

(2009) 02 GUJ CK 0087
In the Gujarat High Court
Case No : Criminal Appeal No. 529 of 1987

State of Gujarat

APPELLANT

Vs

Koli Chhanabhai Gandabhai

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 02 GUJ CK 0087

Hon'ble Judges : Z.K. Saiyed, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; U.S. Brahmbhatt, for the Respondent

Judgement

K.S. Jhaveri, J.—This appeal, u/s 378 of the Code of Criminal Procedure Code, is directed against the judgment and order dated 12th May, 1987 passed by the learned Sessions Judge, Surendranagar in Sessions Case No. 65 of 1986, whereby, the respondent, accused person, has been acquitted from the offences punishable u/s 302 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2. The facts in brief, as emerging from the record, are as under:

2.1 On 31st August, 1986, at around 0800 hours, Karsan Virji, the complainant herein and his uncle-Bachu Mohan had gone to the market for doing labour work. At around 0900 hours, the complainant got a work. While the complainant was about to leave, his uncle-Bachu Mohan told him that since that day was a Sunday and that he had taken a vow to go to a temple, he may also accompany him. However, at that time, the complainant did not accompany him as he had got the work and therefore, the deceased proceeded towards the temple.

2.2 After completing the work and while the complainant was sitting near the

market, at around 1000 hours, one labourer - Gopal Popat informed the complainant that the respondent-accused had injured his uncle-Bachu Mohan with a knife. On hearing this, the complainant went to the place of incident. At that place, some one informed him that the deceased has been taken to the Mahatma Gandhi Smarak Hospital, Surendranagar. Therefore, the complainant went to the said Hospital.

2.3 In the meantime, a shop-keeper, near whose shop the alleged incident in question had taken place, informed the police authority of Surendranagar City Police Station about the said incident. On receipt of the said information, the P.S.I. went to Mahatma Gandhi Smarak Hospital, Surendranagar. In the meanwhile, the complainant had also reached the Hospital. However, he came to know that his uncle-Bachu Mohan had succumbed to the injuries. Therefore, a complaint with respect to the above incident was noted down by the P.S.I. in the Hospital itself. "Marnottar" form was filled up and necessary arrangements were made for the purpose of sending the dead body for performing post-mortem. Inquest "panchnama" was also done in the presence of panchas. In the meanwhile, the complaint was sent to the Police Station for the purpose of registration of the offence and ultimately, it came to be registered as I-C.R. No. 220 of 1986 u/s 302 of I.P.C. and Section 135 of the B.P. Act.

2.3 Investigation into the alleged offence was handed over to P.S.I. - Vinodkumar Manjibhai Asari. The said Investigating Officer went to the place of incident and prepared the "panchnama" of the scene of offence in the presence of panchas. Necessary "mudammal" articles were collected and they were sent to the F.S.L. for examination. Thereafter, the investigation into the alleged offence was handed over to P.S.I. - Jethalal Kacharabhai Patel.

2.4 Further investigation was carried out and statements of several witnesses were recorded. As cogent evidence was found against the respondent, he was arrested on the same day, i.e. on 31.08.1986. Arrest panchnama was prepared in the presence of panchas. On the next day, i.e. on 01.08.1986, the respondent was sent to the Hospital for medical examination, along with a police "yaadi". During the course of interrogation, as the respondent-accused showed his willingness to produce the "knife" used at the time of commission of the alleged offence in question, the same was recovered by way of a separate "panchnama" in the presence of panchas. On receipt of the F.S.L. Report, PM note and other documents, they were kept in the investigation file.

2.5 On completion of the investigation, charge-sheet was filed against the respondent-accused before the Court of learned Chief Judicial Magistrate, Surendranagar. However, as the case was exclusively triable by the Court of Sessions, the same was committed to the Sessions Court, Surendranagar and it was numbered as Sessions Case No. 65 of 1986. On presentation of the respondent-accused, the learned Sessions Judge framed the charge but, as the respondent-accused pleaded not guilty to the said charges, trial was conducted against him.

