[2021] 4 S.C.R. 239

KALABHAI HAMIRBHAI KACHHOT
v.
STATE OF GUJARAT

(Criminal Appeal No. 216 of 2015)

APRIL 28, 2021

[ASHOK BHUSHAN AND R. SUBHASH REDDY,* JJ.]

Penal Code, 1860: s. 302 rw s. 34 – Murder – Previous animosity between the parties – On the fateful day, accused persons attacked the victim and two others with knives, resulting in victim's death, and injuries to other two - Conviction and sentence u/s. 302 rw s.34 and s. 135(1) of the Bombay Police Act – High Court while upholding the conviction, extended benefit of s. 428 CrPC – Interference with – Held: Not called for – On examination of entire evidence of all the witnesses with reference to medical and other evidence on record, it is clear that the prosecution proved the guilt of the accused beyond reasonable doubt – All the accused committed the offence with a common intention and all participated in committing the crime – Role attributed to accused fully supported by the injured witnesses as well as the deposition of investigation officer – Testimony of the injured witness is natural and trustworthy – Contradictions sought to be projected in the deposition of injured witnesses are minor contradictions which cannot be the basis to discard their evidence – Omissions like non-seizing of motorcycle and gold chain of one of the victims, not a ground to discredit the testimony of key witnesses who were consistent, natural and trustworthy – Criminal trial – Evidence – Witnesses.

Dismissing the appeals, the Court Held:

1.1 The view taken by the trial court in recording the conviction against the appellants, as confirmed by the High Court is upheld. Therefore, no interference is called for with the concurrent findings recorded against the appellants. It is also clear that there was a quarrel between the deceased about six months earlier to the incident and one accused regarding payment of rent of tractor. Further it is brought on record that there was animosity between them which is the motive for the crime. As such, the prosecution has

* Author

established, beyond reasonable doubt, that all the accused have committed the offence with a common intention and participated in committing the crime. The trial court as well as the High Court has not committed any error in law or on facts, as such, the order is upheld. [Para 21]

The testimony of PWs-8 and 19 who were with the deceased on the day of occurrence and who were travelling on the same motorcycle, is quite natural and trustworthy. Though it was submitted that as the incident happened in the month of November it was not possible to identify the assailants in the darkness, at the same time it is clear from the evidence on record that the headlight of the vehicle was 'on' and it is evident from the record and *panchnama* of the place of occurrence that there was a light which was there on the Vadi. Furthermore, the accused as well as the witnesses are of the same village, which appears to be a small village and usually the persons residing in the village meet frequently, there would not be any difficulty in identifying the persons. Therefore, as far as the identification of the accused is concerned, the same is well supported by the evidence on record. The prosecution also examined PW-1 who had deposed that he was on duty in the Hospital on 10.11.2006. On that day in the night, injured RM was brought to him by his nephew H, for treatment with the complaint and stated that VR attacked him and gave knife blow. The witness doctor issued injury certificate. PW-2, is the doctor who performed postmortem of the deceased. [Para 17]

The submission that there was no head injury, as deposed by PWs-18 and 19 on the deceased and also as per the postmortem report, as such the deposition of PWs- 18 and 19 is to be discarded, cannot be accepted for the reason that the postmortem report indicates injury on the lower back side of the head. An attempt was made to assault the deceased with an axe. It cannot be expected that it has to be hit on the centre of the head. It has fallen on the lower back side of the head, same is evident from the postmortem report. The attack was made on the deceased and injured, when they were moving on motor cycle. As such, it cannot be said that merely because there is no injury on the centre of the head, the testimony of PWs 18 and 19 is to be discarded. The doctor who has conducted the postmortem, has also clearly stated

