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RAJPUT JABBARSINGH MALAJI

v.

STATE OF GUJARAT

(Criminal Appeal No. 943 of 2006)

MAY 24, 2011

B

[ASOK KUMAR GANGULY AND DEEPAK VERMA, JJ.]

PENAL CODE, 1860:

C

s.302 – Murder – Accused causing severe axe blow on the face of victim, resulting in his death – Conviction and sentence of imprisonment for life upheld by High Court – HELD: From the evidence of prosecution witnesses, recovery of blood stained scarf of accused and blood stained axe at the instance of the accused, the FSL report and the evidence of the wife of deceased corroborated by the medical evidence, it could not be disputed that the deceased had met the homicidal death on account of severe wounds on his face caused by the accused with the axe – In this view of the matter, there is no scope for any interference with the concurrent findings recorded by the two courts below.

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Evidence Act, 1872:

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s.6 – Res gestae witnesses – Name of assailant not mentioned in FIR – Subsequently, the wife of deceased disclosed to two witnesses the name of the assailant with full description of the incident – Witnesses in turn disclosing the name of the assailant in their statements u/s 161 CrPC – HELD: The two witnesses would be res gestae witnesses – The evidence of the wife of the deceased and other witnesses stands fully corroborated with each other's version – Their evidence is of sterling quality and deserves to be accepted – Penal Code, 1860 – s.302.

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The appellant-accused was prosecuted for

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commission of offence punishable u/s 302 IPC. The prosecution case was that on the night of the incident, at about 2.00 a.m., PW-3 raised shouts for help. On hearing the same, PW-2 and other family members reached there and found that PW-3 was crying to save her husband, the brother of PW-2. PW-2 found that his brother had received severe injuries on his face and was bleeding profusely. The victim was taken to the hospital where he was declared brought dead. Thereafter PW-2 lodged a complaint that some one had assaulted his brother with an axe and had run away. After the victim had been taken to the hospital, PW-3 informed PW-5 and PW-6, the other brothers of the victim, that the injury was caused on the person of the victim by the accused with an axe. The two witnesses also told PW-3 that while entering the filed, they had also seen the accused going away with an axe in his hand. PW-5 and WP-6, in their statements u/s 161 mentioned this fact. The accused made disclosure statements leading to recovery of his blood stained scarft and a blood stained axe from the place shown by him. The trial court convicted the accused of the offence charged and sentenced him to imprisonment for life. The High Court upheld the conviction and the sentence. Aggrieved, the accused filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1. Though before taking the victim to the hospital, PW -3 had not disclosed the name of the appellant as assailant to anyone including the complainant who had lodged the FIR, but she has offered an explanation that at that time her uppermost anxiety was to take her injured husband to the hospital for treatment, therefore, the name of the appellant could not be mentioned in the FIR. Only after the victim was taken to the hospital, PW-3 informed PW-5 and PW-6, the brothers of the deceased, that the injury was caused on

A the person of the deceased by the appellant with an axe. Their statements were recorded u/s 161 of Code of Criminal Procedure soon after the incident and this fact is clearly borne out from the records. [para 6 and 10] [983-F-H; 984-A; 985-A-B]

B 1.2. It has neither been challenged before this Court
 nor was challenged before the High Court or the trial
 court that the deceased had met with homicidal death,
 which even otherwise stands proved from the evidence
 of PW-1, who had performed the postmortem of the dead
 C body of the deceased. He has disclosed the nature of
 fatal blow sustained by the deceased on his face and
 testified to the postmortem report in his examination in
 para-2 thereof which also describes the nature of injury
 sustained by the deceased. The said injury fully
 D corroborates with the nature of injury, disclosed by PW-
 3 to others. Thus from this evidence, it could not be
 disputed that PW-3 was stating the truth and the
 deceased had met the homicidal death, on account of
 severe wounds inflicted upon his face by an axe. [para
 E 11] [985-C-E]

