
(2008) 12 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 655 of 1994

State of Gujarat	Vs	APPELLANT
Rajurai Bhilaray Jayswal and Another		RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Arms Act, 1959 — Section 25(1), 3
Penal Code, 1860 (IPC) — Section 114, 302, 307, 34

Citation : (2008) 12 GUJ CK 0030

Hon'ble Judges : Dhirubhai Naranbhai Patel, J;C.K. Buch, J

Bench : Division Bench

Advocate : H.L. Jani, app, for the Appellant; None for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Buch, J.—The present Appeal is filed by the State of Gujarat challenging the order of acquittal passed by the learned Additional Sessions Judge, Valsad district at Navsari in Sessions case No. 36 of 1992 dated 3rd February, 1994. The grievance of the State is that accused No. 1 has been erroneously acquitted for the charge of offence punishable u/s 307 of the Indian Penal Code and also u/s 25(1)(aa) of the Arms Act and respondent No. 2 (original accused No. 2) also has been wrongly acquitted from the charge of offence punishable under Sections 302 307 and 114 read with Section 34 of the Indian Penal Code and also u/s 25(1)(aa) of the Arms Act.

2. We have heard the learned Additional Public Prosecutor Mr. Jani for the State. He has taken us through basic case placed by the prosecution effected in charge framed by the learned trial Judge at exh. 1. According to prosecution, on 11th January, 1992 one Kokilaben, daughter of Somabhai was drawing water through a hand pump at about 2.15 p.m. and at that time, both the accused charge-sheeted by police with third another accused Mohmed Rais had reached there and accused Mohmed Rais with bad intention had caught hold of her hand and

asked her to go with that absconding accused. But Kokilaben forcibly took her hand back from the absconding accused. Thereafter, she had proceeded towards her residence with water in two different utensils popularly known as "Beda". This incident was witnessed by one Chhanabhai Somabhai. In this background, both the accused persons and the absconding accused Mohmed Rais with an intention to kill Bhikhubhai and Ukadbhai tried to inflict injuries with fire arm when complainant Rameshbhai and Chhanabhai were playing cricket with others. Chhanabhai had asked absconding accused Mohmed Rais that why he had played mischief by holding hand of his sister. At that time, the absconding accused had given a slap to Chhanabhai alleging that he is lying. After some time, all the accused had come again at the place where Rameshbhai and Chhanabhai were playing cricket. Accused No. 1 Raju at that time was holding revolver in his hand and accused No. 2 was holding knife. Accused Mohmed Rais was holding fire arm and fired one bullet from revolver. At that time, Ukadbhai had rushed to the spot hearing the bullet shot. At that time, absconding accused Mohmed Rais fired second round. According to prosecution, Bhikhubhai Ukadbhai who was present there had asked the absconding accused Mohmed Rais not to repeat things. But as intention of the accused was to kill Bhikhubhai, accused No. 1 Raju Rai fired revolver which he was holding and Bhikhubhai sustained injuries in the right side of his chest. It is alleged that all the accused persons were keen to see that Bhikhubhai Ukadbhai and the persons who were there are inflicted injuries that may result into death. The accused had assaulted both the prosecution witnesses deceased Bhikhubhai. Ultimately Bhikhubhai lost life. It is further the case of the prosecution that accused persons were holding fire arms, that is, accused No. 1 Raju and absconding accused Mohmed Rais were unlicensed and they were holding weapons in contravention of the provisions of the Arms Act and thereby both of them have committed offence punishable u/s 25(1)(aa) of the Arms Act. Thus, accused Nos. 1 and 2 came to be charged for the offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code and Section 25(1)(aa) of the Arms Act.

3. The prosecution has examined all relevant witnesses including doctor who had carried post mortem of deceased Bhikhabhai Ukadbhai Halpati and eye witnesses to the incident. The learned trial Judge has also considered the opinion expressed by the Ballistic expert and so also the report given by FSL expert tendered in the evidence by the prosecution.

4. According to learned Additional Public Prosecutor Mr. Jani, there is no controversy as to the opinion expressed by Ballistic expert nor it was telling with the fire arm has not been used by the accused persons found in the incident. The learned trial Judge has acquitted the accused persons from the offence punishable u/s 25(1)(aa) of the Arms Act on technical ground as there was no formal sanction by the District Magistrate as per scheme of Section 3 of the Arms Act. In response to the query raised by this Court, Mr. Jani has also accepted that as such there is no such clear ground mentioned in the acquittal appeal for the acquittal recorded by the learned trial Judge for the offence punishable under

Arms Act. The acquittal thus, according to us, has been recorded for improper institution of prosecution for the offence punishable under Arms Act. The finding recorded by the learned trial Judge based on the discussion made in para 23 of the judgment is absolutely legal and there is no scope for interference in the finding recorded by the learned trial Judge in this regard.

5. So far as the acquittal of accused No. 2 recorded in reference to offences punishable u/s 302 and 307 of the Indian Penal Code is concerned, the prosecution who claimed that gun shot fire was also made towards him but the same could not hit his body has not been believed by the learned trial Judge. We have carefully gone through the deposition of this witness Ukadbhai PW 2 examined by the prosecution at Exh.13. He was about 66 years of age on the date of recording of his deposition. His presence in the ground where young persons were playing cricket obviously, if is viewed with some doubt by the learned trial Judge, then such an inference can be said to be reasonable and probable. Good and sound reasons are recorded by the learned trial Judge because according to prosecution case, the accused No. 2 was holding knife. The gunshot injury which was found on the body of the person deceased does not appear to be very close range fire. So, the accused persons must be at some reasonable distance and none of the prosecution witnesses was found injured with knife. No injury which could be caused by knife was also seen on the body of the person deceased. In this fact situation, the learned trial Judge decided to acquit accused No. 2 observing that it would be either legal or proper to say that he was sharing common intention either to commit murder or to commit offence punishable u/s 307 of the Indian Penal Code or to commit offence punishable u/s 307 of the Indian Penal Code. Recovery of knife also according to us, does not appear to be satisfactorily proved by leading cogent and convincing evidence. Recovery of knife at the instance of accused No. 2 also appears to be fishy on bare word of a police officer who has recovered knife is not found sufficient by the learned trial Judge in this regard. So according to us, the order of acquittal recorded by the learned trial Judge does not require to be interfered with.

6. The jurisdiction of the court dealing with acquittal appeal is limited and unless the Court is able to reach to a conclusion that the order of acquittal is apparently illegal, perverse and therefore, requires to be interfered with only then, acquittal normally should be reversed. Yardstick is different while dealing with an acquittal appeal. It is also settled view that merely because some other view could also have been taken by re-writing entire judgment or siting different set of reasons, one possible view if taken by the learned Judge is of acquittal, the same should not be interfered with. So, keeping in mind this accepted proposition of law, we have decided to dismiss the appeal. Hence, the appeal preferred by the State of Gujarat is dismissed.

7. Before parting with the judgment, it is necessary for us to mention that normally, the present being an appeal challenging acquittal of the accused would not have been heard by us as per roster. But today, one appeal challenging the

very judgment and order preferred by one of the accused was listed before us and we have undertaken hearing of that appeal. The present judgment is delivered which is required to be delivered independently and more particularly on the strength of nature of submissions made before us by the learned Additional Public Prosecutor. A copy of this judgment be kept in Criminal Appeal No. 342 of 1994.