in his deposition that all injuries which were noticed on the deceased were *ante mortem.* If the entire evidence of all the witnesses is examined with reference to medical and other evidence on record, it is clear that the prosecution has proved the guilt of the accused beyond reasonable doubt. All the accused have committed the crime with a common intention. It is clear from the record that the role attributed to accused nos.1, 2 and 3 is fully supported by the injured witnesses as well as the deposition of investigation officer. Though the key witness, were cross-examined at length, nothing adverse was elicited. If the testimony of PW 20, is examined, same is fully supported by the evidence of PW 18, 19 and 21. It is clear from the evidence on record that their testimony is natural and trustworthy and so far as PWs18 and 19 are concerned it cannot be said that they are the chance witnesses. Even the injuries sustained by PWs18 and 19 are not self-inflicted as per the opinion of the medical expert. Further, it is also clear from the opinion of the doctor who was examined, that all the injuries were possible with *muddammal* knife and axe. It is further to be noticed that serological report from which the blood group was found on the cloths of the deceased and that of the accused nos.1 and 2 is the same. Even with regard to the presence of accused no.3, it is also clear considering the entire oral evidence on record that his presence on the spot is also proved beyond reasonable doubt. [Para 18]

It cannot be said that there are major contradictions in the deposition of PWs 18 and 19. The contradictions which are sought to be projected are minor contradictions which cannot be the basis to discard their evidence. The prosecution has proved the case against all the appellant-accused beyond reasonable doubt. The omissions like not seizing the motorcycle and also not seizing the gold chain of one of the victims, by itself, is no ground to discredit the testimony of key witnesses who were examined on behalf of the prosecution, whose say is consistent, natural and trustworthy. [Para 19, 20]

Mohar & Anr. v. State of U.P. **(2002) 7 SCC 606;** *State of Uttar Pradesh v. Naresh & Ors.* **(2011) 4 SCC 324;** *Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra* **(2000) 8 SCC 457 – relied on.**

Anand Ramachandra Chougule etc. v. Sidarai Laxman Chougala & Ors. **(2019) 8 SCC 50: [2019] 11 SCR 14;** *Akula Veera Venkata Surya Prakash @ Babi v. Public Prosecutor, High Court of Andhra Pradesh* **(2009) 15 SCC 246 : [2009] 7 SCR 543;** *Mohinder Singh & Anr. v. State of Punjab & Ors.* **(2004) 12 SCC 311 : [2011] 4 SCR 1176 – referred to**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 216 of 2015.

From the Judgment and Order dated 09.05.2014 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 459 of 2010.

With

Criminal Appeal Nos. 453 of 2021 and Criminal Appeal No. 290 of 2018.

Harin P. Raval, Sr. Adv., Anirudh Sharma, Awadesh Kumar, Kartikeya Kanojia, Sukanya Singh, Sameer Sawarn, Vaibhava Veer Shanker Nachiketa Joshi, Ms. Sucheta Joshi, Ms. Himadri Haksar, D.N. Ray, Lokesh Kumar Chaudhary, Dillip Kumar Nayak, Ms. Disha Ray, Mrs. Sumita Ray , Advs. for the Appellants.

Ms. Vishakha, Ms. Deepanwita Priyanka, Anirudha P. Mayee, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted in S.L.P.(Crl.) No. 3227 of 2015.

2. All these criminal appeals are filed against the common judgment dated 09.05.2014 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal Nos.405 of 2010 and 459 of 2010, as such, they are heard together and disposed of by this common judgment.

3. Criminal Appeal No.290 of 2018 is filed by accused no.1 – Vajashibhai Ramshibhai Kachhot; Criminal Appeal arising out of S.L.P.(Crl.) No.3227 of 2015 is filed by accused no.2 – Mulubhai Markhibhai Nandaniya; and Criminal Appeal No.216 of 2015 is filed by accused

no.3 – Kalabhai Hamirbhai Kachhot. For the sake of convenience, the appellants in the above appeals shall be referred to as accused nos.1 to 3 hereafter.

