

(2020) 01 GUJ CK 0172
In the Gujarat High Court
Case No : R/Criminal Appeal No. 21 Of 1997

State Of Gujarat	Vs	APPELLANT
Hakorbbhai Punjabhai Solanki & 1 Other(s)		RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Citation : (2020) 01 GUJ CK 0172

Hon'ble Judges : R.M.Chhaya, J;Vireshkumar B. Mayani, J

Bench : Division Bench

Advocate : Manan Mehta, Mrudul M Barot

Final Decision : Dismissed

Judgement

Vireshkumar B. Mayani, J

1. The present acquittal Appeal has been filed by the appellant " original complainant, State of Gujarat under Section 378 of the Criminal Procedure

Code against the Judgment and order dated 19.09.1996 rendered by the learned Additional Sessions Judge, Vadodara, in Sessions Case No.64 of

1996. The said case was registered against the present respondent original accused for the offence under Sections 302 and 323 of the Indian Penal

Code and under Section 135 of the Bombay Police Act.

2. According to the prosecution case, the complainant Shantaben widow of Ramanbhai Babubhai Nayak had lodged her complaint before the Police

Inspector of Chhani Police Station on 12.11.1995 that she resides at Narayannagar, Chhani, District: Vadodara and her husband was Rickshaw

Driver. She has two daughters, Manisha, 3 years and Sejal, 3 months old. As per routine, her husband had gone to drive rickshaw at 8 o'clock in the

morning on 12.11.1995 and returned at 1 O'clock in the afternoon for lunch. As

rickshaw was required to be repaired, he took rickshaw to the house of rickshaw owner Bharatbhai Ratilal at four O'clock and came back to Narayannagar at 6 O'clock in the evening. He kept rickshaw at home and as there was no tea and sugar in his house, he was sent to bring tea and sugar from the shop of Guru. In a short while, her sister's law's son (nephew) Laliyo came there and stated her that "Thakor Mama is beating mama". She and Punjiben went towards Guru's shop. Thakor fled, seeing both of them. Her brother's law Maganbhai arrived there after a while. Therefore, she, Punjiben and Ramanbhai went to the house of Thakor, but he was not found at home. His three brothers Arvind, Raman and Bhago and his sister Suraj were at home. Hence, they scolded brothers of Thakor and persuaded them to prevent Thakor from quarreling with Raman after drinking liquor and Thakor had beaten Ramanbhai with handle of shovel. At that time, Arvindbhai had asked as to where is Thakorbhai. Meanwhile, Thakor, who was hidden behind the tree, came there with dagger, stated him that your father is here and inflicted blow of dagger on the back of Ramanbhai, who was absorbed in the talks. Therefore, Ramanbhai collapsed in front of the house and went unconscious. Therefore, the complainant Shantaben, her sister's law Punjiben and brother's law Maganbhai took the injured person to the Chhani Hospital in the rickshaw of rickshaw driver Fulmali, where the doctor declared her husband dead. Therefore, Thakorbhai, whose father's name is not known, Solanki by caste, native of Vasna Kotaria had quarreled with Ramanbhai after drinking liquor and beaten him by a big wooden stick and upon being scolded by Raman, he got angry and inflicted blow of dagger in the back of her husband and caused his death. Hence, the complaint is lodged to take legal action.

3. Thereafter, investigation was carried out and statements of several witnesses were recorded. During the course of investigation, accused person was arrested and, ultimately, charge sheet came to be filed against him in the Court of learned Magistrate. As the case was sessions triable the same was committed to the Court of Sessions.

4. Thereafter, charge came to be framed and explained to the accused person, to which the accused person pleaded not guilty and claimed to be tried.

5. In order to bring home the charges against the accused person, prosecution has examined several witnesses and also produced documentary

evidence.

6. Thereafter, after filing closing pursis by the prosecution, further statements of accused person under Section 313 of the Code of Criminal

Procedure, 1973 was recorded. The accused person has denied the case of the prosecution and submitted that a false case is filed against him.

7. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned Judgment, acquitted the respondent â?" accused.

8. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 19.09.1996 rendered by the learned Additional Sessions

Judge, Vadodara, in Sessions Case No.64 of 1996, the appellant â?" State has preferred the present appeal before this Court.

9. Heard Learned APP Mr. Manan Mehta, appearing on behalf of the appellant â?" State. He has contended that the judgment and order passed by

the learned Judge is contrary to law and evidence on record. He has contended that the learned Judge has not properly appreciated oral as well as

documentary evidence adduced by the parties in its proper perspectives.

10. He has submitted that Shantaben, an eyewitness, who is wife of the deceased has given deposition supporting the prosecution case and, therefore,

the learned Judge ought to have believed her say. The said witness is not likely to involve the accused allowing the real culprit scot free. He has

submitted that the learned Judge has erred in holding that there was darkness and, therefore, the accused could not have been identified. Lastly he has

prayed to quash and set aside the impugned judgment and order.

