

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of decision: 24-05-1996.

CRIMINAL APPEAL No 899 of 1983

with

CRIMINAL REVISION APPLICATION No 161 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BAVAJI J RAMJI

Appearance:

1. Criminal Appeal No. 899 of 1983
MR MA BUKHARI APP for Petitioner
MR MJ BUDDHBHATTI for Respondent No. 1, 2, 3
 2. Criminal Revision ApplicationNo 161 of 1992
MR SHIRISH JOSHI for Petitioner
MR MJ BUDDHBHATTI for Respondent No. 1, 2, 3
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CORAM : H.R.SHELAT,J

Date of decision: 24/05/96

ORAL JUDGEMENT

1. Both the matters - the appeal and the revision, are directed against the judgment and order of acquittal dated 26th October, 1982, passed by the then learned Judicial Magistrate (FC) at Gondal in Criminal Case no.1051 of 1979. In short, the case of the prosecution is as under:-

2. Nathubha Amarsingh is serving as a helper in railway at Gondal. He resides in railway colony along with his wife Hansaba, daughter Ushaba and son Hardev. Jayantilal Ramjibhai, the accused no.1 is also serving in railway as lineman. As Nathubha Amarsingh and Jayantilal Ramjibhai are serving in railways, they came in contact and cultivated friendly relations, since the time they were at Jetalsar. Jayantilal Ramjibhai used to go to Nathubha and collect the hard coal for the purpose of domestic use which was in fact, the theft of the railway property. Nathubha by passage of time refused to help him in taking away the hard coal from the railway premises to his home. Hence dissensions arose between the two. In the month of October, 1979, Nathubha proceeded on sick leave, but at times he used to go to the railway-station for passing his leisure hours and come back. On 22nd October, 1979 in the evening, he had been to the railway-station just to pass the leisure hours. At 23-00 hours, he was returning. On his way back his son Hardev met him, and so both together were going to their home. Hardev was having a cycle. After walking certain distance, Hardev riding over the cycle, went home earlier. Nathubha was going on foot. When he was about 10 to 15 feet away from his house, Jayantilal Ramjibhai, Ranchhodbhai alias Babubhai Ramjibhai and Mansukhbhai Jankidas attacked and caused injuries. Jayantilal Ramjibhai was armed with a knife, Ranchhodbhai Ramjibhai was armed with a pipe, and Mansukhbhai Jankidas was armed with a stick. Jayantilal Ramjibhai and Ranchhodbhai Ramjibhai are brothers, while Mansukhbhai Jankidas is the cousin of Jayantilal and Ranchhodbhai. Hearing the shouts of Nathubha Amarsingh, his family members came out of the house and rescued him. Nathubha who was seriously injured was then taken to the hospital initially at Gondal, and later on at Rajkot. During the course of the treatment, as he was seriously injured on the right eye, he lost the vision of that eye. A complaint was then lodged before the police at Gondal, putting the investigation to motion. At the conclusion

of the police investigation, Jayantilal Ramjibhai, Ranchhodbhai alias Babubhai Ramjibhai and Mansukhbhai Jankidas were chargesheeted of the offences under sec.326, 325, 324 & 323 read with sec. 114 of the Indian Penal Code. Hearing both the parties, the learned Magistrate framed the charged at Ex.9 to which all the three accused, named hereinabove pleaded not guilty. The prosecution then adduced necessary evidence. Appreciating the evidence on record, the learned Magistrate reached the conclusion that prosecution had failed to establish the charge free from reasonable doubts. He therefore, acquitted all the three accused on 26-10-1982. It is against that order of acquittal, the State has preferred the Criminal Appeal, while Nathubha Amarsingh- the injured, has preferred the Revision.

3. As both the matters arise out of the same judgment and order, and in both the matters, the issues raised being common, I preferred to hear both the matters together and dispose the same of by a common judgment. Accordingly, both the matters are heard, and by this judgment both the matters shall stand disposed of.