3. The prosecution has examined in all twenty-one witnesses in order to prove the guilt of the respondent-accused. PW-1 Dr. Anjanaben Shah at Exhibit-5, PW-2 Karsan Virji at Exhibit-9, PW-3 Dilipkumar Ratilal at Exhibit-11, PW-4 Salimbhai Harunbhai at Exhibit-12, PW-5 Gopalbhai Popatbhai at Exhibit-13, PW-6 Raisingh Amarsingh at Exhibit-14, PW-7 Chandrakant Tribhovandas at Exhibit-15, PW-8 Mangalsinh Bhojubhani at Exhibit-16, PW-9 Dr. Devjibhai Khimjibhai Vadher at Exhibit-21, PW-10 Vagjibhai Dhamjibhai at Exhibit-24, PW-11 Paresh Labhshankar at Exhibit-25, PW-12 Govindhbhai Jethabhai at Exhibit-27, PW-13 Mahipatsinh Chandubha at Exhibit-28, PW-14 Arvind Vrajlal at Exhibit-30, PW-15 Amrubhai Kathadbhai at Exhibit-32, PW-16 Manubhai Lalubha at Exhibit-33, PW-17 Kheruben Mohmmadbhai at Exhibit-35, PW-18 Bhikubha Thakubha at Exhibit-41, PW-19 Virji Mohan at Exhibit-46, PW-20 Vinodkumar Manjibhai at Exhibit-47, PW-21 P.I. Jethalal Kachrabhai at Exhibit-48.

4. The prosecution has relied upon several documentary evidence, viz. the complaint at Exhibit-10, the Inquest "panchnama" at Exhibit-18, the "panchnama" regarding the seizure of the clothes of the deceased at Exhibit-19, Purshis of the map of the scene of the offence at Exhibit-20, post-mortem report at Exhibit-22, the "panchnama" of the body of the accused at Exhibit-26, the "panchnama of the scene of the offence at Exhibit-29, the "panchnama" of discovery of knife at Exhibit-31, Forwarding letter of "muddamal" sent to the F.S.L. at Exhibit-49, the F.S.L. report along with its receipt at Exhibit-50.

5. On submission of the closing "purshis", the learned Sessions Judge recorded the further statement of the accused u/s 313 of the Code of Criminal Procedure, 1973. After hearing learned Counsel for the respective parties and after considering the entire evidence on record, the learned Sessions Judge passed the impugned judgment acquitting the respondent-accused from the alleged offence in question. Hence, this appeal.

6. Mr. R.C. Kodekar, learned APP for the appellant-State has submitted that looking to the documentary evidence on record, more particularly, the evidence in the form of "panchnama" of the clothes seized from the dead body of the deceased at Exhibit-19, the Post-mortem report at Exhibit-22, the discovery "panchnama" at Exhibit-31 and the F.S.L. report at Exhibit-50 and the oral evidence in the form of depositions of PW-1 Dr. Anjanaben Shah at Exhibit-5, PW-2 - Karsan Virji-complainant at Exhibit-9, PW-9 Dr. Devjibhai Khimjibhai Vadher at Exhibit-21, PW-10 Vagjibhai Dhanjibhai at Exhibit-24, PW-13 Mahipatsinh Chandubha at Exhibit-28, PW-14 Arvind Vrajlal at Exhibit-30, PW-19 Virji Mohan-father of the complainant at Exhibit-46, PW-20 Vinodkumar Manjibhai Asari-Investigating Officer at Exhibit-47, PW-21 Jethalal Kachrabhai Patel - Investigating Officer at Exhibit-48 on record, the guilt of the respondent-accused is established beyond doubt. Therefore, the Court below has committed grave error in law and on facts by acquitting the respondent-accused from the alleged offence in question.

7.0 Mr. U. S. Brahmhatt, learned Counsel for the respondent-accused, has

submitted that there is no eye witness to the alleged incident in question and that the entire case of the prosecution rests upon circumstantial evidence. He has submitted that the prosecution has failed to establish the chain of circumstances pointing towards the guilt of the respondent-accused. He has further submitted that if the said chain of circumstances remains incomplete or if there is any reasonable ground for a conclusion consistent with the innocence of the accused, then the accused cannot be convicted for the alleged offence in question.

