

(1998) 03 GUJ CK 0041
In the Gujarat High Court

Vaghri Virji Hanubhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-03-1998

Acts Referred:

Bombay Police Act, 1951 — Section 135
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1998) 3 GLR 2135

Hon'ble Judges : R.M. Doshit, J; M.R. Calla, J

Bench : Division Bench

Judgement

M.R. Calla, J.—This Criminal Appeal is directed against the judgment and order with regard to the conviction and sentence awarded to the present appellants by the Addl. Sessions Judge, Junagadh in Sessions Case No. 103 of 1988 on 5-4-1989 whereby the two appellants have been convicted for the offences punishable u/s 302 read with Section 34 of the I.P.C. and sentenced to life imprisonment and fine of Rs. 5,000/- each. In case of failure to deposit fine, two years" further R.I. with the further order that out of the amount of fine of Rs. 10,000/-, Rs. 9,000/- shall be paid to the complainant and her children.

2. The case arises out of an incident dated 2-5-1988 which happened at about 11-00 a.m. in respect of which the F.I.R. lodged on the same date at 4-30 p.m. with the Police Station, Una, District Junagadh. One Shantaben, wife of Lakhman Nanji Vaghri lodged the F.I.R. alleging that about four months back the farming of watermelon was undertaken in partnership with one Manji Shiva in the Vadi of Rambhai Garasia at the outskirts of village Sankhda. When the watermelon were ready there was a dispute with Manji Shiva. Rambhai Garasia, owner of the Vadi, removed the accused Manji Shiva and sacked him out. Manji Shiva was under a mistaken belief that he had been removed by Rambhai Garasia on the briefing and at the instance of the complainant and on this issue he had quarrelled with the complainant more than once. On 2-5-1988 at about 7-00 a.m. she and her husband went to cut and prepare the tooth brushes at the outskirts of village

Khatrivada. At about 11-00 a.m., while she and her husband were preparing the tooth brushes, Manji Shiva Vaghri and one another Vaghri from Bhal side, who had been coming with him for last two three months, came from the side of village Gangda. The Vaghri, who was coming from Bhal side, was having a Kulhadi with small handle and Manji Shiva was having a knife (Chhuri). Both these persons suddenly came near the complainant and her husband and attacked her husband, namely, Lakhman Nanji with the said Kulhadi and knife and caused injuries on his person. Shantaben's husband started profusely bleeding and fell down. She raised an alarm and called for the help and for that purpose she also ran to the nearest Vadi calling to save her husband. It is also stated in the complaint that three persons came alongwith her but by that time Manji Shiva and the Vaghri, who was in his company, ran away with the arms and when she saw her husband, it was found that his intestine had come out and there was blood all over his body. When she wanted to talk with her husband, he could not speak anything and she found that he was dead. Therefore, she went to the Police for filing the complaint and gone to Sankhda. From Sankhda she took a rickshaw for going to the Police Station at Una. The Police registered the case and started investigation. The Inquest report Exh. 10 was prepared and the body was sent for post mortem and, thereafter, Panchnama of the scene of the occurrence Exh. 11 was prepared. P.W. No. 13, i.e., Apabhai Amra - Head Constable recorded the statements of Rambhai Bhikhabhai, Ramsingh Dadabhai and the complainant as also her daughter and son. The other accused Vaghri Virji Hanubhai was arrested on 9-6-1988 and Manji Shiva was arrested on 17-6-1988. The charge-sheet was filed and the Judicial Magistrate, First Class, Una committed the accused persons to Sessions Court, Junagadh and the matter came up for trial before the Addl. Sessions Judge, Junagadh. On 30-12-1988 the charge was framed against the appellants for the offences u/s 302 read with Section 34 of the I.P.C., as also u/s 135 of the Bombay Police Act.