11. Heard Mr. Mrudul M. Barot, learned advocate for the respondent. He has mainly submitted that as per the case of the prosecution there were

three eyewitnesses who had seen the offence which includes the wife of deceased Ramanbhai and nephew (bhaniyo) of deceased Ramanbhai and

another independent person. He submitted that wife of deceased Ramanbhai viz. Shantaben had lodged the FIR. In the FIR the incident occurred in

two parts; one part near the house where deceased Ramanbhai was beaten by the accused with stick whereas another part of the incident occurred

at the house of the accused where Shantaben Ramanbhai went to the house of the accused to scold where three brothers of the accused were

present and during the meantime the accused came from behind the deceased

Ramanbhai and inflicted blow of dagger on the back of the deceased

Ramanbhai and thereby Ramanbhai sustained fatal injury and succumbed to death.

12. He further submitted that though the wife of the deceased Ramanbhai viz. Shantaben was eyewitness, as per the case of the prosecution, she

deposed in the chief examination just like an eyewitness but at the same time she deposed before the Trial Court in the cross examination that she

did not witness the incident and she is not an eyewitness. As per the case of the prosecution, there were two parts of the incident whereas in the

deposition the complainant Shantaben described only one incident in one part. Moreover the learned Trial Court had minutely appreciated the

evidence of Shantaben and came to the conclusion that she is not the trustworthy witness. Moreover, the incident had taken place in the season of

winter at about 7:30 p.m. It is an admitted fact that there was darkness and the weapon could not be identified by some of the witnesses. If the

weapon is not identified then it will be very difficult to come to the conclusion that the accused was identified. The witness Lalo @ Hasmukh who is

child witness categorically admitted in the cross examination that at the time of incident he was at his house with his sister and he had not seen the

incident. Therefore, he is also not an eyewitness. Other so called eyewitness Naranbhai was declared hostile and he had not supported the case of the

prosecution. At the last the learned advocate for the respondent submitted that present appeal is meritless and requires to be dismissed and the order

of acquittal passed by the learned Trial Court is to be upheld.

13. Here in the present case, as per the case of the prosecution the incident had taken place in two part. One part at the market where the deceased

Ramanbhai was beaten by the accused with stick and another part near the house of the accused where the complainant Shantaben, her husband

deceased Ramanbhai and other went to scold and at that time the accused inflicted blow of dagger on the back side of the deceased Ramanbhai and

as a result Ramanbhai expired. The deposition of Shantaben who is complainant and wife of deceased Ramanbhai described only one incident and at

that time also in the chief examination she deposed that accused inflicted the blow of dagger on the back side of the deceased Ramanbhai who is

her husband, but at the same time in the cross examination she admitted that

there was darkness due to winter and also she had not seen the incident.

14. In view of the deposition, the wife of the deceased Ramanbhai viz. Shantaben deposed in the chief examination just like an eyewitness whereas on the other hand in the cross examination she admitted that she is not an eyewitness and she had not seen the incident. Moreover, there was darkness. In view of such type of evidence of Shantaben, the complainant the learned Trial Court has rightly come to the conclusion that the so called eyewitness Shantaben is not trustworthy witness and reliance cannot be placed upon her testimony.

15. The another eyewitness is the child witness Lalo @ Hasmukh. He deposed in the chief examination that he went to the house of the deceased Ramanbhai and took wife of deceased Ramanbhai to the place of offence and at the same time in the cross examination, he deposed that at the time of incident he was at his house with his sister and he had not seen the incident. Therefore, appreciating the evidence in the chief examination as well as in the cross examination the Trial Court has come to the conclusion that this witness is not trustworthy witness and cannot be relied upon.

16. The other eyewitness Narayan Chhitubhai has not supported the case of the prosecution and, therefore, his deposition is not helpful to the case of the prosecution.

17. The witness â?" Maganbhai Kabhai who is brother in law (Jijaji of deceased Ramanbhai) categorically stated in the deposition that he had not seen the incident. He came after the incident took place and, therefore, he is not an eyewitness and his testimony is not useful to the prosecution case.

18. The dagger as well as cover of the dagger were found by way of discovery at the instance of the accused as per the case of the prosecution. The panch witnesses of the above mentioned panchnamas are examined before the Trial Court. The chief examination as well as the cross examination are appreciated by the Trial Court and rightly come to the conclusion that the testimony of the panchas are not helpful to the prosecution, because the panchas of the panchnamas of discovery of dagger stated that the whole panchnama had been written in the police station, whereas the pancha of panchnama of discovery of cover of the dagger had stated that he had signed the panchnama which had been already prepared by the police.

Therefore, the Trial Court has not relied upon the testimony of the panchas and thereby not believed that discovery had been made as per Section 27

of the Evidence Act.

19. In view of above mentioned facts and circumstances of the case the Trial Court has appreciated the evidence in proper perspective and right

manner and not committed any error in coming to the conclusion of acquittal of the accused for the offences punishable under Sections 302 and 323 of

the Indian Penal Code and under Section 135 of the Bombay Police Act.

20. It is settled legal position that in an acquittal Appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when

the Appellate Court is in agreement with the reasons assigned by the Trial Court acquitting the accused. In the instant case, this Court is in full

agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent "accused and adopting the said reasons

as well as the reasons aforesaid, in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court. Hence, this

Appeal requires to be dismissed.

21. In the result, acquittal appeal of the State deserves to be dismissed and accordingly it is dismissed. The impugned judgment and order dated

19.09.1996 rendered by the learned Additional Sessions Judge, Vadodara, in Sessions Case No.64 of 1996 acquitting the accused is upheld and

confirmed. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith. Bail bond, if any, shall stand cancelled.