

(2008) 07 GUJ CK 0048
In the Gujarat High Court
Case No : Criminal Appeal No. 478 of 1986

State of Gujarat

APPELLANT

Vs

Ravjibhai Babubhai and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2008) 07 GUJ CK 0048

Hon'ble Judges : S.R. Brahmbhatt, J; Bhagwati Prasad, J

Bench : Division Bench

Advocate : Maulik Nanavati, app, for the Appellant; Nitin M. Amin, for Opponents 1-2, for the Respondent

Final Decision : Dismissed

Judgement

Bhagwati Prasad, J.—The present appeal is filed by the State of Gujarat against the decision of the Court of Sessions, Nadiad at Kheda district, being the decision dated 17/12/1985 acquitting the accused for the offence punishable u/s 302 of Indian Penal Code, passed in Sessions Case No. 89 of 1985.

2. At the time of admission of the present appeal this Court [Coram: D.H. Shukla & A.P. Ravani, JJ (as they then were) dismissed the appeal in respect of Respondent/Accused No. 3 - Shardaben Budhabhai. This appeal is now to be decided in respect of Respondent No. 1 & 2 Ravjibhai Babubhai and No. 2 Budhabhai Babubhai only.

3. The facts involved in the present case are as under.

4. According to the case of the prosecution, on 20/6/1995 the deceased had gone to the house of Hirabhai Narsinhbhai, P.W. No. 2 at 4:00 and was sitting on a cot. At that time accused No. 1 came with dhariya and accused No. 2 with stick. Upon seeing them deceased started running and both the accused had also ran after him. In the field of one Ishwarbhai Naranbhai, deceased was intercepted and the accused started assaulting him. Because of the injuries

sustained the deceased died on the spot. Two witnesses, i.e. P.W-2 Hirabhai Narsinhbhai and P.W. No. 3 Haribhai Narsubhai saw the incident and according to the prosecution they were the eye witnesses. The Learned Addl. Sessions Judge, district Kheda at Nadiad by his judgment & order dated 17th December 1985 acquitted the accused.

5. After considering the case of the prosecution the trial Court gave following reasons for acquittal.

6. Presence of P.W-2 Hirabhai's presence is doubtful at the place of incident. The witness after seeing the incident had gone to his home and did not tell anybody till his police statement was recorded. He was at his home till next morning. In the morning he had gone to his field for work. This witness had not gone to inform the son of the deceased nor had gone to inform the Police Patel in the village. The conduct of the witness is most unnatural. This witness had not gone to see the deceased immediately after the incident.

7. Presence of P.W-3 Haribhai is also doubtful at the scene of offence. His conduct is also most unnatural. This witness did not shout though there were labourers working in the nearby fields. He went to his home and on the next day did his work in the field. Thereafter he came at 12:00 noon for lunch and did his work in the field till 5:00 p.m. This witness did not inform anybody till his police statement was recorded on the next day evening.

8. Both the above mentioned witnesses did not raise any hue and cry. They did not shout for any help though number of labourers were working. P.W-3 Haribhai could not be an eye witness as after reaching the scene of offence, he asked P.W-2 Hirabhai as to why the deceased was badly injured and was in a bleeding condition. This makes his presence very much doubtful and it proves that he has not seen the incident.

9. The incident as per the prosecution had occurred at 4:45 p.m. There were number of fields and houses in the fields. It was a monsoon season. Labourers were working in different fields. It is surprising that nobody else had seen the incident. Both the so-called witnesses did not inform anybody up to 16 to 17 hours.

10. There were 21 injuries on vital parts of the deceased. The doctor has said that bleeding was continued from head, eyes, hands etc. He opined that the injuries must have occurred before 6 to 8 hours. In such case the incident must have taken place at 12:00 midnight and not at 5:00 p.m. on 20/6/1985 as alleged by the prosecution. The defence version is more probable that the deceased was of a bad character and had many quarrels on account of ladies at the village. The deceased forcibly dragged a lady in the midnight, so 3 to 4 persons chased and assaulted him. The witnesses have admitted that the deceased was of a bad character.

11. The dhariya used by accused No. 1 was recovered from open courtyard. No

sufficient blood was found on it to ascertain the blood group. The stick used by accused No. 2 was not having any blood stain.

12. Ishwarbhai on whose field the deceased was lying was not examined by the prosecution. Thus the trial Court was of the opinion that the prosecution has failed to prove its case.

13. The learned APP arguing the appeal assailed that the foundation of reasoning for acquittal is not proper. The prosecution had examined two eye witnesses and in light of their testimony the trial Court should have considered the prosecution case to be established. Per contra the learned Counsel for the defence argued that the eye witnesses are got up witnesses. Their story is totally inconsistent to the facts obtaining on record. The time of incident as deposed by the prosecution witness is not in conformity with the medical evidence. What makes their evidence inadmissible is their conduct in not informing any one about the incident immediately after the occurrence. They can safely be said to be the witnesses who have been created after the police case.

14. We have heard the learned Counsels and have given our thoughtful consideration to the material available on record. Both the eye witnesses have claimed to have seen the incident. If that was the case, then, their first obligation was to rescue the deceased. If they failed in it due to fear etc. then the matter was required to be reported immediately to the authority. None of these two obligations were discharged. Curious is the deposition of eye witness (P.W-3) where he asked the other eye witness (P.W-2) as to what had happened to the deceased. No eye witness will ever ask a question like the same to the other witness if it was known that the incident had occurred in a particular fashion. Not only that the conduct of the witnesses are unnatural. Their testimony is not corroborated by the medical evidence. When time of death is not correctly deposed that at the relevant time presence of the witnesses is doubtful.

15. In view of the aforesaid facts & circumstances of the case, we do not think that any interference is called for in the appeal against the acquittal. Consequently the judgment & order of the trial Court is upheld.

16. In the result the appeal fails and is dismissed. The bail bonds shall stand cancelled. Registry is directed to send record & proceedings to the trial Court forthwith.