

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO.900 of 1997

with

CRIMINAL MISC. APPLICATION No.7193 OF 1997

with

CRIMINAL REVISION APPLICATION No.533 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

=====

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?  
1 to 5 - No

-----  
STATE OF GUJARAT

Versus

THAKOR JENAJI DHULAJI

-----  
Appearance:

1. Criminal Appeal No. 900 of 1997  
PUBLIC PROSECUTOR for Petitioner
2. Criminal Revision ApplicationNo 533 of 1997  
MR VIJAY H PATEL for Petitioner

-----  
CORAM : MR.JUSTICE B.C.PATEL and

C.A.V JUDGEMENT (Per: R.P.Dholakia,J.)

State, being aggrieved with the order of acquittal recorded by Addl. Sessions Judge, Mehsana in Sessions Case No.135 of 1996 on 7-9-1997, has preferred this appeal. The respondents-accused were tried for the offences punishable under Secs. 302, 201 and 120(b) of Indian Penal Code and Sec.135 of Bombay Police Act.

.RS 2

#. As per the prosecution case, the complainant Sarthanji Motiji Thakore stated before Police Sub-Inspector, Sampra on 2-2-96 that his son-Hargovindji left his house on 25-1-96 and did not return. As his son was not traceable, PSI has recorded his complaint. In the evening, one Bhikhaji informed that bloodstains and hairs were seen lying in the field of Babuji Guptaaji. On the next day, in presence of panchas and Executive Magistrate, dead body of Hargovindji was taken out from the field. Inquest panchnama and panchnama of place were prepared to that effect and post-mortem was performed immediately by the doctors. Statements of various witnesses were recorded and after investigation, Police has submitted the charge-sheet against the accused. Accused pleaded not guilty to the charge. On appreciation of evidence and after hearing the learned advocates of the parties, accused were acquitted by the learned Addl. Sessions Judge.

#. We have heard learned Addl. Public Prosecutor, who was having the record and proceedings with him. His argument was that the prosecution has proved the chain of circumstances and learned Addl. Sessions Judge ought to have accepted the circumstantial evidences and convicted the respondents-accused.

#. It is true that in the instant case, there is no eye witness and prosecution case solely relies on the circumstantial evidence but, prosecution was not able to establish the link of circumstances. No enmity was proved by the prosecution between the deceased and the accused. Prosecution has failed to establish that deceased was found on 25-1-1996 at the house of accused No.1 and it is the say of the prosecution that it was Sonji, who came to the house of deceased and he called the accused. To prove the above facts, Sonji was not examined by the prosecution. Other witnesses, namely Mevuji Sarthanji, Somaji Divanji, Shankarji are not supporting the prosecution case. The prosecution was not

able to prove that it is the accused, who have murdered the deceased.

#. We have gone through the evidence which was suggested to be read by learned Addl. Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. It is under the above circumstances that appeal is required to be dismissed and is accordingly dismissed.

#. In view of the aforesaid order passed in Criminal Appeal, Cri. Misc. Application No.7193 of 1997 need not be entertained as Criminal Revision Application No.533 of 1997 itself does not survive.

\*\*\*\*

radhan/