4. The aforesaid appellants were the accused in FIR no.I-215/2006 dated 11.11.2006 on the file of Keshod Police Station, which was registered for the offences punishable under Sections 302, 326, 324 and 34 of Indian Penal Code (IPC) and Section 135 of the Bombay Police Act, in which chargesheet was filed on 07.02.2007 in the court of First Class Magistrate, Keshod. As much as the offences were triable by Sessions Court, the case was committed to the Court of Additional Sessions Judge, Junagadh and the accused were tried for the aforesaid offences in Sessions Case No.14 of 2007. All the accused were convicted for the offences under Section 302 read with 34, IPC and Section 135(1) of the Bombay Police Act. Accused no.1 – Vajashibhai Ramshibhai Kachhot – was found guilty for offence punishable under Section 302 read with 34, IPC and was sentenced to undergo life imprisonment and to pay fine of Rs.10,000/- and in default, to undergo further S.I. for 12 months. He was also found guilty for offence punishable under Section 324, IPC and was sentenced to pay fine of Rs.3000/- and in default, to undergo further S.I. for six months. He was also found guilty for the offence punishable under Section 135(1) of the Bombay Police Act and was sentenced to undergo S.I. for four months and to pay fine of Rs.100 and in default, to undergo further S.I. for ten days. Accused no.2 – Mulubhai Markhibhai Nandaniya – was found guilty for offence punishable under Section 302 read with 34, IPC and was sentenced to undergo R.I. for life and to pay fine of Rs.10000/- and in default, to further undergo S.I. for 12 months. He was also found guilty for offence punishable under Section 135(1) of Bombay Police Act and was sentenced to undergo S.I. for four months and to pay fine of Rs.100/- and in default, to further undergo S.I. for ten days. Accused no.3 – Kalabhai Hamirbhai Kachhot – was found guilty for offence punishable under Section 302 read with 34, IPC and was sentenced to undergo R.I. for life and to pay fine of Rs.10000/- and in default, to further undergo S.I. for 12 months. He was also found guilty for offence punishable under Section 135(1) of Bombay Police Act and was sentenced to undergo S.I. for four months and to pay fine of Rs.100/- and in default, to further undergo S.I. for 10 days. The learned Sessions Judge has acquitted the original accused

nos.2 and 3 of the charges under Sections 326 and 324 read with 34, IPC. Against the judgment and order of conviction passed by the learned Sessions Court, accused nos.1 and 3 filed Criminal Appeal No.459 of 2010 and accused no.2 filed Criminal Appeal No.405 of 2010 before the High Court.

5. The High Court, by the impugned common judgment, while confirming the conviction, has partly allowed the appeals and ordered that all the sentences imposed against the accused shall run concurrently and, by extending the benefit of Section 428 of the Code of Criminal Procedure, also ordered that the period of detention of the accused as under-trial prisoners be set off against the sentence.

6. On 10.11.2006, one Rajshibhai Maldebhai Karangiya, resident of Bamnasa Ghed, Taluka Keshod, gave complaint before the Sub-inspector 'B' Division, Junagadh stating that he lives at Bamnasa Ghed with his family and is engaged in agricultural work and lives in the orchard situated in sim of village Akha. In his complaint, he has stated that at about 5:00 p.m. on 10.11.2006 Rajshibhai Maldebhai Karangiya; Mitesh Hardasbhai and Gokalbhai Karsanbhai went to Keshod for some work on Gokalbhai's Hero Honda motorcycle. Gokalbhai was riding the motorcycle. While returning, when they reached near to orchard of Kalabhai at about 7:15 p.m., Vajashibhai Ramshibhai, Mulubhai Markhibhai and Kalabhai Hamirbhai Kachhot were waiting with axe and knives. In order to stop Rajshibhai Maldebhai Karangiya, Mulubhai gave axe blow, which hit on Gokalbhai's head, due to which Rajshibhai Maldebhai Karangiya, Miteshbhai Hardasbhai and Gokalbhai fell down from the motorcycle. Thereafter the three accused have attacked the deceased Gokalbhai with knives and when Rajshibhai Maldebhai intervened, Vajashibhai gave knife blow on the head of Rajshibhai Maldebhai Karangiya. It is also alleged that Vajshibhai hit knife blow on the back side of head on ear and hit Mitesh on left shoulder. Gokalbhai became unconscious. The three accused then ran away towards Akha on Kalabhai's motorcycle. Thereafter, relatives of the deceased and injured were called and they were shifted to Government Hospital where Gokalbhai was declared dead and Rajshibhai Maldebhai and Miteshbhai were given medical treatment. It is also stated that the reason behind the incident is that six months earlier to the date of incident there was

a quarrel between Vajshibhai and Mulubhai with Gokalbhai. He has stated in the complaint that the present incident is consequence of such rivalry between the accused and the deceased.