7.1 Learned Counsel for the respondent-accused has contended that the prosecution has failed to prove that there was any motive behind the commission of the alleged offence in question. He has submitted that the complaint has been filed merely on the suspicion that the mother of the complainant was having an illicit relation with the respondent-accused. Thus, in absence of any evidence on record to show the existence of any motive behind the commission of the alleged offence in question, the Court below was justified in acquitting the respondent-accused. Hence, no interference is warranted from this Court in this appeal.

8.0 We have gone through the judgment 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 Counsel for the respective parties. Admittedly, the entire case of the prosecution rests upon circumstantial evidence. The law relating to the proof of a case based purely on circumstantial evidence has been settled by several authorities of this Court as well as of the Apex Court. Needless to say that in cases in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn, must be fully established beyond any reasonable doubt and the circumstance so established should not only be consistent with the guilt of the accused but, they must in their effect be such as to be entirely incompatible with the innocence of the accused and must exclude a reasonable hypothesis with his innocence. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

9.0 In order to prove the guilt of the respondent-accused, the prosecution has placed heavy reliance upon the medical evidence on record in the form of deposition of the Medical Officer [PW-9 Dr. Devjibhai Khemjibhai Vadher at Exhibit-21] who has performed the Post-mortem of the deceased. In his deposition, the Medical Officer has stated that the injuries sustained by the deceased were anti-mortem and that they were possible by the "muddamal" weapon - knife. The said fact is also evident from the remarks mentioned in Column 17 of the Post-mortem Report at Exhibit-22. He has categorically deposed the cause of death as "hemorrhagic shock due to injury to heart".

9.1 Thus, looking to the medical evidence on record in the form of deposition of the Medical Officer [PW-9 Dr. Devjibhai Khemjibhai Vadher] at Exhibit-21 and the

Post-mortem Report at Exhibit-22, we have no hesitation in coming to the conclusion that the deceased died a homicidal death.

10.0 The prosecution has examined the complainant- Karsan Virji as PW-2 at Exhibit-9. In his deposition, he has deposed that his mother was having illicit relationship with the respondent-accused and that she has been staying with the respondent-accused since last more than two years prior to the date of the alleged incident in question. He has further deposed that at times the deceased, who was considering his mother as her sister, had tried to persuade her that she should not maintain any illicit relationship with the respondent-accused. Therefore, the respondent-accused was having grudge against the deceased. He has further deposed that about a period of four to five days prior to the date of the alleged incident, the respondent-accused had even attempted to kill the deceased but, at that time, the deceased had run away to a nearby village. He has also deposed that about a period of fifteen days prior to the date of the alleged incident, when he along with his other family members had gone to the house of the respondent-accused to bring her mother back, the respondent-accused was in a drunken condition and at that time had threatened them by showing a knife.

10.1 This witness has been cross-examined at length before the Court below. In his cross examination, he has deposed that before about four months prior to the date of the alleged incident, his mother had filed a complaint against his father- Virji Mohan [PW-19 at Exhibit-46] and his brother and that since then, her mother has been staying with the respondent-accused. However, no document has been produced on record by the prosecution in support of the same.

10.2. We have carefully gone through the evidence led by this witness in his cross-examination. From his cross-examination, it transpires that on several occasions, disputes had taken place within the family of the complainant on the issue of alleged illicit relationship between his mother and the respondent-accused and that on about four to five occasions, the dispute had reached knocking the doors of law. Nothing incriminating has come out from his cross-examination which may lead us to believe his evidence to be untrue or unreliable. Thus, from the evidence led by this witness, it has to be said that though this witness is not an eye-witness to the alleged incident but, one aspect that comes to the fore is that on several occasions, disputes used to take place within the family of this witness on the issue of alleged illicit relationship between the respondent-accused and the mother of this witness.

11.0 The prosecution has also examined PW-19 Virji Mohan at Exhibit-46, who is the father of the complainant. In his deposition, he has deposed that his wife- Laxmi, i.e. the mother of the complainant, had illicit relationship with the respondent-accused. He has further deposed that earlier also, he had filed a complaint against his wife-Laxmi and the respondent-accused for allegedly eloping with each other with some valuables & gold ornaments. However, subsequently, he had withdrawn the said complaint on account of the threat

given by the respondent-accused at that time.