4. Mr. Bukhari, the learned APP submitted that the lower Court fell into error in appreciating the evidence and acquitting the accused i.e. respondents in the appeal and the revision. The evidence on record was sufficient to hold the respondents guilty. The learned Judge ought to have relied upon the evidence of Nathubha Amarsingh and Ushaba, but assigning illogical reasons, the learned Judge preferred to discard that evidence, which was a serious error on his part. The panchnama, medical evidence were also supporting the case of the prosecution. Mr. Bukhari, the learned APP submitted that though the principle was that the Appellate Court did not disturb an order of acquittal in a case where two views were reasonably possible, but where approach of the trial Court was manifestly erroneous and the conclusions drawn were wholly unreasonable and perverse, the principle that the Appellate Court did not disturb the order of acquittal when two views were possible was not applicable. For his such submission, he relied upon the recent decision of the Apex Court rendered in the case of Bharwad Jakshibhai Nagjibhai and Others V/s. The State of Gujarat, 1996 (1) GLH 226. In this case, according to him, the approach of the Learned Judicial Magistrate was manifestly erroneous as he without any logic, discarded the evidence of the injured as well as the eye-witness, Ushabha.

5. No doubt the evidence of the Doctors Ex.16 and Ex.21 and their certificates Ex.17 and 22 in clear terms support the case of the injuries alleged to have been inflicted on the person of Nathubha Amarsingh, and to an extent, the panchnama also supports the case of prosecution, but that evidence cannot corroborate the version of a witness as to the complicity of the accused, at the most, that evidence may establish the place and time of the occurrence. For such view, the reference of the decision in the case of B.N. Singh etc. v. State of Gujarat etc. AIR 1990, SC 1628 may be made. In view of the law made clear by the Supreme Court, the evidence of the doctors, and certificates & panchnama would not establish complicity of the respondents who were original accused before the lower Court. For that the evidence of injured and eye-witness if any is to be dissected.

6. Nathubha Amarsingh has before the lower Court made necessary statements in his evidence supporting the case advanced by the prosecution, but his testimony is not free from doubt. While lodging the complaint, he named Jayantilal Ramjibhai, the accused no.1, but did not name rest of the two opponents. According to him, Jayantilal Ramjibhai and two strangers, assailed him when he was going to his home from the railway-station & was about 10 to 15 feet away from his house, and was injured. Later on he improved the case and implicated Ranchhodbhai alias Babubhai Ramjibhai and Mansukh Jankidas and made necessary statements on oath before the lower Court involving those two. It may be stated that according to Nathubha Amarsingh rest of the two respondents namely Ranchhodbhai and Mansukhbhai were known to him. If that was so, he would have recognised those two and would have named before the police initially. As he has not named, respondents no.2 and 3 and only preferred to allege against respondent no.1 saying that Jayantilal and two others attacked him, the case against Ranchhodbhai and Mansukhbhai Jankidas having been developed later on suitably has been rightly turned down by the learned Judge below, and I entirely agree with the reasonings he has assigned. In view of this fact, I have now to consider whether Jayantilal Ramjibhai has been rightly implicated by Nathubha Amarsingh.

7. It may be recollected that with regards to the coal- affairs, dissensions arose between the two and by passage of time they had become the arch-rivals. When Nathubha Amarsingh was serving at Jetalsar & other places, Jayantilal Ramjibhai used to take away the coal for which he had reported the matter to his higher authorities for departmental action. The complaint

before RPF was also lodged. Because of such action being taken both were hostile to each other and never missed a chance to baffle the other one. Nathubha Amarsingh had therefore, an axe to grind against Jayantilal Ramjibhai. In view of this fact, he can be termed interested witness. Of course, as per the well-settled principle of law, the evidence of the interested witness cannot be discarded only on that count, and such evidence has to be appreciated with care and caution. But in this case, the evidence of Nathubha Amarsingh cannot even by appreciating with care and caution be accepted for one good reason. Initially, he did not name Ranchhodbhai and Mansukhbhai as the assailants; and named only Jayantilal and two others. But at the time of hearing, improving his initial case suitably he roped in Ranchhodbhai and Mansukhbhai Jankidas. When accordingly, he has tried to rope in rest of the two respondents falsely, that circumstance being glaring on record, renders his evidence highly suspicious. For my such view, I get support from the decision of the Supreme Court rendered in the case of B.N. Singh (supra). As the evidence of Nathubha Amarsingh is highly suspicious, the learned Magistrate was right in not placing reliance on his testimony.