7. Based on the abovesaid complaint, crime was registered and after necessary investigation, chargesheet was filed before the Addl. Sessions Judge, Junagadh. Learned Sessions Judge framed charges against the accused. When the accused pleaded not guilty to the charges and claimed trial, they were tried for the offences alleged against them.

8. To prove the charges framed against the accused, prosecution has examined, in all, 32 witnesses and marked 61 documents and at the end of the trial, after recording the statement of the accused under Section 313, Cr.PC and after hearing the arguments of prosecution and defence, learned Additional Sessions Judge held appellant-accused were guilty for the offences and awarded sentence, as narrated above. Aggrieved by the judgment of conviction and sentence imposed on the appellant-accused, the accused nos.1 and 3 have preferred Criminal Appeal No.459 of 2010 and original accused no.2 has preferred Criminal Appeal No.405 of 2010 before the High Court. The High Court, while confirming the conviction, has extended the benefit of Section 428, Cr.PC and allowed the appeals partly by common judgment, only to the extent indicated above.

9. We have heard Sri Harin P. Raval, learned senior counsel appearing for the appellant in Criminal Appeal No.216 of 2015; Sri D.N. Ray, learned counsel appearing for the appellant in Criminal Appeal No.290 of 2018; and Sri Nachiketa Joshi, learned counsel appearing for the appellant in Criminal Appeal arising out of S.L.P.(Crl.)No.3227 of 2015 and Ms. Vishakha, learned counsel appearing for the respondent-State.

10. Sri Harin Raval, learned senior counsel has contended that the conviction of the appellant-accused is mainly based on the testimony of PW-18 and PW-19, who are the injured eye witnesses. It is submitted that if their depositions are scrutinized closely, there are major contradictions. It is submitted that they are the chance witnesses and their evidence is not trustworthy to base the conviction of the appellant-accused. Further, it is submitted that there is no mention about the nature of injuries in the postmortem report and the motorcycle used in the crime was not recovered. It is further

contended that though it is the case of the prosecution that there was a head injury caused by the accused on the deceased, there is no corresponding medical injury in the postmortem Report of the deceased. It is submitted that the medical records including postmortem report are not reliable and the prosecution has failed to prove the case beyond reasonable doubt. He has thus requested to extend the benefit of doubt to the accused and set aside their conviction. In support of his arguments, learned counsel has relied on the judgments of this Court in the case of **Anand Ramachandra Chougule etc.** v. **Sidarai Laxman Chougala & Ors.**[1]**; Akula Veera Venkata Surya Prakash @ Babi** v. **Public Prosecutor, High Court of Andhra Pradesh**[2]**;** and **Mohinder Singh & Anr.** v. **State of Punjab & Ors.**[3].

11. Learned counsel Sri D.N. Ray appearing for the appellant in Criminal Appeal No.290 of 2018 has contended that though a fatal injury was attributed on the deceased, caused by one of the appellants, there were no blood marks on PWs-18 and 19 who are stated to be injured witnesses and were travelling on the same motorcycle of the deceased. Further, it is submitted that the deceased and injured were taken in Maruti car but there were no traces of blood in the car. No blood was also found on PWs-18 and 19 and injuries suffered by them are superficial. It is further submitted that the alleged incident happened at about 07:30 p.m. in the month of November, as such, there was no possibility of identifying the accused in the darkness. Further it is submitted that no injury was found on the head of the deceased as per the doctor's deposition. It is further submitted that the alleged motive, that an amount of Rs.15000/- was payable to the deceased, was no basis to record the guilt of the accused as the said incident was about eight months earlier to the date of the incident.

12. Shri Nachiketa Joshi, learned counsel appearing for the appellant in the Criminal Appeal arising out of S.L.P.(Crl.)No.3227 of 2015, while adopting the arguments of Sri Harin Raval and Sri D.N. Ray, has contended that though there is no acceptable evidence on record, the appellant was convicted for the offences alleged. He has submitted that if overall evidence is taken into consideration, the charges framed

1 (2019) 8 SCC 50
2 (2009) 15 SCC 246
3 (2004) 12 SCC 311

against the accused are not proved beyond reasonable doubt and even the High Court has not considered the grounds raised by the appellant-accused in proper perspective and dismissed the appeals.

