

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 594 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE DN PATEL

- =====
- 1 Whether Reporters of Local Papers may be
allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the
fair copy of the judgment ?
- 4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?
- 5 Whether it is to be circulated to the
civil judge ?

=====

GAMBIRBHAI BABUBHAI VASAVA - Appellant
Versus
STATE OF GUJARAT - Opponent

=====

Appearance :

MS BANNA S DUTTA for the Appellant.
MR AJ DESAI, APP for the Opponent.

=====

CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE DN PATEL

Date : 24/10/2008

CAV JUDGMENT**(Per : HONOURABLE MR.JUSTICE D.N.PATEL)**

1. This appeal has been preferred against the judgement and order of conviction and sentence dated 7th May,1993, passed by learned Additional Sessions Judge, Surat in Sessions Case No.242 of 1991, whereby the present appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to undergo life imprisonment for committing murder of Khalpabhai, who is husband of the complainant.

2. Brief facts leading to the present case are as under:

(i) On 15th August,1991 at about 20-30 hours, the present appellant caused injuries to Khalpabhai Chaudhari, by a spear typed pointed iron bar and caused injuries on head as well as on upper part of right eye and other injuries on the face of Khalpabhai, who succumbed to his injuries.

(ii) It is a prosecution case that the present appellant was instigating wife of the deceased and because of this, on certain occasions, there was hot altercation between the complainant (wife of deceased) and the deceased. Place of incident is the house of the

deceased himself. Thereafter, the present appellant had run away. The wife of the deceased filed FIR, wherein name of the present appellant was given with all details. The said FIR is at Exh-14 in the Sessions Case. Thereafter, the appellant was arrested and after completion of investigation, charge-sheet was filed. Sessions Case No.242 of 1991 was registered against the appellant. Upon evidence for the offence punishable under Section 302 of the Indian Penal Code, the appellant was convicted and sentenced to undergo life imprisonment and, therefore, this appeal has been preferred by the convict-appellant.

3. We have heard learned counsel for the appellant, who has mainly submitted that the prosecution has failed to prove offence beyond reasonable doubt against the appellant. The so called eye witness is not an eye-witness at all. There were no blood stain on the weapon. Panch witnesses have turned hostile. The panchnama of discovery of weapon; panchnama of clothes of the accused and other panchnamas have not been proved by the prosecution. There are no material evidence collected and presented by the prosecution and, therefore, the judgement and order of conviction passed by the Trial Court deserves to be quashed and set aside.

4. Learned Additional Public Prosecutor for the respondent- State submitted that there are more than one eye-witness, who have been examined by the prosecution and they have proved the offence beyond reasonable doubts committed by the present appellant. Learned Additional Public Prosecutor for the respondent further submitted that it is the present appellant, who having relation with the wife of the deceased, was instigating her and, therefore, on several occasions, there were altercations between the deceased husband and complainant wife. Eye-witnesses were natural eye-witnesses and their presence was natural at the time of offence. The appellant came to the house of the deceased and caused injuries by spear typed pointed iron bar. All the injuries have been caused on the vital part of the body, mainly on the head of the deceased. Panchnama of scene of offence has been proved by PW-2, who has given clear deposition before the Court. Prosecution witnesses Nos.4 and 5 are eye-witnesses. Even PW-6 had also seen the appellant running away with weapon from the scene of offence. Police witnesses have proved the rest of the panchnamas. There is enough corroboration to the evidence of the eye-witnesses and, therefore, the offence has been proved beyond reasonable doubt against the appellant and, therefore, the judgement and order of conviction and sentence may not be altered by this Court. No error has been committed by the Trial Court in

appreciating the evidence.

Learned Additional Public Prosecutor submitted that the present appellant had run away from the jail while doing agriculture work in the jail. Thus, the present appellant is absconding accused.