3. The prosecution has examined Dr. Jashubhai as P.W. No. 1 (Exh. 14). P.W. No. 2 is the sole eye-witness Shantaben, widow of Lakhman Nanji. P.W. No. 3 is Bhikhubhai, who prepared the map of the scene of the occurrence and P.W. No. 4 is Shri Jagannath Damodar Pandya, the Executive Magistrate before whom the identification parade was conducted. P.W. No. 5 Shantiben and P.W. No. 7 Punjo Rajabhai are the witnesses who had corroborated the version of the eye-witness Shantaben and P.W. No. 7 is Ram Bhikha who proved the motive. P.W. Nos. 8, 9 and 10 are the Panch witnesses and P.W. Nos. 12, 13 and 14 are the police employees. Exh. 12 is the Panchnama relating to the clothes which were taken into custody from the dead body of the deceased Lakhman Nanji. Exh. 13 is the Panchanama relating to the arrest of Vaghri Virji and post-mortem note is at Exh. 15. Map of the scene of the occurrence is at Exh. 18 and Exh. 19 is the letter through which the muddamal etc., were sent to the Forensic Science Laboratory. Exh. 22 is the Panchnama of the identification parade. Exh. 34 is the recovery memo of the Kulhadi recovered u/s 27 of the Evidence Act from accused No. 1 and Exh. 30 is the recovery Memo of the knife (Chhuri) u/s 27 of the Evidence

Act from accused No. 2. The original complaint is at Exh. 36.

4. The trial Court had considered the evidence which was led in this case and has convicted and sentenced the appellants as above, while acquitting them of the offence u/s 135 of the Bombay Police Act. So far as the oral evidence is concerned, three witnesses are important in the facts of this case. P.W. No. 2 is the eye-witness in whose presence the appellants attacked the deceased with Kulhadi and knife and caused injuries to the person of Lakhman Nanji resulting to his death on the spot. P.W. No. 2, being the wife of the deceased, had raised the alarm and this is supported by the witnesses Shantiben P.W. No. 5 and Punjo Rajabhai P.W. No. 7. The motive has been proved by the statements of P.W. No. 2 as well as P.W. No. 6 - Ram Bhikha. In this background, P.W. No. 2 has stated that two appellants had come with Kulhadi and knife and caused injuries resulting into the death of Lakhman Nanji. Statement of P.W. No. 2 shows that she raised the alarm immediately and she ran towards the village Khatrivada. She has stated that when she was going towards Khatrivada calling for the help she met three ladies and two boys and she had told them that her husband had been killed and they may come to her rescue. Out of these three ladies and two boys, Shantiben and Punjo Rajabhai P.W. No. 5 and P.W. No. 7 have been examined and they have corroborated P.W. No. 2 by saying that she is the lady who had come raising alarm and telling that her own husband had been attacked. Both these witnesses P.W. No. 5 and P.W. No. 7 further correctly identified P.W. No. 2 Shantiben and have stated that she is the same lady, who had come raising the alarm and seeking their help and had told that her husband had been attacked. The version, which has been given about the condition of the dead body with the intestine had been out and there were blood all over the body has also been corroborated in the medical evidence with which we shall be dealing later on. Although P.W. No. 5 and P.W. No. 7 have been declared hostile, nevertheless the fact remains that they have corroborated the statement made by P.W. No. 2 to the effect that she had immediately asked for the help and P.W. No. 5 and P.W. No. 7 both had gone to the spot. Merely because they have not been able to say as to what was the condition of the dead body will not detract the Court from considering their statements to the extent they corroborated the version of P.W. No. 2.

