
(2019) 12 GUJ CK 0056
In the Gujarat High Court
Case No : R/Criminal Appeal No. 248 Of 2019

Vijaybhai Ravjibhai Vasava	Vs	APPELLANT
State Of Gujarat		RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304II

Citation : (2019) 12 GUJ CK 0056

Hon'ble Judges : J.B.Pardiwala, J;A.C. Rao, J

Bench : Division Bench

Advocate : Mrudul M Barot, Jirga Jhaveri

Final Decision : Disposed Of

Judgement

J.B.Pardiwala, J

1. On 29th November, 2019, this Court passed the following order :

“While allowing the Criminal Appeal No.248 of 2019 preferred by the convict (original accused), vide our judgment and order dated 2nd April 2019,

the following has been observed in para-8 :

“[8] The trial court failed to appreciate the deposition of witness Prabhatbhai Masabhai Chaudhary PW No.6 Ex.21 who in his cross examination

has stated that he along with two of his other colleagues including the deceased were on patrolling duty on that fateful night. He has deposed that it

was too dark when the incident took place and that except the four of them, there was no one around. He admitted that the appellant is mentally sick

and keeps on roaming about in the Areth village. He has deposed that he cannot say for sure as to who hit the deceased as it was very dark.

However, the trial court has not considered this part of the evidence of this

witness, who was in company of the deceased at the time of the incident.â??

It appears, prima facie, that although the accused was ordered to be acquitted and to be released forthwith, yet as an abundant caution, having regard to his mental condition, we had directed the jail authority to first ascertain whether it would be advisable to release the accused from jail or not.

It appears that the convict was subject to medical examination by a Psychiatrist of the Hospital for Mental Health, Vadodara. The Psychiatrist has issued a certificate. The certificate is not very clear as we are not able to read clearly what has been stated therein.

In such circumstances, we request the learned APP appearing in this matter to call for a detailed report. Once we are convinced after going through

the report that there should not be any problem in releasing the convict from jail, we shall pass appropriate order accordingly. In fact, it appears that

there is a misconception in the mind of the authority concerned that the accused is yet to be put on trial. We are not trying to ascertain whether the

accused is fit to be put on trial having regard to his mental condition. The trial resulted in conviction and thereafter the appeal of the accused also

came to be allowed by this Court. The accused has been ordered to be acquitted. In fact, he should have been released forthwith, but in the peculiar

facts of this case, keeping in mind the safety of the society at large, we thought fit to first ask the jail authority to ascertain whether the accused is in a

fit state of mind or not.

Stand over to 13th December 2019.â??

2. The certificate issued by the Psychiatrist, Hospital for Mental Health, Vadodara, has been placed before us. The certificate reads thus :

â??HOSPITAL FOR MENTAL HEALTH, VADODARA

We undersigned members of board of visitors committee of the hospital for mental health at Vadodara hereby certify that we have this day visited and

personally examined Mr. Vijay ravjibahi vasava. A confined under the provisions of section 330(2)(01c-466) of the criminal procedure cod. In

accordance with the provisions 337 (old: 473) of the said code.

We report that in our opinion Mr. Vijay ravjibahi vasava can be discharged & he is manageable at jail with visiting psychiatrist or can be handover to

his relative & ensure regular treatment as per sec-42 of mental health act 1987.

Facts observed by ourselves.

Patient talks relevantly, co-operatively

Not reporting any perceptual disturbances

No abnormality with thought, behaviour or perception Observing thought abstract thinking is impaired

Patient require regular follow up & treatment which can be taken care by visiting psychiatrist or district hospital psychiatrist & patient can be assign to

relative (Guardian) as per sec 42.

Other facts communicated to us by medical officer of the hospital

Patient communicates well

Takes self-care

Complaint for treatment

Impaired abstract thinking

Performs suggested work

Can be discharged & can be continue treatment from visiting psychiatrist at central jail or can be handover to his relative & ensure regular treatment

as per sec-42 of mental health act 1987.

Psychiatrist,

Hospital for Mental Health,

Vadodara.â??

3. Having regard to the certificate of the Psychiatrist, there should not be any problem to release the appellant of the Criminal Appeal No.248 of 2019,

who has been acquitted of the offence punishable under Section 302 of the IPC and has been convicted for the offence punishable under Section 304

Part II of the IPC. On completion of his sentence of five years, as altered by this Court, the appellant shall be released from jail if not required in any

other case. The jail authority, while releasing Vijaybhai Ravjibhai Vasava from jail, shall make him understand that he will have to continue with the treatment.

4. With the above, the office note stands disposed of.