5. We have perused the record and heard the learned counsel for the appellant at length. She has read and re-read the evidence collected during the course of investigation. On 15th August, 1991, as per PW-4 namely Bhagubhai Fatesingh Vasava at Exh-15 at 20-30 hours, when he had gone to the house of the deceased, he had seen the present appellant causing injuries to the deceased. Looking to his deposition, it appears that he is a trustworthy witness. He has given clear narration of the whole incident. How the whole incident happened, has been narrated by him. The appellant was causing injuries by spear typed pointed iron bar to the deceased. He has also narrated that the appellant had thereafter run away and wife of the deceased had also run away. During his cross-examination, nothing is coming out in favour of the accused-appellant. On the contrary, in his cross-examination also, he has accurately narrated about the whole incident, weapon and the identification of the accused. Accused and PW-4 are residing in the same village and, therefore, accused was knowing him.

6. Looking to the deposition given by PW-5 namely Zambiben Nagariyabhai Vasava, it appears that she was also present along with P.W.No.4 at the time of incident at the house of the deceased. Both P.W.Nos.4 & 5 had gone at the house of deceased for collecting remains of supper. She has also seen the incident. It has been stated in her deposition that the present appellant had caused injuries by spear typed pointed iron bar on the head of the deceased. Thereafter, the present appellant had run away. P.W.Nos.4 and 5 are the persons, who were carrying cattle of various persons for grazing and, they were returning at twilight time. Looking to her deposition, she has clearly narrated the whole incident and there are no material omissions and contradictions in her deposition. Looking to the cross-examination, nothing is taken away or shaken from her in examination-in-chief. On the contrary, she has clearly narrated in the cross-examination that she knows the appellant. Therefore, there is no question of misidentity of the appellant. Her presence at the time of scene of offence was natural one. Looking to her deposition, she is a trustworthy witness. Thus, looking to the evidence of P.W.Nos.4 and 5, who are eye-witnesses, the prosecution has proved the case against the present appellant beyond reasonable doubt.

7. Looking to the deposition of PW-6, who is Gimblabhai Nadabhai Chaudhari and supporting witness, it has been narrated by him that at about 8:30 p.m., he heard cries of P.W.Nos.4 and 5 and this is how, he came to know about the incident. He rushed to the house of the deceased and he had seen the appellant running away with weapon and the deceased was lying with injuries. Thereafter, this witness P.W.No.6 and his brother as well as P.W.No.4 were chasing the present appellant, but, the present appellant had run away quickly after the incident. This witness had also identified the appellant in the Court. Looking to his deposition, his presence is also a natural one. Nothing is coming out in the cross-examination of the witness, in favour of the present appellant. There are no omissions and contradictions in his statement. Looking to the deposition of this witness, he has clearly supported the evidence given by the eye-witnesses namely P.W.Nos.4 and 5. Thus, there is enough corroboration to the depositions of the eye-witnesses by the deposition of P.W.No.6.

8. Looking to the deposition of Dr.Navinchandra Revabhai Chaudhari, P.W.No.1 at Exh-7, who had performed postmortem of the deceased, there are several injuries caused on the head of the deceased. There are as many as eight injuries pointed out in his deposition. There are

also fractures to the deceased. It has also been deposed by the Doctor that all these injuries were caused by the weapon, shown to him, which was discovered at the behest of the appellant. There were following injuries reflected in the postmortem note:

- (a) Clean incised wound over the right frontal region 2.5 cm x 0.5 cm. X 1 cm;
- (b) right lat.angle of eye 2 cm x 0.5 cm x 1 cm;
- (c) Right Maxillary region 3 cm x 0.5 cm x 1.5 cm;
- (d) C.L.W. over the occipital region 0.5 cm x 0.5 cm;
- (e) upper jaw two median teeth fell,
- (f) C.L.W over the lower lip 1 cm x 0.5 cm;
- (g) right angle of mandible clean incised wound 2.5 cm x 0.5 cm x 1.5 cm;
right side neck lat.side abrasion 4 cm x 2 cm.
- (h) Fracture of nasel bone.
- (i) Fracture of right maxillary bone.

Postmortem note is at Exh-8, also corroborates the ocular evidence given by P.W.Nos.4 and 5. Thus, there is enough corroboration to the evidence of eye-witnesses by this postmortem note and by the evidence of P.W.No.1 Dr.Navinchandra Chaudhari.