13. Per contra, Ms. Vishakha, learned counsel appearing for the respondent-State has submitted that there are concurrent findings of conviction against the appellants. It is submitted that the trial court itself has considered at length, the oral and documentary evidence on record and has come to conclusion that the appellants were guilty for the offences alleged and there are no grounds to interfere with the same. It is further submitted that accused nos.1 and 3 were found with knives and accused no.2 caused the injury on the deceased by hitting on his head with axe when, all three were travelling on motorcycle. It is submitted that murder of the deceased was committed by injuring PWs-18 and 19 with the common intention, as such, they were rightly found guilty by the Sessions Court. Further, learned counsel, by referring to the deposition of PW-21 who was the person first to reach the place of occurrence, i.e., the brother of the deceased, has submitted that postmortem report indicates the injury on the lower back side of the head. Further, submitting that the identity of the accused cannot be questioned as all are known to each other and are of the same village. She has further submitted that the medical and ocular evidence supports the case of the prosecution, to prove the case against the accused. The learned counsel has lastly contended that discrepancies, if any, in the depositions are minor and same will not affect the case of the prosecution. The learned counsel placed reliance on the judgments of this Court in the case of **Mohar & Anr.** v. **State of U.P.**[4] and **State of Uttar Pradesh** v. **Naresh & Ors.**[5].

14. In reply, Sri Harin Raval, learned senior counsel and Sri D.N. Ray, learned counsel appearing for the appellant-accused have submitted that the alleged incident has occurred at about 07:30 p.m. on 10.11.2006 and even according to evidence, PWs-18 and 19 remained at the site of the occurrence for about 45 minutes, which is unusual. It is submitted that in a situation like this, PWs-18 and 19, who suffered injuries, should have made an attempt to shift

4 (2002) 7 SCC 606
5 (2011) 4 SCC 324

the deceased to the nearest hospital immediately. Referring to the deposition of PWs-18 and 19 in cross-examination, it is submitted that such injuries suffered by PWs-18 and 19, can be self-inflicted. Further reiterating that the discrepancies noticed in the depositions are major, hence, benefit of doubt has to go to the appellants and prayed for acquittal of the accused.

15. Having heard the learned counsel on both sides, we have perused the judgment of the trial court as well as that of the High Court and other material placed on record.

16. Upon close scrutiny of the evidence on record and the findings recorded by the trial court, as confirmed by the High Court, we do not find any merit in the submissions of the learned counsel for the appellant-accused, to interfere with the conviction recorded by the trial Court, as confirmed by the High Court.

17. To prove the charges framed against the appellants, the prosecution has examined 32 witnesses and marked 61 documents as exhibits, during the trial. Among the other witnesses examined on behalf of the prosecution, Rajshibhai Maldebhai Karangiya, who was with the deceased at the time of incident, was examined as PW-18. In his deposition he has stated that the incident occurred at about 07:30 in the evening on Bamnasa-Akha road on 10.11.2006. On that day, he, along with Miteshbhai and Gokalbhai (deceased), went to Keshod on Hero Honda motorcycle at about 05:00 O'clock in the evening. Gokalbhai was driving the motorcycle and thereafter at about 06:45 p.m. Gokalbhai's brother Vajshibhai made a phone call to Gokalbhai and stated that he wants motorcycle to go for some other work and requested him to come back if his work is completed. Therefore, they proceeded from Keshod to Village Bamnasa and when they reached near the farm of Kalabhai – a policeman, Vajshibhai Ramshibhai armed with knife, Mulubhai Markhibhai armed with axe and Kalabhai Hamirbhai armed with knife were standing across the road to stop them. When Gokalbhai slowed down the vehicle, Mulubhai Markhibhai gave axe blow on the head of Gokalbhai and, therefore, they fell down from the motorcycle and thereupon the accused started giving blows with axe and knife to Gokalbhai haphazardly. Further it is also deposed that when he and Mitesh tried to interfere, they also suffered injuries. Thereafter he made a phone call to Masaribhai at Bamnasa from his mobile and requested him to come to the place of incident

