90 (Exhibit-33)

3. The learned APP submitted that the learned Judge ought to have appreciated that it was not in dispute that the deceased had sustained injuries, as deposed by P.W.-4, Dr. Ghanshyambhai Popatbhai Motka(Exhibit-12). The injuries sustained by the deceased are set out in Paragraph-3 of the judgment, which are as under:

1. One injury wound of 5 c.m. above right frontal region, one traverse-wound of 2 c.m., deep to the bone,

2. One more injury wound besides the aforesaid wound 5 c.m. X 1 c.m. deep to the bone,

3. One small injury wound under the right frontal region of 1 c.m. X 0.5 c.m. deep to skin,

4. One big abrasion of red and bluish colour on left back-side of 12 c.m. long X 8 c.m. wide and X 2 c.m. swollen,

5. One injury wound behind left ear of 2 c.m., 0.5 c.m. skin deep,

6. One injury wound above the aforesaid wound of about 2 c.m., 0.5 c.m skin deep, the fifth and sixth wounds were cross wounds and appear to have been caused due to some ornament worn in the ear,

7. On touching, the fracture of frontal bone appears and besides following internal injuries also appeared;

(1) The outer injury Nos. 1, 2 and 4 are also found while examining internally, under the skin,

(2) As per the sketch drawn in the note of post-mortem, there was fracture of right frontal bone which was 7 c.m. vertical and 4 c.m. horizontal.

4. The learned APP, further, submitted that the learned Judge ought to have appreciated that it was a clear case of accused having attacked the deceased and caused serious injuries, which resulted into death of the deceased.

5. In support of his submissions, the learned APP has placed reliance on a decision of the Apex Court in the matter of Sucha Singh and Another Vs. State of Punjab, , wherein the Apex Court, in Paragraphs-20, 21 and 24 has observed as under:

20. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth...

21. The evil of acquitting a guilty person light-heartedly as a learned

author(Glanville Williams in "Proof of Guilt")has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty....

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24. The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

6. We have perused the judgment and the evidence which is laid before the learned Judge. We are of the opinion that the complainant has deliberately suppressed the genesis of the incident and has tried to state only favourable version of the incident and has tried to create eye-witnesses, who are not found to be probable and natural. The learned Judge has rightly not believed the version of Hirabhai Bhikhabhai-P.W.-2 and Chelabhai Popatbhai-P.W.-3. Besides, on a perusal, this Court has also noticed that the complainant has not given the correct version of the incident and his conduct is not found natural. If the complainant was with his son at the time of incident, his natural conduct would-be that he would try to intervene and defend his son, instead he run away to his home shouting about the attack on the deceased. In the cross-examination, he has admitted that he had gone to the police station and at that time accused persons were lodging their complaint and then he states that the second time he had gone to police station carrying his injured son in a rickshaw, whereas in the examination-in-chief, he has not uttered a word about his first visit to police station.

7. It is well settled principle of law that in acquittal appeal where there is a possibility of two views, the one which is favourable to the accused should be adopted. It is also well settled principle of law that the Appellate Court would be slow in interfering with an order of acquittal until and unless the judgment of the Trial Court is perverse or demonstrably unsustainable. In the present appeal, we find that the reasons given by the trial Court are plausible, cogent and convincing. Thus, in light of the evidence on record, it cannot be said that the Trial Court has committed any error in acquitting the accused.

8. It is a settled legal position that in acquittal appeal, the Appellate Court is neither required to re-write the judgment nor to give afresh reasoning, when the reasons assigned by the court below are found just and proper. Such principle is laid down by the Hon"ble the Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, , wherein it is held as under:

This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, that it is not the duty of the appellate court when it agrees with the

view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

9. Thus, in case the Appellate Court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary. On perusal of the evidence on record and the aforesaid facts, this Court is of the opinion that the prosecution is not able to establish its case and the learned Judge has rightly recorded acquittal of the accused. We find no substance in the appeal and the same is DISMISSED. Bail bond stands cancelled.