11.1 This witness has also been cross-examined before the Court below. In his cross-examination, he has deposed that he had filed the complaint in question because his wife-Laxmi had eloped with the respondent-accused with cash amounting to Rs. 2500/- and other gold ornaments. Nothing incriminating has come out from his cross-examination, which may lead us to believe his evidence to be true or unreliable.

12. Considering the evidence led by the aforesaid two witnesses, viz. PW-2 & PW-19 and keeping in mind the history of their past relationship, it can be safely said that the respondent-accused had grudge against the family of the complainant and more particularly, the deceased, on account of his relationship with the mother of the complainant. Thus, it is established beyond doubt that the respondent-accused had the motive to kill the deceased.

13.0 The prosecution has relied upon the oral evidence of PW-10 Vagjibhai Dhanjibhai at Exhibit-24. This witness has identified the respondent before the Court below as the person who had come to his shop and had asked him to get the handle repaired for his knife. This witness has also identified the muddamal weapon-knife before the Court below. This witness has been cross-examined. However, nothing incriminating has come out, which may lead us to believe his evidence to be true or unreliable.

14.0 The prosecution has placed heavy reliance on the discovery panchnama carried out u/s 27 of the Indian Evidence Act, at Exhibit-31, by which the "muddamal" weapon-knife, allegedly used in the commission of the offence in question, has been seized. The same has been proved by the prosecution by way of the oral evidence of panch witness - PW-14 Arvindbhai Vrajlal at Exhibit-30. We have carefully examined the evidence led by this witness. Nothing incriminating has come out from his evidence, which may lead us to believe his evidence to be untrue or unreliable.

15.0 The prosecution has also placed reliance upon the F.S.L. Report at Exhibit-50. From the said Report, it transpires that the Blood Group of both the respondent-accused as well as of the deceased is "AB". It is pertinent to note that blood stains of Blood Group "AB" have been found on the carpet lying at the place of incident and also on the clothes of the deceased and the respondent-accused.

15.1 It is true that in the scuffle that had taken place between the deceased and the respondent-accused, the respondent had also sustained some injury on his right thumb. At this stage, it would be relevant to refer to the Medical Certificate at Exhibit - 6 issued by the Doctor who had examined the respondent at the relevant point of time. The said Medical Certificate at Exhibit - 6 describes the injury sustained by the respondent as - "Incised wound over dorsal aspect of the hand at the base of the thumb". In other words, the injuries sustained by the respondent were simple in nature. The prosecution has proved the said

Certificate by the evidence of PW-1 Dr. Anjanaben Narendrabhai Shah at Exhibit - 5. Therefore, it has to be concluded that the knife injuries sustained by the deceased were of such a grave nature that the deceased had started to bleed profusely, which had resulted into the falling of blood on the carpet also, apart from the clothes of the respondent.

15.2 Thus, if we consider the evidence led by PW-10 Vagjibhai Dhanjibhai at Exhibit-24 in the backdrop of the oral evidence led by PW - 1 Dr. Anjanaben Narendrabhai Shah at Exhibit - 5 and the documentary evidence in the form of the Medical Certificate at Exhibit - 6, the Post-mortem report at Exhibit-22 and the F.S.L. Report at Exhibit-50, it could be safely concluded that the deceased had sustained knife injuries at the hands of the respondent and that the blood stains found on the muddamal weapon-knife were of the deceased.

16.0 The prosecution has also examined PW-14 Arvind Vrajilal at Exhibit-30, who is a panch witness of the discovery panchnama at Exhibit - 31. This witness has categorically deposed that the muddamal weapon-knife was recovered from a place near to railway crossing Dudhrej. From the evidence of this witness, it is established that the muddamal weapon-knife was recovered from a place which was not known to the general public. Having gone through the evidence of this witness, we find that the discovery panchnama has been performed after following due process of law.