1.3. The star witness in the case is PW-3, who was
 sleeping next to her husband alongwith her small child
 aged 1 ½ years. She happened to know the appellant as
 they all are related. According to her at about 2 a.m.
 F midnight the appellant had inflicted a heavy and hard
 blow on the face of her husband with an axe. On hearing
 the painful shrieks of her husband, she woke up and saw
 the appellant standing with the axe in his hand. Since the
 electric bulb was already lit, it was throwing sufficient
 G light in which PW-3 could comfortably recognise the
 appellant. She has also said that soon thereafter, she
 raised an alarm, on which several persons had gathered
 there. [para 13] [985-G-H; 986-A-B]

H 1.4. The statement of PW-3 stands fully proved and

corroborated from the evidence of PW-5 and PW-6, who were informed soon after the incident as to how, the injury was inflicted by the appellant on her husband. Their statements also reveal that they were in the vicinity of the scene of crime and were among the many members of the victim's family who had rushed to the spot as soon as they heard PW-3's wails and shrieks. Their evidence lends full support to the case of prosecution and corroborates the evidence of P.W.3. She had first disclosed the full description of the incident including the name of appellant to them, thus u/s 6 of the Evidence Act, 1872, they would be *res gestae* witnesses. [para 14] [986-C-D]

1.5. Another crucial link with commission of the offence by the appellant stands proved from the FSL report. The appellant's blood stained scarf, and the blood-stained axe used in the commission of the offence were sent for serological report alongwith other articles recovered from the place of occurrence. Human blood of group 'O' which was also the blood group of the deceased was found on all the articles including appellant's scarf and the axe. These findings could not be satisfactorily refuted by the appellant. Thus, from the FSL report and the evidence of P.Ws 2, 3, 5 and 6, it is clearly established beyond shadow of any doubt that the appellant was the person who had caused the fatal blow on the deceased causing his death. Thus, there is no scope for any interference in the concurrent findings recorded by the two courts below. [para 15-18] [986-G-H; 987-A-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 943 of 2006.

From the Judgment & Order dated 28/29.4.2005 of the High Court of Gujarat at Ahmedabad, in Criminal Appeal No. 597 of 1998.

A S. Usha Reddy for the Appellant.

Kamaldeep Dayal, Hemantika Wahi, Suveni Banerjee for the Respondent.

B The Judgment of the Court was delivered by

C **DEEPAK VERMA, J.** 1. On account of homicidal death of Jethusing on the intervening night of 2/3.04.1994 at about 2 a.m. Appellant was charged and prosecuted for commission of the offence under Section 302 of the Indian Penal Code (for short 'IPC') and under Section 135 (1) of the Bombay Police Act. On appreciation of evidence available on record, Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 137 of 1994, decided on 07.03.1998, found the Appellant guilty for commission of the said offence and awarded him life imprisonment and a fine of Rs. 500/-, and in default to undergo further R.I. for 3 months under Section 302 of the IPC and 4 months simple imprisonment and fine of Rs. 100/- and in default to undergo further imprisonment of 15 days under Section 135 (1) of Bombay Police Act. The sentences were directed to run concurrently.

E 2. Feeling aggrieved thereof, Appellant filed Criminal Appeal No. 597 of 1998 before the Division Bench of the High Court of Gujarat at Ahmedabad. The High Court, after categorically examining the oral and documentary evidence available on record came to the conclusion that no case for interference was made out, affirmed the judgment and order of Trial Court and thus dismissed the appeal.

G 3. The Appellant therefore feeling aggrieved by the aforesaid impugned judgment and order of conviction recorded by the Division Bench of the High Court, is before us challenging the same on variety of grounds.