with vehicle. Therefore, after sometime, Rajubapu Bavaji came with Maruti van and Samat Govind and Vajsi Karsan were with Rajubapu. Even as per the say of this witness the reason for the incident is the altercation, between Gokalbhai and Vajashibhai with regard to rent of Rs.15000/-, which occurred six months prior to the occurrence, of which complaint was lodged in Junagadh Police Station. Other person, who was with the deceased on the day of occurrence was Mitesh Hardas Kachhot – PW-19, has also deposed on similar lines as that of PW-18. The testimony of PWs-18 and 19 who were with the deceased on the day of occurrence and who were travelling on the same motorcycle, is quite natural and trustworthy. Though it is the contention of the learned counsel for the appellant-accused that as the incident happened in the month of November it was not possible to identify the assailants in the darkness, at the same time it is clear from the evidence on record that the headlight of the vehicle was 'on' and it is evident from the record and *panchnama* of the place of occurrence that there was a light which was there on the Vadi. It is further to be noticed that the accused as well as the witnesses are of the same village, which appears to be a small village and usually the persons residing in the village meet frequently, there will not be any difficulty in identifying the persons. Therefore, as far as the identification of the accused is concerned, the same is well supported by the evidence on record. The prosecution also examined Dr. Nikhilkumar Buch – PW-1 – who has deposed that he was on duty in Civil Hospital, Junagadh on 10.11.2006. On that day at about 10:40 hrs. in the night, injured Rajshi Malde was brought to him by his nephew Hitesh Hardas, for treatment with the complaint and stated that Vajshi Ramshi attacked him and gave knife blow. The witness doctor has issued injury certificate which is exhibited as Exh.18. Dr. Prafulaben Mohanlal Dhabariya was examined as PW-2, who has performed postmortem of the deceased. The said witness has found the following injuries on the person of the deceased :

"i) There was one cut, incised wound which was transverse, in mid way of left thigh. It was upto skin and muscle. It was elliptical in shape and 5 inch long, 1 and ½ inch wide and ¾ inch deep.

ii) There was cut incised wound over left chest, left 6th inter-coastal space starting from mid clavicular line and was going downwards and laterally. It is 2 and ½ inch long, ¾ inch wide

and penetrates the cavity. The wound track is tapering and infiltrated with blood. There is no exit wound. It penetrates the rear and left ventricular wall.

iii) There was incised wound at the level of the hair line over the neck posteriorly measuring 3 inch long starting from ½ inch from the midline on the left and extending transversely to the right. The wound is ½ inch wide, cuts through skin, muscles and grazes the cervical vertebra. Bleeding noted.

iv) There was was incised wound over right side of neck below above injury laterally measuring 1 x ½ x ½ inch long x wide x deep.

v) There was incised wound parallel to above ½" below it measuring 1" x ½" x ½".

vi) There was incised wound just above right scapula at base of neck starting 1" lateral to the vertebral margin and extending laterally and transversely and upwards. It is 2" long, 1" wide and penetrates the chest cavity. The wound is tapering upwards. It penetrates the right upper lung lobe.

vii) There was incised wound over right scapula region medially measuring 1"x 1/2" x 1/2" cutting through skin and muscle, next to vertebral margin, transverse.

viii) There was incised wound over right scapula region about centrally and transversely measuring 1½" x 1" x ½".

ix) There was incised wound over right chest just below right scapula vertically and at border of scapular measuring 1 ½" x 1" x ½" cutting through skin and muscle.

x) There was incised wound lateral to above wound, also parallel to above wound, 2" distant from it and measuring 1 ½ "x 1" x ½" cutting through skin and muscle.

xi) There was incised wound and lateral and parallel to above, 2" distant from it, measuring 1 ½ "x 1"x 1/2" cutting through skin and muscle.

xii) There was incised wound over right back, 10th intercostal space transverse, measuring 2"x1" x ½".

xiii) There was incised wound over left scapula, at the base, vertical wound measuring 2" x 1" x ½" deep cutting through skin and muscle.

