

(2022) 03 GUJ CK 0092
In the Gujarat High Court
Case No : R/Criminal Appeal No. 728 Of 1999

State Of Gujarat	Vs	APPELLANT
Velabhai Punabhai Thakore & 2 Other(S)		RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120(B), 307, 323, 324, 326
Code Of Criminal Procedure, 1973 — Section 209, 313, 378, 378(1)(3), 379

Citation : (2022) 03 GUJ CK 0092

Hon'ble Judges : S.H.Vora, J; Sandeep N. Bhatt, J

Bench : Division Bench

Advocate : BN Raval, CM Shah, HD Chudasama

Final Decision : ?Dismissed

Judgement

S.H.Vora, J

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 24.05.1999 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) in Sessions Case No.171 of 1996, whereby the respondents accused came to be acquitted for the offences under section 307, 326, 324, 323, 34 and 120(B) of Indian Penal Code, the appellant – State has preferred present appeal under section 378(1)(3) of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. Briefly stated, it is case of the prosecution that as per complaint at Exh.19 lodged by the complainant – Premjibhai, father of the injured – Vasudevbbhai that on 30.09.1994 in the morning when the complainant and his son – Vasudevbbhai were going to take newspaper from the Panchayat Office of Village – Goriya, at that time, prosecution witness – Khengarbbhai and Kantibbbhai met with the complainant on the way and therefore, injured – Vasudevbbhai went to take newspaper at bus stand and at that time, accused persons including deceased – Bhima Vela surrounded the injured Vasudevbbhai. At that time, accused Bhima

Vela (deceased) caused injury on the abdomen of victim - Vasudevbhai and accused Mana Vela caused injury to victim Vasudevbhai on chest and also caught hold injured Vasudevbhai. At that time, accused Rana Vela caused injury with knife on knee of victim Kantibhai. Thus, it is alleged that the accused persons were intended to commit murder of victim Vasudevbhai, they have also abated commission of such crime.

2.1. It is further alleged by the complainant that before four months from the date of incident, there was some quarrel between the accused persons on one side and injured Vasudevbhai on the other side about collection of fish from the pond situated near the Village.

3. In pursuance of the complaint being C.R.No.I-108 of 1994 lodged by the complainant with the Viramgam Police Station for the offence under sections 307, 326, 324, 323, 34 and 120(B) of Indian Penal Code, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of offence, discovery and recovery of weapons and clothes were affected and obtained FSL report for the purpose of proving the offence. After having found sufficient material against the respondent accused and deceased accused Bhima, charge-sheet came to be filed in the Court of learned JMFC, Viramgam. As said Court lacks jurisdiction to try the offence, it committed the case to the Sessions Court, Ahmedabad (Rural) as provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, Ahmedabad (Rural), learned Sessions Judge framed charge at Exh.5 against the respondent accused and deceased Bhima for the aforesaid offences. The accused persons pleaded not guilty and claimed to be tried.

5. In order to bring home charge, the prosecution has examined 12 witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in para 6 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondents accused so as to obtain their explanation/answer as provided u/s 313 of the Code. In the further statement, the respondents accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and false case has been filed against them. The accused persons while denying incriminating circumstances appearing in the evidence filed written statement at Exh.58, inter-alia, stating that on the date of incident there was a quarrel between accused Bhima Vela on one side and victim Vasudevbhai and Kantibhai on the other side and when accused Bhima Vela was coming on his bicycle, the injured persons met him near school and this two injured persons were about to attack accused Bhima Vela with stick, at that time, accused Bhima Vela reasonably apprehended that he is likely to be caused severe injury, therefore, on retaliation, accused Bhima Vela caused injury to victim Vasudevbhai and Kantibhai. It is further stated that other three accused

persons are falsely framed on account of political rivalry and thus, absolute false case has been filed against other three accused.