H 4. Before we proceed to decide the grounds raised at the time of hearing, it is necessary to narrate the facts of the case in nutshell, which stand as under:

5. On 2.4.1994 at about 6 o' Clock, deceased Jethusing A
and his agriculture partner Fueo Rabari had gone to cultivate
the field of Karshanbhai Patel in their village and returned at
about 12 O' clock midnight, after cultivating the same. Then
Jethusing went to sleep in Oshri outside Orda, whereas his wife
Pepaben and their son Pintu were also sleeping at the same B
place but on another cot. Father of the complainant i.e. Paragji
and Feuo were sleeping in Verandah whereas, brother of the
complainant named Vaghji was sleeping outside verandah and
youngest brother of the complainant Deepji was watering castor
plants. On the intervening night of 2/3.4.1994, at about 2.00 C
a.m., Pepaben raised shouts for help. On hearing the same,
complainant – Viramji Paragji, his wife and other members of
the family were woken up. Complainant and other family
members, went to the place where Jethusing, his wife Pepaben
and their son were sleeping. On reaching the spot, they found D
that Pepaben was raising alarm to save her husband Jethusing.
Complainant found that Jethusing had received severe injuries
on his face and was bleeding profusely. Looking to the gravity
and seriousness of the matter, Viramji Paragji and his other
brother Surajsing and Fueo placed injured Jethusing in the E
tractor to take him to Dhanera Hospital.

6. On way to hospital, they met Appellant and one
Kanabhai Mulabhai, who also accompanied them to the
hospital. The Doctor on duty examined him and declared the
deceased brought dead. Thereafter, the complainant went to F
Dhanera Police Station and lodged his complaint. It is pertinent
to mention here that at that time PW -3 Pepaben had not
disclosed the name of the Appellant as assailant to anyone
including the complainant who had lodged the FIR. To this she
has offered an explanation that at that time her uppermost G
anxiety was to take her injured husband to the hospital for
treatment, therefore, the name of the Appellant could not be
mentioned in the FIR. Only after Jethusing was taken to the
hospital, Pepaben informed PW-5 - Deepji Paragji and PW-6
- Vaghji Paragji, brothers of the deceased that injury was H

A caused on the person of the deceased by Appellant, with the aid of an axe. On hearing this, they informed Pepaben that while entering the field, they had also seen Appellant going away from the field, with an axe in his hand.

B 7. FIR lodged by complainant Viramji Paragji was handed over to the Police Sub Inspector of Aagathala Police Station, for investigation. After completion of usual formalities and collecting incriminating articles, statements of the witnesses were recorded by him, who were conversant with the facts of the case. Thereafter, arrangements were made for sending the
C body for postmortem at Dhanera Hospital.

8. Further investigation in the case was conducted by Circle Police Inspector, Tharad. While in police custody, Appellant made disclosure statements pursuant to which blood
D stained adhivato (scarf to be tied as head gear) and blood stained axe were discovered from the place shown by Appellant. The incriminating articles seized during the course of investigation were sent to Forensic Science Laboratory (FSL) for analysis. On completion of the investigation, the
E Appellant was charged and prosecuted for commission of the aforesaid offences as mentioned hereinabove.

9. The Appellant denied the charges and submitted that he is innocent and prayed for absolving the charges levelled
F against him. The criminal investigation machinery was set into motion on the strength of the report submitted by complainant PW-2 -Viramji Paragji on 03.04.1994 itself. No doubt, it is true that in the same, the name of the Appellant has not been mentioned but it has been categorically mentioned that
G someone had assaulted his brother with an axe and after assault had ran away. The assault was on the right side of the mouth, and on the forehead with some sharp weapon.

10. Formal FIR was registered at the Police Station on the strength of the aforesaid complaint. But as soon as PW-3,
H Pepaben had become little composed after the shock which

she faced due to the incident, she had disclosed the name of Appellant to PW-5, Deepji Paragji Rajput and PW-6, Vaghji Paragji Rajput (as stated hereinabove). Their statements were recorded under Section 161 of Code of Criminal Procedure (in short 'Cr.P.C.'), soon after the incident and this fact is clearly borne out from the records.

11. It has neither been challenged before us nor was challenged before the High Court or the District Sessions Court that deceased Jethusing had met with homicidal death, which even otherwise stands proved from the evidence of PW-1, Dr. Shamaldas Mohanlal Adhvan, who had performed the postmortem of the dead body of the deceased. He has disclosed the nature of fatal blow sustained by deceased on his face. He has testified to the postmortem report in his examination in para-2 thereof which also describes the nature of injury sustained by the deceased. The said injury fully corroborates with the nature of injury, disclosed by PW-3, Pepaben to others. Thus from this evidence, it could not be disputed before us that PW-3 was stating the truth and the deceased had met the homicidal death, on account of severe wounds inflicted upon his face by an axe.