xiv) Incised wound at level of T12, transverse wound measuring 3 ½ "x 1" and cutting through skin, muscles and grazing bone.

xv) Incised wound at level of L2, transverse wound measuring 1 ½ "x 1" x ½" cutting through skin and muscle.

xvi) Incised wound at level of L5-S1 transverse wound measuring 3" x ½" and cutting through skin, muscles and grazing bone.

xvii) Incised wound over sacral region, vertical, midline measuring 1" x1/2" x ½", muscle deep.

xviii) Incised wound over sacral region, vertical, midline measuring 1"x ½" x ½", 2" below above wound muscle deep.

xix) Incised incised wound about 1" below injury no 16, lateral to it measuring 1" x ½ "x 1/2"."

In his deposition, with reference to abovesaid injuries, he has also opined that all the injuries are ante-mortem. The injuries which are referred to, are stated to have been enclosed in the postmortem note. Sri Jagdishbhai Sarmanbhai Kamaliya, who was the *panch* witness of the *panchmana* of the dead body, was examined as PW-5. Sri Hardasbhai Bhikhabhai Bhetariya was examined as PW-6 who was *panch* witness to the scene of offence. The prosecution has also examined Masharibhai Govindbhai Karangiya as PW-20. In his deposition he has stated that on the date of incident when he was at his field, he received a phone call of Rajshi Malde at about 07:30 in the evening stating the incident and assault on them and he was informed to come with Maruti van of Rajubapu and thereafter he has gone to village on his motorcycle. As he could not meet Rajubapu, he contacted Rajubapu on phone and requested him to come with his Maruti van to the field of Kalabhai immediately which is situated on the road of Aakha. He has clearly stated in his deposition that when he reached the spot, he has noticed the injuries on Miteshbhai and Rajashi Malde and Gokalbhai was lying in bleeding condition. He has also stated that there was a lamp in the field of Kalabhai, light of which was falling on the road. The brother of the deceased was examined as PW-21. In his deposition he has also stated that

as Gokalbhai has taken the Hero Honda motorcycle and as the same was required by him to go out of station on the motorcycle, he made a phone call to Rajashi on his mobile no.9825921960 through the coin drop box phone from the shop of Nathubhai in the village. Even this witness has stated that the reason for the incident is that Gokalbhai unloaded the soil in the field of Vajashibhai Ramshi through his tractor and the amount of Rs.15000/- towards rent thereof was outstanding from him. It is stated that as there was discord in this regard, the incident has occurred, which resulted in the murder of Gokalbhai. Sri Rajeshbhai Jethabhai Parmar who has investigated the crime, was examined as PW-31. He also clearly stated in detail in his deposition regarding the incident.

18. The submission of the learned counsels, that there was no head injury, as deposed by PWs-18 and 19 on the deceased and also as per the postmortem report, as such the deposition of PWs-18 and 19 is to be discarded, cannot be accepted for the reason that the postmortem report indicates injury on the lower back side of the head. An attempt was made to assault the deceased with an axe. We cannot expect that it has to be hit on the centre of the head. It has fallen on the lower back side of the head, same is evident from the postmortem report. At this stage, it is to be noted, that the attack was made on the deceased and injured, when they were moving on motor cycle. As such, it cannot be said that merely because there is no injury on the centre of the head, the testimony of PWs-18 and 19 is to be discarded. The doctor who has conducted the postmortem, has also clearly stated in his deposition that all injuries which were noticed on the deceased were ante mortem. If the entire evidence of all the witnesses is examined with reference to medical and other evidence on record, it is clear that the prosecution has proved the guilt of the accused beyond reasonable doubt. All the accused have committed the crime with a common intention. It is clear from the record that the role attributed to accused nos.1, 2 and 3 is fully supported by the injured witnesses as well as the deposition of investigation officer. Though the key witness, were cross-examined at length, nothing adverse was elicited. If the testimony of PW-20, i.e., Masharibhai is examined, same is fully supported by the evidence of PW-18, 19 and 21. It is clear from the evidence on record that their testimony is natural and trustworthy and so far as PWs-18 and 19 are concerned it cannot be said that they are the chance witnesses.