8. On another count also the evidence of Nathubha Amarsingh is highly incredible & suspicious. Initially, while lodging the complaint, he made it clear before the police that near his house it was too dark to see who he was. When he accordingly made it clear that owing to the darkness it was difficult to identify a person assailing or passing by, how he could identify Jayantilal Ramjibhai, is a question kept unravelled. But when on oath, he has in order to get out from the impossibility of identification improved his case mentioning that there was a street light pole and street light was also burning and because of Diwali days there was light in the courtyard of the house, prudence dictates that independent corroboration must be insisted upon. It can also be said that when he has made the improvement so as to eradicate the effects of his earlier statement, there is a reason to agree with the learned advocate representing the respondent that Nathubha Amarsingh is a man who can twist the story to any extent suitably and involve his rivals. His say before the court, therefore cannot be termed genuine or natural but distorted one. The learned Magistrate was therefore right in not placing the reliance on Nathubha Amarsingh.

9. No doubt Ushaba, the minor daughter of Nathubha Amarsingh is examined at Exh.46 and she supports the case

of the prosecution, but her testimony being a corroborative one cannot be accepted when the primary evidence of the injured is found suspicious. Even on another count also the evidence of Ushaba cannot be accepted. In the cross-examination when she was trapped she had to admit that she had gone through her police statement before she stepped in the witness box and she was consistent with the statement made before the police. This raises a suspicion, because a child would not like to be inconsistent with the statement she reads before entering the witness box because she/he would all the while feel that to be inconsistent with this police statement would be nothing, but inviting trouble, better therefore to be consistent with the same. If under such contemplation, one would naturally have, the evidence has been recorded, it is doubtful whether in fact truth of the incident is reflected. Further she, her mother and brother rushed to the scene of incident hearing the shouts and before they could reach, very close, the assailant had run away. How she could have then seen the incident in view of the fact the injured has made it clear that there was darkness, is the question raising doubt. No doubt, Ushaba has come forward with the say that because of the Diwali, there were lights on the front doors of the houses and there was street light too, but the panchnama is silent on the point and the injured too. When such inconsistencies are brought on record about the light, the learned Judge was perfectly right in placing no reliance in the absence of any independent corroborative evidence.

10. Jhaverbhai Laxmanbhai and Pratapbhai Labhshanker Joshi are examined at Exh.31 and 34 respectively so as to have support to the case of the prosecution. When the evidence of the injured, the primary evidence is not believable, the corroborative evidence has no value. It may however be stated that Jhaverbhai Laxmanbhai and Pratapbhai Labhshanker Joshi when reached near Nathubha Amarsingh hearing shouts the assailants had run away. Of course on this point they have made contradictory statements, and when they have made contradictory statements on this point, it cannot definitely be said that they could see the assailant showering the blows. They reached after the assailant ran away, and according to them they made query to the injured to which the injured replied that Jayantilal and two others had assailed and during the attack he was injured. Nathubha Amarsingh did not mention about rest of the two respondents giving their names, but these witnesses have involved the respondents no.2 and 3 as if they had in fact seen the incident. It may be stated that at one

stage, Pratapbhai Labhshanker Joshi is not sure about the involvement of and identity of respondent no.3. He gave the name only because injured Nathubha Amarsingh informed him about him. CR.No.37. In short, the source of information for these two witnesses is injured himself, and when the injured does not name the respondent no.2 and 3 and these witnesses later on tried to involve respondent no.2 and 3, the improvements that they made is the strongest circumstance on record going to discredit the truth of the case of the prosecution & their testimony.

11. After the injuries were caused, the clothes of the injured were blood stained, but those clothes are not seized by the police during the course of investigation. It is alleged that at the scene of offence, the blood marks were found, but the police has not seized the blood for the purpose of analysis and finding out the clue. It is not explained why the clothes were not seized and blood stained mud was not taken & seized from the place of evidence. When the police has omitted to do so, there is a reason to believe the submission of the respondents that incident in any other manner at any other place might have taken place and because of the enmity they were involved.

12. I have perused the evidence on record as well as the judgment delivered by the lower Court, and I entirely agree with the lower Court and do not find anything which would give a reason to me to hold that the approach of the lower Court is erroneous or highly unreasonable. For the aforesaid reason, I find no justification to interfere with the order of acquittal, being quite in consonance with law. The appeal as well as the revision application being devoid of merits are required to be dismissed. In the result, both the appeal and the revision application are hereby dismissed.