7. Learned APP Ms. Shah for the appellant – State has vehemently submitted before us that impugned judgement and order of acquittal is contrary to the evidence on record and learned Trial Judge has not properly appreciated deposition of the complainant recorded at Exh.18, wherein, the complainant has specifically stated that accused Bhima Vela had inflicted knife blow to injured Vasudev on the stomach, whereas, accused Mana Vela inflicted knife on the chest of injured Vasudev and they caught hold of son of complainant and when injured Kantibhai tried to save son of complainant, accused Rana Vela inflicted injury on his knee. He also deposed before the Court that accused Puna Vela gave kick and fist blow to him and one Mr. Khegarbhai. In support of such evidence, learned APP has also drawn our attention to evidence of prosecution witness Khegarbhai recorded at Exh.24, injured Vasudevbbhai recorded at Exh.26 and evidence of injured Kantibhai. Additionally, she has also drawn our attention to deposition of eye witness - Jagmalbhai recorded at Exh.41. In order to substantiate that nature of injury caused to the injured was fatal, she has also read before us medical evidence and to suggest that accused persons have caused injury to the prosecution witnesses, more particularly, injured Vasudevbbhai on the vital part of the body and therefore, learned Trial Judge has committed error in acquitting respondents – accused for the charges framed against them and urged to record finding of conviction qua respondents – accused.

8. As against this, learned advocate Mr. H.D.Chudasama for respondent no.2 – Manabhai Velabhai submits that on the date of incident, there was quarrel between accused Bhima Vela and injured Vasudevbbhai and injured Kantibhai and other three accused persons are falsely implicated in the offence, despite the fact that they have not played any role or have no motive qua the complainant or injured persons. It is also submitted by him that prosecution has suppressed true facts and allegations made in the complaint at Exh.19 and same is got up because at the time of incident, the respondents accused were not present when incident alleged to have taken place. It is further submitted that there are material inconsistency and discrepancy in the prosecution case and learned Trial Judge after appreciating the evidence rightly discarded prosecution case and gave benefit of doubt to the respondents accused since plea of the defence raised by the prosecution is probabilities through deposition of witnesses. At the end, he would submit that no case is made out to interfere with the judgment and order of acquittal recorded in favour of the respondents – accused.

9. Before submissions made at bar is considered, it needs to be noted that accused Bhima Vela died during trial, whereas, accused Puna Vela – respondent no.1 expired on 28.08.2010 pending trial and therefore, appeal against respondent no.1 stands abated.

10. We have heard learned advocates appearing for the respective parties at length and perused oral and documentary evidence adduced by the State before

the learned Trial Court and on our re-appreciating and re-analysis of the evidence, we are of the opinion that no case is made out to interfere with the findings recorded by the learned Trial Judge leading to the acquittal of respondents. Following are our reasons :-

10.1. The prosecution has not examined independent eye witness to the incident which allegedly took place on 30.09.1994 and witnesses which are examined by the prosecution are interested and relative witnesses of the injured persons. No-doubt it is not the law that evidence of interested witnesses should always be discarded because they are relatives of injured persons. If prosecution has not examined independent eye witness, degree of scrutiny of evidence should be much higher and then adverse inference can be drawn against the prosecution. One such independent witness – Arjanbhai who is neither relative of prosecution witness nor relative of accused persons, but eye witness to the incident has not been examined by the prosecution. If we read deposition of all injured and eye witnesses examined by the prosecution, there are material contradiction and inconsistency in the version of respective witnesses and on the top of it, the prosecution has suppressed genesis of incident and there are material inconsistency and discrepancy in the prosecution case vis-a-vis medical evidence.

10.2. To begin with, it appears that defense witness No.1 – Jethabhai Bhudarbhai examined at Exh.61 was performing duty as Head Constable at V.S. Hospital on 30.09.1994. On the date of incident itself, said defense witness recorded statement of injured Kantibhai who received injury in the present case. As per his statement, quarrel took place between accused deceased Bhima Vela and injured Vasudev because of colliding with bicycle. According to said defense witness, he recorded statement of injured Kantibhai who received injury during incident, wherein, he stated that consequent to an altercation regarding colliding of bicycle with injured Vasudev, accused Bhima Vela got agitated and inflicted blow with knife to injured Vasudevbhai on his stomach and on his left arm and when injured Kantibhai intervened to rescue injured Vasudevbhai, accused Bhima Vela inflicted blow with knife to injured Kantibhai on left side of his chest. So as per first version provided by injured Kantibhai, origin of complaint is incident of colliding with bicycle, whereas, injured Kantibhai who is examined at Exh.32 deposed that deceased Bhimabhai inflicted blow with knife to injured Vasudevbhai on his stomach and accused Mana Vela inflicted knife blow on his chest. As per his version before the Court when he tried to intervene / save injured Vasudevbhai, accused Rana inflicted knife blow on knee of left leg. It is further stated by him in his deposition that at that time injured Vasudev shouted and other witnesses – Khengarbhai and complainant – Premjibhai came to rescue him. He deposed that other persons viz. Arjanbhai and Karshanbhai came there and thereafter, accused ran away. So it seems that injured Kantibhai made two inconsistent statements. Said witness also admitted in the cross examination in para – 13 of his deposition that when he and injured Vasudevbhai were taken to the hospital in bus, they did not talk about incident nor he disclosed anything about the incident to the Doctor who treated them.