Even the injuries sustained by PWs-18 and 19 are not self-inflicted as per the opinion of the medical expert. Further, it is also clear from the opinion of the doctor who was examined, that all the injuries were possible with *muddammal* knife and axe. It is further to be noticed that serological report from which the blood group was found on the cloths of the deceased and that of the accused nos.1 and 2 is the same. Even with regard to the presence of accused no.3, it is also clear considering the entire oral evidence on record that his presence on the spot is also proved beyond reasonable doubt.

19. We also do not find any substance in the argument of the learned counsel that there are major contradictions in the deposition of PWs-18 and 19. The contradictions which are sought to be projected are minor contradictions which cannot be the basis to discard their evidence. The judgment of this Court in the case of **Mohar**[4] relied on by the learned counsel for the respondent-State supports the case of the prosecution. In the aforesaid judgment, this Court has held that convincing evidence is required, to discredit an injured witness. Para 11 of the judgment reads as under :

"11. The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and has seen the occurrence by himself. Convincing evidence would be required to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy which does not affect the prosecution case materially cannot create any infirmity. In the instant case the discrepancy in the name of PW 4 appearing in the FIR and the cross-examination of PW 1 has been amply clarified. In cross-examination PW 1 had clarified that his brother Ram Awadh had three sons: (*1*) Jagdish, PW 4, (*2*) Jagarnath, and (*3*) Suresh. This witness, however, stated that Jagarjit had only one name. PW 2 Vibhuti, however, stated that at the time of occurrence the son of Ram Awadh, Jagjit @ Jagarjit was milching a cow and he was also called as Jagdish. Balli (PW 3) mentioned his name as Jagjit and Jagdish. PW 4 also gave his name as Jagdish."

Learned counsel for the respondent-State has also relied on the judgment of this Court in the case of **Naresh & Ors.**[5]. In the aforesaid judgment, this Court has held that the evidence of injured

witnesses cannot be brushed aside without assigning cogent reasons. Paragraphs 27 and 30 of the judgment which are relevant, read as under :

"27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh* v. *State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , *Balraje* v. *State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and *Abdul Sayeed* v. *State of M.P.* [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262])

… … … …

… … … …

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

"*9*. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." [**Ed.**: As observed in *Bihari Nath Goswami v. Shiv Kumar Singh*, (2004) 9 SCC 186, p. 192, para 9.]

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide *State v. Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152], *Arumugam v. State* [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130 : AIR 2009 SC 331], *Mahendra Pratap Singh v. State of U.P.* [(2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352] and *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra* [(2010) 13 SCC 657 : JT (2010) 12 SC 287] ."

Further, in the case of **Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra**[6], this Court has considered the effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in criminal trial. In the aforesaid judgment it is held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of Para 42 of the judgment reads as under:

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause

6 (2000) 8 SCC 457

any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

… … …"

20. By applying the aforesaid ratio, as laid down by this Court coupled with the evidence on record, we are clearly of the view that the prosecution has proved the case against all the appellant-accused beyond reasonable doubt. The omissions like not seizing the motorcycle and also not seizing the gold chain of one of the victims, by itself, is no ground to discredit the testimony of key witnesses who were examined on behalf of the prosecution, whose say is consistent, natural and trustworthy.

21. In that view of the matter, we are fully in agreement with the view taken by the trial court in recording the conviction against the appellants, as confirmed by the High Court. Therefore, no interference is called for with the concurrent findings recorded against the appellants. As discussed earlier it is also clear that there was a quarrel between the deceased about six months earlier to the incident and one accused regarding payment of rent of tractor. Further it is brought on record that there was animosity between them which is the motive for the crime. As such, the prosecution has established, beyond reasonable doubt, that all the accused have committed the offence with a common intention and participated in committing the crime. The trial court as well as the High Court has not committed any error in law or on facts, as such, the same are required to be upheld by this Court. As far as the judgments relied on by the learned counsel for the appellants are concerned, having regard to the facts of the case and the evidence on record, we are of the view that the abovesaid judgments would not render any assistance to support the case of the appellants.

22. For the aforesaid reasons, we do not find any merit in these appeals, same are accordingly dismissed.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeals dismissed.