12. We have accordingly heard Ms. Usha Reddy, learned counsel for the Appellant and Mr. Kamaldeep Dayal, Ms. Hemantika Wahi and Ms. Suveni Banerjee, learned counsel for the Respondent State at length and have also perused the records.

13. PW-2, Viramji Paragji who lodged the FIR had given the reasons as to why initially in the complaint the name of Appellant could not be mentioned but which was stated expressly by him subsequently on getting necessary information from PW-5, Deepji Paragji and PW-6, Vaghji Paragji who in turn were informed by PW-3, Pepaben, Wife of the deceased. The star witness in the case is PW-3, Pepaben, who was sleeping next to her husband alongwith her small child aged 1

- A ½ years. She happened to know the Appellant as they all are related. According to her at about 2 a.m. midnight the Appellant had inflicted a heavy and hard blow on the face of her husband with an axe. On hearing the painful shriek of her husband, she woke up and saw the Appellant standing with the axe in his hand. Since the electric bulb was already lit, it was throwing sufficient light in which PW-3 could comfortably recognise Appellant. She has also said that soon, thereafter, she raised an alarm, on which several persons had gathered there.

- C 14. The statement of Pepaben stands fully proved and corroborated from the evidence of PW-5 and PW-6, who were informed soon after the incident as to how, the injury was inflicted by the Appellant on her husband. Their statements also reveal that they were in the vicinity of the scene of crime and were among the many members of the victim's family who had rushed to the spot as soon as they heard the PW-3's wails and shrieks. Thus under Section 6 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act"), PW-5 and PW-6 were to be treated as *Res Gestae* witnesses. Their evidence lends full support to the case of prosecution and corroborates the evidence of P.W.3 Pepaben. She had first disclosed the full description of the incident including the name of Appellant to them, thus they would be *Res Gestae* witnesses. In the light of aforesaid evidence of PW-2, Viramji Paragji (complainant), PW-3, Pepaben, PW-5, Deepji Paragji and PW-6, Vaghji Paragji, it fully stands proved and established that the Appellant had caused the fatal blow on the person of the deceased causing his death. Single blow was so hard and powerful that it caused his death instantaneously.

- G 15. However, at this stage it is also pertinent to point out that another crucial link with commission of the said offence by the Appellant stands proved from the FSL report. As mentioned hereinabove, during the course of investigation Appellant's blood stained scarf, blood-stained axe, used in the commission of the offence were recovered from the place of discovery.
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Same were sent for serological report alongwith mattress, sand, shirt, big scarf, waistcoat, turban, watch, belt etc. belonging to the deceased. Human blood of group 'O' which was also the blood group of the deceased was found in all the articles including Appellant's scarf and the axe. These findings could not be satisfactorily refuted by the Appellant. Thus from the FSL report it is conclusively established that it was Appellant and only Appellant who had caused the fatal blow on the deceased. There could not have been any other better link connecting the Appellant with the commission of the said offence.

16. After critical examination of the evidence of P.W.3 Pepaben, P.W.2 Pragji, P.W.5 Deepji and P.W.6 Wagji, it is clearly established that Appellant was the person who had caused the fatal blow on the deceased. Their evidence stands fully corroborated with each other's version. There was no reason why they should have unnecessarily implicated the Appellant, had he not been the perpetrator of the crime. Their evidence is of sterling quality and deserves to be accepted.

17. Thus, in our considered opinion, the prosecution has fully established beyond shadow of any doubt that it was Appellant and none else who had caused the fatal blow on the person of the deceased which ultimately caused his death.

18. In this view of the matter, looking to the facts of the case from all the angles, we are of the considered opinion that there is no scope for any interference in the concurrent findings recorded by the two courts below. Appeal being devoid of any merit and substance, deserves to be dismissed. It is accordingly dismissed.

R.P.

Appeal dismissed.