5. The Learned Counsel for the appellants has pointed out from the cross-examination of P.W. No. 2 that the first injury by knife was caused on the right side of her husband and there was blood all over and when she intervened to save her husband, they ran towards her also and, therefore, she ran away out of fear and went towards Khatrivada while crying for the help. On the basis of this part of the cross-examination, Learned Counsel for the appellants has argued that this witness P.W. No. 2 has not seen any injury being caused by the other accused with Kulhadi and, therefore, she should not be believed. The statement of this witness has to be considered as a whole and while appreciating the evidence, a part of the statement made in the cross-examination cannot be seen in isolation. She has first stated that the accused No. 2 had come earlier and

accused No. 1 came later on and then she has stated that first injury was caused by knife. That does not mean that she has made any contrary statement so as to render her testimony to be unbelievable. Thus, we do not find anything in her evidence so as to disbelieve this eye-witness. Moreover, her statement that she ran towards the village Khatrivada for help has also been corroborated by the two witnesses, i.e., P.W. No. 5 and P.W. No. 7.

6. In the facts of this case, so far as the identification of the accused persons is concerned, she has stated that she knew the accused Vaghri Manji Shivabhai for last so many years and had also known the other accused by face for last one year. Merely because she did not give the name of this accused, i.e., Vaghri Virji in the first instance, it does not make her evidence to be unbelievable, more particularly when the fact has come on record and stands duly established that in the identification parade she had identified both the accused correctly and had also identified both the accused before the Court and thus there is no doubt about the identity of the two accused persons.

7. Of course, a suggestion has been made to this witness that she was having some affairs with Mayji Tappu and that she had also gone with him earlier more than once even during the life time of her husband and that her husband had been killed in her presence by Mavji Tappu because her husband was not happy with the visits of Mavji Tappu. This suggestion had been totally denied by this witness and in the cross-examination this witness has also stated that it was untrue that she was living with Mavji Tappu after the death of her husband. The mere suggestion that she has been taken away by Mavji Tappu does not lead anywhere and this suggestion, which has been made to the eye-witness by the defence, has not been substantiated by any other independent witnesses and, therefore, this suggestion, which has been made by the defence, is hardly sufficient to create any suspicion about the truthfulness of the witness, more particularly keeping in view the position pointed out on behalf of the prosecution by the learned Addl. G.P., that the witness belongs to a tribe in which such instances of living with other person after leaving the husband are very common and this hardly affords any reason to Mavji Tappu to kill her husband even if they wanted to live together. Thus, we do not find any reason to doubt the prosecution case to the effect that the two accused persons were responsible for causing the injuries on the person of the deceased, as stated by the eye witness.

8. So far as the medical evidence is concerned, P.W. No. 1 has proved the post mortem report and it is clear that 18 injuries were caused on the person of the deceased by use of sharp-edged weapons, which could be Kulhadi as well as knife. P.W. No. 1 - Jashubhai has recorded in the postmortem report 18 incised wounds and he has also stated in his evidence that all the injuries were ante mortem injuries and had also described the seven internal injuries, which show that the deceased was brutally killed and injuries after injuries were given. This witness has given out the cause of death to be hemorrhagic shock due to intra-abdominal hemorrhage as a result of multiple rupture of mesenteric vessels due

to abdominal incised wounds. He has also stated that the injury Nos. 6 and 7 could be caused by Kulhadi and thus, as per the medical evidence, the injuries could be caused by the weapons, which were carried by the two accused persons.

9. Thus, it is a case in which the motive has been established by showing that there was a dispute between Manji Shiva and the complainant and her husband on the question of agricultural produce of watermelon and that Manji Shiva had acted under the impression that he had been removed by Rambhai Garasia at the instance of the complainant and her husband. The depositions relating to motive have also been corroborated by other witnesses.

Recovery of weapons of offence, i.e., Kulhadi and knife had been proved and we do not find that there is anything on record to render this recovery to be inadmissible u/s 27 of the Evidence Act.

10. Thus, we find that the prosecution story is proved by the oral as well as medical evidence and the recovery of the weapons is also proved. The learned Sessions Judge has considered the evidence in detail and has also considered certain cases, which were cited before him, and we do not find any basis to interfere with the order of conviction and sentence passed by the Addl. Sessions Judge, Junagadh. The conviction and sentence awarded by the trial Court are sustained.

11. Accordingly, we do not find any merit in this Appeal and the same is hereby dismissed.