

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 786 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? ..No..
 2. To be referred to the Reporter or not? ..No..
 3. Whether Their Lordships wish to see the fair copy of the judgement? ..No..
 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?..No..
 5. Whether it is to be circulated to the Civil Judge?..No..

STATE OF GUJARAT

Versus

KAMLESH KRUSHNAPRASAD VAIDYA & ANR

Appearance:

MR.MA BUKHARI, APP, for the appellant-State.

MR.MJ BUDHBHATTI WITH MS NAYANA V PANCHAL
for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE M.S.PARIKH

Date of decision: 30/12/97

ORAL JUDGEMENT

PER:K.R.VYAS,J.

This appeal is filed by the State challenging the judgment and order dated 3-5-92 passed by the learned Additional Sessions Judge, Junagadh in Sessions Case No. 151/92, acquitting the respondents of the offences

punishable under Section 302 read with Section 34 of the Indian Penal Code.

The prosecution case in nutshell can be summarised as under:

Deceased Kokila alias Kirtiben was the wife of respondent No.2. The incident out of which this appeal arises took place on 3-5-91 between 10.00 p.m. and 11.35 p.m. in the city of Junagadh. Deceased Kokila earlier married to one Dinesh Mehta of Hadvad and out of that wedlock son Nilesh, PW 18, Ex.47, and daughter Shilpa were born. Deceased Kokila obtained divorce seven years prior to the incident and had thereafter married respondent No.2. The second marriage also failed as the wife and husband were not on good terms with the result they started residing separately in the same house. The deceased was staying in the first floor whereas respondent No.2 was staying on the ground floor. It is the prosecution case that respondent No.2 used to address letters to Pranshanker Jani, PW 2, Ex.8, father of the deceased, about the alleged illicit relations of the deceased with one Shantilal Rangpariya, PW 13, Ex.40. The deceased also filed an application for maintenance against respondent No.2 in the Court of Chief Judicial Magistrate and a criminal complaint for defamation against respondent No.2 and his mother Shardaben. It is also the prosecution case that twenty days prior to the date of the incident, the deceased had gone to Rajkot and returned to Junagadh with her son Nilesh. It is also the case of the prosecution that Nilesh had gone to see day-night cricket match at about 9.30 p.m. on the night of the incident. It is further the case of the prosecution that the maid-servant Maniben, PW 4, Ex.11, had gone to the house of the deceased between 5.00 p.m. and 6.00 p.m. and at about 6.00 p.m. Pravinchandra Raval, PW 5, Ex.12, had also visited the house of the deceased and remained with her upto 7.00 p.m. and discussed about the divorce proceedings of the deceased against respondent No.2. Babu Dayal Bhoi, PW 10, Ex.37, who is doing the colouring work had also visited the house of the deceased at about 8.30 p.m. and remained there till 10.30 p.m.

A telephonic message was received at about 11.35 p.m. by Junagadh Police Station from one lady named Shardaben informing that a dead body of a lady is lying in Nazar Mohmad Gali, opposit the house of Babubhai Primaswala in Ambica Chowk, Junagadh. An entry to that effect was made in the Police Station Diary and on the basis of the said information, PSI Raval, PW 19, Ex.48,

started investigation. PSI Raval noticed a number of injuries on the person of the deceased. He, therefore, filed a complaint with Junagadh City Police Station in the early morning at about 3.30 a.m. on 4-5-91. After completion of the investigation, both the accused were arrested for having committed murder of the deceased.

Charge, Ex.1, was framed against both the respondent-accused to which they pleaded not guilty and claimed to be tried. The learned Additional Sessions Judge, Junagadh, after considering the evidence on record, the statements of the respondent-accused recorded under Section 313 of the Criminal Procedure Code and hearing the learned Advocates for the parties, came to the conclusion that the prosecution has failed to prove the charge levelled against the respondents and, therefore, passed the order of acquittal which has been challenged in the present appeal.

Mr. M.A.Bukhari, learned Additional Public Prosecutor, appearing for the appellant-State, has taken us through the evidence of the material witnesses and submitted that the learned trial Judge has committed an error in acquitting the respondents as the prosecution has established the case against them beyond reasonable doubt and, therefore, this appeal is required to be allowed.

Mr. Budhbhatti, learned Advocate appearing for the respondent-accused has supported the judgment of the trial Court in toto.