9. Looking to the deposition of Revliben Khalpabhai Vasava - P.W.No.3, who is a wife of the deceased, has turned hostile, but, looking to her deposition, it appears that she has admitted her signature on FIR and looking to the FIR, which is at Exh-14, she has clearly narrated the whole incident. Name of the present appellant has been given in the FIR. Nature of weapon is

also given in the FIR. Thus, FIR at Exh-14, which was recorded at Mandvi Police Station bearing C.R. No.I-121 of 1991, which is an immediate version of the whole incident also corroborates the deposition of the eye-witnesses namely P.W.Nos. 4 and 5. Thus, prosecution has proved the case beyond reasonable doubt against the present appellant.

10. Looking to the deposition of P.W.No.2 namely Babubhai Gimjibhai Chaudhari, who is a panch-witness of scene of offence panchnama at Exh-12; there were blood stains at the scene of offence. The scene of offence is the house of the deceased and this witness has admitted his signature on the scene of offence panchnama. Thus, the scene of offence panchnama at Exh-12 also corroborates the depositions of P.W.Nos.4 and 5. Looking to the deposition of police witness at Exh-27, who is Pravinsinh Ranjitsinh, who has narrated that the offence was registered and investigated and has also narrated how the various panchnamas were drawn. Map of whole incident is at Exh-31, which also reveals that the incident has taken place in front of the house of the deceased. Looking to his deposition, there is enough corroboration to the deposition of the eye-witnesses and has proved various panchnamas.

11. Thus, from the evaluation of the evidence, it appears that P.W.Nos.4 and 5 are natural witnesses and their presence at the scene of offence was natural one. They were engaged for carrying cattle of villagers for grazing. They were returning at evening hours and they had gone to the house of the deceased and they witnessed the whole incident. They have named the appellant. They were knowing the appellant. There is a clear narration of the weapon and they have also narrated that it is the present appellant, who had caused head injury to the deceased. Even looking to the deposition of P.W.No.6, who is supporting witness, who rushed to scene of offence hearing cries of P.W.Nos.4 and 5, there is corroboration to evidence of P.W.Nos.4 & 5. They rushed immediately after hearing the cries of P.W.Nos.4 & 5. They have seen deceased Khalpabhai, lying with injuries and they have also seen the appellant running away with weapon. With the help of P.W.No.2, scene of offence panchnama at Exh-12 has also been proved, which also corroborates the evidence of P.W.Nos.4, 5 and 6. Nothing is coming out in cross-examination of these witnesses, in favour of the appellant. Looking to the medical evidence, given by P.W.No.1 Navinchandra Chaudhari, he has performed postmortem of the deceased, there were several injuries upon the deceased on the vital part of the body i.e. on the head of the deceased. Looking to the cause of death

also, the deceased had expired due to head injury. Thus, postmortem note at Exh-8 also provides enough corroboration to the depositions of P.W.Nos.4, 5 and 6. Looking to these depositions, no error has been committed by the Trial Court in appreciating the evidence and has rightly come to the conclusion that the offence has been proved beyond reasonable doubt. Eye-witnesses are natural eye-witnesses. They are not got up witnesses. Looking to the totality of the witnesses, they are trustworthy witnesses, having enough corroboration with other evidences given by P.W.Nos.6, 2 and 1 and also enough corroboration through documentary evidence like complaint at Exh-14, postmortem note at Exh-8, scene of offence panchnama at Exh-12, eye-witnesses have also identified the appellant. Looking to the deposition of witnesses, the injury is sufficient, in ordinary course of nature, to cause death of the deceased. Therefore, as per Clause thirdly of Section 300 of the Indian Penal Code, an offence of murder has been committed by the appellant. There are no omissions and contradictions in the depositions of the eye-witnesses.

12. As a cumulative effect of the aforesaid facts, we see no reason to alter the judgement and order of conviction and sentence dated 7th May,1993 passed by learned Additional Sessions Judge, Surat in Sessions Case

No.242 of 1991. It is the present appellant, who has committed an offence of murder of the deceased.

13. Learned Additional Public Prosecutor submitted that the appellant has run away from judicial custody. At present, he is an absconding accused since 17th October,1997. There is no substance in this appeal and, therefore, the same is hereby dismissed.

(R.P.DHOLAKIA,J)

(D.N.PATEL,J)

*dipti