17.0 The prosecution has also examined PW-13 - Mahipatsinh Chandubha at Exhibit-28, who is a panch witness of the panchnama of the scene of offence at Exhibit - 29, PW-20 Vinodkumar Manjibhai Asari at Exhibit-47 is the P.S.I. who had carried out the preliminary investigation into the alleged offence and PW-21 Shri Jethalal Kachrabhai Patel at Exhibit-48 is the P.S.I. who had arrested the respondent-accused in connection with the alleged offence and who had completed the investigation. These witnesses have also been cross-examined at length before the Court below. However, nothing incriminating has come out from their cross-examination which may lead us to believe their evidence to be untrue or unreliable.

18.0 The law on the subject is well-settled. Having appreciated the entire evidence available on record, we find that the approach of the learned trial Judge to be not only erroneous but, de hors the record and settled principles of criminal jurisprudence. In such cases, what should be the mode of appreciating the evidence is noted by the Apex Court in the case of State of Maharashtra Vs. Siraz Ahmed Nisar Ahmed and Others, Paragraph 33 of the said decision reads as under:

The Designated Court has rejected the evidence of both the witnesses on consideration of other aspect that PW-55 had stated that no search of the flat was made by the police party. While appreciating the evidence, the court must keep in mind that the powers of observation differ from person to person. What one may notice, other may not. An object or thing happened might reflect in the

image of a person's mind, whereas it may go unnoticed on the part of the another. It has not come out in the evidence or in the cross-examination that PW-55 was also a party to the search of the flat along with PW-50 after the arms were produced by the accused who had made a categorical statement that he had made a search of block No. 402 before the completion of the panchnama. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence, more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence, as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matter not touching the core of matter in issue, hyper-technical approach by taking sentence out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

19.0 Similar view has been taken by this Court in the case of State of Gujarat v. Hathisinh A. Parmar reported in 2008 GLHEL HC 220294 : 2008 (3) GLH 2.

20.0 In view of the above discussion, we are of the considered opinion that the prosecution has succeeded in proving beyond doubt the guilt against the respondent-accused and the entire chain of circumstances pointing towards his guilt. Essentially the element of motive behind the commission of the alleged offence has also been established by the prosecution. The evidence in the nature of oral evidence of PW-1 Dr. Anjanaben Shah at Exhibit-5, PW-2 Karsan Virji at Exhibit-9 and PW-10 Vagjibhai Dhamjibhai at Exhibit-24 and documentary evidence in the form of discovery "panchnama" at Exhibit-31, F.S.L. report at Exhibit-50, Medical Certificate of the respondent-accused at Exhibit-6, clearly establish the presence of the respondent-accused at the relevant point of time and the documentary evidence in the form of discovery "panchnama" at Exhibit-31 and F.S.L. report at Exhibit-50 establish that the alleged offence in question was committed with the "muddamal" weapon knife seized by way of discovery "panchnama". Thus, the above referred evidence leads us to the only conclusion that the respondent-accused was the author of the gruesome act of killing the deceased. No other conclusion than the one stated herein-above could be arrived at on appreciation of the evidence on record. Hence, the impugned order passed by the learned Sessions Court is required to be quashed and set aside.

21.0 In the premises aforesaid, the appeal is allowed and the judgment and order dated 12th May, 1987 passed by the learned Sessions Judge, Surendranagar in Sessions Case No. 65 of 1986 acquitting the respondent-accused is hereby quashed and set aside and the following order is passed.

21.1 We hold that the accused is guilty for the offence punishable u/s 302 of the

Indian Penal Code and u/s 135 of the Bombay Police Act and convict him for the same.

21.2 Since the accused has been convicted for the aforesaid offence, he will have to be heard on the question of sentence. The accused is, therefore, directed to remain personally present before the Court on 20th February, 2009 at 10:30 a.m. for the hearing on the question of sentence. Directions issued on the convict will be communicated to him through the concerned Police Station forthwith.

Further order on 20th February, 2009.

Pursuant to the order dated 5th February, 2009 passed by this Court, the Police Officer, who is present in the Court has submitted a report dated 20th February, 2009, along with accompanying annexures. He has also produced the copy of the death certificate of the respondent-accused, in its original, from which it transpires that the respondent-accused has expired on 3rd November, 2001. The aforesaid documents are taken on the record. In view of the above the appeal stands abated.