10.3. Injured Vasudev is examined at Exh.26. He has deposed that when he and complainant went to bus stand to collect newspaper, on the way complainant met with Khengarbhai and Kantibhai and therefore, when they were talking, said witness alone went to bus stand to collect newspaper. According to his version, accused caught him and accused deceased Bhima Vela inflicted knife blow on his stomach and accused Mana Vela inflicted knife blow on chest and shoulder and at that time, when injured Kantibhai came at the scene of offence, accused Rana Vela inflicted injury on the knee of injured Kantibhai. As per medical evidence, injured Vasudev suffered six injuries, whereas, as per deposition of injured witness, he received only two injury. Similarly, injury certificate of Kantibhai shows that injured Kantibhai had injury of CLW which cannot be caused with knife and thus evidence of injured Kantibhai and injured Vasudev are contrary to medical evidence. According to the complainant, at the time of incident, Khengarbhai and Jagmalbhai were present and these persons separated the injured persons and prevented the accused persons from causing further injury to the injured Vasudev.

10.4. Now as per deposition of Jagmalbhai examined at Exh.41, deceased accused Bhima Vela gave two knife blows on the stomach of injured Vasudev and accused Mana Vela inflicted knife blow on chest of injured Vasudev. Said witness nowhere states that either complainant – Premjibhai or Khengarbhai were present at the scene of incident. Surprisingly, all the injured witnesses while travelling in bus did not utter a word to any of the passengers of the bus with regard to incident nor to Doctor who treated them. Thus, if evidence of each injured witness and eye witness are examined with reference to version disclosed before the police and before the Court at subsequent stage, all the witnesses gave inconsistent and contradictory version, more particularly with regard to origin of the complaint or incident and also author of injury and presence of the complainant and Khengarbhai at the scene of offence. If we look statement of Kantibhai recorded by defence witness No.1 – Jethabhai at Civil Hospital, he gave specific details as to occurrence of incident and attributed author of injury to deceased accused Bhima Vela only. Evidence of prosecution suggest that respondents accused are falsely roped in the offence and their presence at the scene of offence is not established through cogent and reliable evidence.

10.5. It appears that prosecution witnesses are so arranged and maintained that they deposed before the Court as per complaint Exh.19. There are correction in the name in the medical evidence and also Investigating Officer stated that name of the accused Vela Puna was added by striking of other name and no initial is made. The Investigating Officer has clearly stated that witness has not stated about collision of cycle, whereas injured Kantibhai did speak about occurrence of incident on account of collision of bicycle. The theory of visiting bus stand by the injured alone to collect newspaper has not been established and thus, place of incident does not stand proved. It surfaced on record that there was hostile relation amongst accused and complainant side and learned Trial Judge after appreciation of evidence found that quarrel took place due to accused Bhima Vela

and we also find that author of the injury was only deceased accused Bhima Vela.

10.6. Learned Trial Judge has rightly found and observed that deceased accused Bhima Vela was guilty of offence and rightly observed that respondents accused are not involved in the offence or even present at the place of incident and therefore, rightly acquitted them. Since important witnesses in the matter are close interested witnesses of the prosecution and though the witnesses sustained injury but considering contrary evidence deposed by them which does not tally with the medical certificate / evidence, the learned Trial Judge has rightly discarded evidence of prosecution witnesses as it does not inspire confidence in the mind of the Court and also our mind. Thus, credibility of the prosecution witnesses becomes doubtful and when genesis of the incident is altered or changed and to suit change of genesis of crime, prosecution has proceeded to adduce evidence and conveniently avoided to cite Jethabhai – defence witness as prosecution witness though he was police constable posted at V.S.Hospital to perform his duty at hospital.

11. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP for the applicant has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

12. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:

"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

13. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal,

unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

14. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

15. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed.