
(1995) 11 GUJ CK 0003
In the Gujarat High Court

Vasantben Labhubhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-11-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 302

Citation : (1996) 1 GLR 618

Hon'ble Judges : M.H. Kadri, J;K.J. Vaidya, J

Bench : Division Bench

Judgement

K.J. Vaidya, J.—Vasantben Koli, by this appeal has brought under challenge the impugned judgment and order of conviction and sentence dated 12-8-1994, rendered in Sessions Case No. 238 of 1993, passed by the learned Additional Sessions Judge, Bhavnagar-Mahuva, wherein on her coming to be tried for the alleged offence punishable under to Section 302 of IPC, was sentenced to imprisonment for life and to pay a fine of Rs. 500/- and in default, to undergo RI for three months.

2. The prosecution case as it gets summed up and reflected in Charge Exh. 4 is to the effect that the alleged incident in question wherein Vasantben Koli gave a blow with an iron bar to her husband Labhubhai Koli, took place in between 9-00 PM on 16-7-1993 and 6-00 AM on 17-7-1993 in her house at Village Dhoba. In this case, there is no eye-witness. So far as the incident in question is concerned, the prosecution has examined two witnesses, viz., PW-5 Jamnaben Laxman, who happens to be mother-in-law of the accused and PW-6 Samant Rambhai who was a Sarpanch and also neighbour. Out of these two witnesses, PW-5 gave a complaint Exh. 32 which was recorded by PW-8 PSI D.K. Solanki, at the hospital. According to PW-5, on the date of the incident, there was a quarrel between Vasantben and her husband Labhubhai as Vasantben came late in the evening. Labhubhai her husband on inquiring as to why she came late, the accused feeling offended took an exception and asked him not to interfere, else she will run away. According to PW-5, on the aforesaid date, time and place, she

was sleeping in the Warrandah of the house. In the morning when she woke-up, she found her son Labhu dead bleeding from the head and the ear. At that time, Vasantben was in the house. On seeing Labhubhai gasping, when PW-5 tried to raise shout, Vasant said not to raise the shout and go to the village, else she will also kill her. Thereafter, Vasant said "I have killed. I have killed". On the basis of this PW-5 imagined that Vasant must have killed Labhubhai with an iron-bar. Thereafter, PW-6 came to her house and ultimately she filed a complaint at Exh. 34. This part of the story of PW-4 is corroborated by PW-6, who at the relevant time was neighbour and Sarpanch of village Dhoba. According to this witness, when he went to the house of the informant PW-5, Vasantben was strolling outside her house saying, "I have killed"!! There was nothing in her hand at that time. Thereafter, PW-6 tried to talk with the injured Labhubhai but he was unable to speak, and accordingly, he was taken to the hospital in a jeep where he was declared dead. On the basis of these allegations, after the investigation was over, the accused came to be charge-sheeted for the aforesaid alleged offence before the Sessions Court at Mahuva. The trial Court ultimately placing reliance upon the evidence of PW-5 and PW-6, as corroborated by the medical evidence of PW-3, Dr. R.D. Pargi, convicted and sentenced the accused as stated above in para-1 of this judgment, giving rise to the present appeal.

Heard Ms. Shilpa Shah, learned Advocate (appointed) for the appellant and Mr. M.A. Bukhari, the learned A.P.P. for the State.

3. Having gone through the evidence on record and heard the learned Advocates for the respective parties, it appears that there is neither any eye-witness to the incident nor there is any dependable piece of the circumstantial evidence and that the learned trial Judge has passed the order of conviction and sentence only on the basis of two extra-judicial confessions made before the two witnesses, i.e., PW-5 and PW-6 as well as the subsequent conduct of the accused in not attending her injured husband for giving him medical treatment. Now, it is indeed too well-known to be mentioned and emphasised here that the extra-judicial confession standing by itself in absence of any other dependable substantive evidence is the weakest type of evidence in any criminal trial to hold guilty the accused of crime alleged against him and accordingly it is too risky and hazardous to act upon the same! The reason is it is indeed very easy to put words in the mouth of the prosecution witnesses as accused having confessed before them that he/she has committed crime alleged, and if this practice is encouraged, the Court would be giving indirectly, an easy handle to sometimes unscrupulous investigating agency to secure conviction of any person on mere asking!! This sort of extra-judicial confessions at the most can be taken into consideration as a corroborative piece of evidence only and only if there is some other and further substantial evidence available on the record connecting the accused with the crime alleged against him/her!! In the instant case, there is no eye-witness. In this case, as observed above, there is also no other incriminating circumstance connecting the accused with the crime alleged. When such is the point-blank facts-situation, it would be simply risky and hazardous to base the

order of conviction and sentence on extra-judicial confession, which as stated above, is easy to mischievously place in the mouth of any witness/accused by over-zealous investigating agency or any other witness inimically, disposed to the accused!! Further, it is apparent from the record that PW-5 who is mother-in-law of the accused was not in good terms with the accused and she was having a different kitchen. Further, if indeed when the incident is alleged to have taken place in the house itself when accused gave a blow with iron bar, injured must have screamed and yet it is simply surprising that the mother-in-law did not hear though she was quite near by the place of the incident!! The matter does not rest here as PW-6 who happens to be Sarpanch, in his cross-examination has admitted that he has not stated before the police that Vasant was loudly saying "she has beaten". This clearly runs counter to what has been stated by him in his examination-in-chief before the Court. Under the circumstances, how indeed could any one place reliance upon a witness who admits not to have stated material circumstances at the earliest before the police when his statement came to be recorded, comes before the Court making a statement on oath that the incident took place in a particular manner!! In this view of the matter, we are simply not at all impressed by these two so-called extra-judicial confessions which to repeat in our opinion is the weakest type of the evidence capable enough of making any mischief going to the extent of framing up any person for any charge, and therefore, requires to be discarded from the consideration, of course unless there is some other substantive evidence!!

4. This takes us to the second reasoning of the learned trial Judge who has laid quite heavy, emphasis upon the subsequent conduct of the accused. According to the learned trial Judge ordinarily when the husband was found to be seriously injured and found gasping, wife would start either weeping, beating the chest and/or would do all possible best to take injured husband to the hospital for the medical treatment and/or would go and request the neighbours to help her out in darkest hours of her grief and misfortune!! Nothing of the sort was done!! This conduct of a wife is not only unnatural and perplexing but in a way symptomatic enough to hold her guilty. Now here also, it is indeed not possible for this Court to concur with this way of appreciation of the human conduct made by the learned trial Judge. There is no laboratory test to arrive at precise conclusion regarding the human conduct. It is a matter of common experience that ordinarily human conduct is as unpredictable and as frequently changing as nature and weather!! Different persons react differently under the different set of circumstances!! Why even the same person in same and/or different set of circumstances react differently. It all depends in a given case like the present one, as observed "wife would be weeping out or start beating her chest, asking for medical assistance" and at the same time, there can be wife who even on seeing such incident may get simply stunned dumbfounded turn into statue, not able to reflect, react in any way but remain cold stone, expressionless existence!! When there are possibilities of different persons reacting differently, in a criminal trial, one cannot clutch to one possibility only in favour of the prosecution and on

the basis of the same record the order of conviction. It is a settled cardinal principle of criminal jurisprudence that upon the basis of same set of circumstances, if two reasonable inferences are permissible, the one that leans in favour of the accused has got to be accepted and got to be accepted because there is mandate that let 99 guilty persons go scot-free but one innocent should not be sent behind the bars. Of course, it is true that this principle cannot be stretched to any unwarranted extent!! Thus, taking into consideration the overall view of the evidence, in our opinion, there is no sufficient, dependable, convincing evidence on the record to satisfy our conscience to sustain the order of conviction and sentence passed by the learned trial Judge and once we find our satisfaction wanting regarding the prosecution evidence, it is indeed the bounden duty to at once resolve it in favour of the accused by quashing and setting aside the impugned order of conviction and sentence. Nothing other and further has been pointed out by the learned A.P.P. to take a view contrary to the one which we are taking.

5. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence passed by the trial Court is quashed and set aside. The appellant is ordered to be set at liberty forthwith unless her presence in jail is required in connection with any other proceedings pending against her. The office is directed to forward a writ of this order immediately to the jail authorities. Having regard to the special facts, viz., the accused is a lady, the jail authorities are directed to take her to the Railway Station/State Transport Bus-Stand and see that she is paid for purchasing ticket to reach home.