Having perused the evidence on record, at the outset, we may state that the learned Additional Sessions Judge was justified in passing the order of acquittal as the prosecution has failed to establish the case against the respondent-accused. The entire case of the prosecution is based on circumstantial evidence as there are no eye witnesses to the incident in question. In a case based on circumstantial evidence, motive plays an important part. However, in the instant case, the alleged motive appears to be too weak and would not assist the prosecution. It is the prosecution case that the relations of the deceased and accused No.2 were admittedly not good and, in fact, talks about divorce were going on. Apart from that, respondent No.2 used to address letters to the father of the deceased about her alleged illicit relations with one Shantilal and, therefore, respondent No.2 had a strong motive to get rid of the deceased. It is true that the relations of the deceased with respondent No.2 were quite strained and the

deceased was required to file an application for maintenance . However, it is also true that the amount of maintenance awarded by the Court has been paid by respondent No.2. The fact that both were staying separately in the same house and, in fact,had accepted the proposal of divorce, would, on the contrary, go to suggest that the parties had decided to keep aside all their differences. In that case the alleged motice on the part of respondent-accused No.2 has become redundant. Apart from that there is no circumstantial evidence connecting the respondents with the alleged offence . We are, therefore, of the view that there are no circumstances involving the respondents in the commission of the murder of deceased Kokila.

Babu Dayal, PW 10, Ex.37, who was in the company of the deceased from 8.30 p.m. to 10.30 p.m., in his evidence has stated that he saw respondents No.1 and 2 together at 7.00 p.m. in the area of Kalva Chowk in the city of Junagadh. He has further stated that he saw respondent No.2 at his house at 9.30 p.m. and it is further the case of this witness that even when he left the house of the deceased at about 10.30 p.m. he saw respondent No.2 in his house.

Nilesh, PW 18, son of the deceased, in his evidence has stated that he saw both the respondents in the house of respondent No.2 at about 9.30 p.m. It is to be noted that the dead body of the deceased was found at about 11.30 p.m. Merely because both the respondents were together at the house of respondent No.2, even if the evidence of Nilesh is to be believed, in that case also, it is not possible for us to connect the respondents with the crime. Evidence of Nilesh is not corroborated by Babu Dayal when he does not refer to the presence of respondent No.2 at the house of respondent No.2 at 9.30 p.m. If we read the evidence of Babu Dayal, he has specifically stated that from 8.30 p.m. to 10.30 p.m. he and the deceased were alone in the house and nobody else had come there. If that is so, in that event, the presence of Nilesh at the house of the deceased itself becomes doubtful. Thus, the evidence of both the witnesses is inconsistent and consequently, therefore, it is doubtful whether they had seen the accused last together. Except this so-called evidence regarding they having seen the accused last together, there is no other evidence worth its name to connect the respondents with the crime in question.

The prosecution has also been unsuccessful in proving the subsequent conduct of respondent No.1 in

leaving Junagadh city by a rickshaw and reaching Vijapur and again returning to Junagadh on the next day noon. For that purpose, the prosecution has examined Rickshaw-wala Chandu Ganesh, Ex.38; Ratilal Gordhan, Ex.13; Mohanbhai Hirjibhai, Ex.39; Ranchhodbhai Bhani, Ex.40, and another Rickshaw-wala Bharat Harkishan, Ex.42. All these witnesses have not at all supported the prosecution and they have been declared hostile.

The manner in which the death of the deceased had taken place would raise a serious doubt as to the involvement of the respondents and the investigation carried out by the Investigating Officer. The prosecution has failed to explain as to why different witnesses, who were not at all concerned with the affairs of the deceased, had visited her right from 6.00 p.m. to 10.30 p.m. more particularly when the deceased was staying alone. The so-called explanation given by the prosecution about their visit to the deceased does not inspire confidence.

The evidence of Pravin Raval, PW 5, Ex.12, who had visited deceased Kokila at about 6.00 or 6.30 p.m. for the purpose of having a talk about divorce goes to suggest that there he was merely a Petition Writer and, therefore, we fail to understand as to what advice he could have rendered to her. Similarly, Babu Dayal, PW 10, Ex.37, is merely a colourman and had remained with the deceased for quite long time for about two hours from 8.30 p.m. to 10.30 p.m. It is difficult to understand as to why Babu Dayal had remained with the deceased. Similarly, regarding the evidence Shantilal, PW 13, Ex.40, it is clear that he used to take active interest in the maintenance proceedings going on between the deceased and respondent No.2. The facts of this case make it clear that the deceased used to meet number of persons and, in fact, on the night of the incident, number of persons met her till the incident took place. In absence of the evidence of any eye witness, we fail to understand as to how the respondents can be connected with the crime in question. These are the few circumstances relied on by the learned trial Judge in passing the order of acquittal. Since we are in total agreement with the reasoning of the learned trial Judge, we refrain from repeating the same. Since we confirm the judgment and order of acquittal passed by the learned trial Judge, it is also not necessary for us to reiterate the reasons given by the trial Court in view of the decision of the Supreme Court in *State of Karnataka v Hemareddy* and another AIR 1981 SC 1417.

In the result, we find no substance in this appeal and accordingly it is dismissed. Bail bonds stand cancelled.

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