Koli Lakhmanbhai Chanabhai vs State Of Gujarat on 16 November, 1999

Equivalent citations: AIR 2000 SUPREME COURT 210, 1999 AIR SCW 4305, 2000 BLJR 1 368, 1999 (3) CRIMES 256, 2000 (1) UJ (SC) 9, 2000 CRIAPPR(SC) 138, 2000 ALL MR(CRI) 567, 2000 SCC(CRI) 13, 2000 CRILR(SC MAH GUJ) 111, 2000 (1) SRJ 55, 1999 (7) SCALE 127, 1999 (8) SCC 624, (1999) 9 JT 133 (SC), (1999) 4 CRIMES 383, (2000) 2 GUJ LR 1151, (2000) 2 GUJ LH 567, (2000) MAD LJ(CRI) 338, (2000) 1 RAJ LW 92, (2000) 1 RECCRIR 26, (1999) 9 SUPREME 233, (1999) 26 ALLCRIR 2764, (1999) 7 SCALE 127, (2000) 40 ALLCRIC 116, (1999) 3 CHANDCRIC 201, (2000) 1 EASTCRIC 46, (1999) 4 CURCRIR 273, 2000 CRILR(SC&MP) 111, (2000) SC CR R 183

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Bench: M.B.Shah

PETITIONER:
KOLI LAKHMANBHAI CHANABHAI

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 16/11/1999

BENCH:
M.B.Shah, G.B.Pattanaik

JUDGMENT:

Shah, J.

This appeal is filed against the judgment and order dated February 21, 1997 in Criminal Appeal No. 395 of 1985 passed by the High Court of Gujarat whereby the Court partly allowed the appeal of the State and set aside the judgment and order dated January 31, 1985 rendered in Sessions Case No.85/84 by the Addl. Sessions Judge, Junagadh acquitting the appellant and convicted him for the offence punishable under Section 302 IPC and imposed sentenced for life.

It is the prosecution story that original accused No.1 approached the father of PW2 Bhana Puna for rendering assistance for construction of house at Una district Junagadh. Father of PW2 gave some amount, which resulted into close relationship between two families. Thereafter, deceased Naran Puna had gone to Bombay for further studies in the year 1974 and stayed with the family of accused No.1. It is alleged that accused No.1 was having five to six wives and Narmada was one of them with whom deceased developed some relations; Hence deceased was thrashed by the accused and thereafter at the request of PW2 he was permitted to go to Una. Subsequently, accused No.1 (father of the appellant) and appellant (accused no.2) hatched a conspiracy at Bombay that the deceased Naran Puna, younger brother of PW2 be done to death on account of misconduct or misbehaviour of deceased with the wife of accused No.1. In the present appeal, we are not required to consider the evidence relating to the said part of the incident as the incident in question had taken place after ten year, on 17th July, 1984 between 3.00 to 4.00 p.m. on Una - Veraval road. It is the prosecution version that accused No.2 inflicted several knife blows on deceased, Naran Puna on account of enmity and ill-will of accused no.1 with the deceased. PW2 Bhana Puna, brother of the deceased on receipt of the information at about 3.30 p.m. that his brother was done to death near the farm of Jaigurudev, rushed to that place where he found several persons among whom PW7 Babu Govind and PW11 Bhagwan Jana were present. On inquiry, he learnt that Laxman Channa (appellant) had committed murder of deceased Naran. He thereafter lodged FIR at 5.00 p.m. at Una Police Station. After completing the investigation, appellant was charged with the offence punishable under section 302 IPC and original accused no.1 was charged with the offence punishable under section 302 read with section 109 IPC and both of them were also charged with the offence punishable under section 120-B IPC. The learned Addl. Sessions Judge after recording the evidence of prosecution witnesses and on appraisal and assessment thereof came to the conclusion that the prosecution case was not established beyond reasonable doubt, hence he acquitted the accused by giving benefit of doubt. Against that judgment and order the appeal filed by the State Government was partly allowed and appellant was convicted as stated above. That order is challenged in this appeal.

At the time of hearing of this appeal, learned counsel for the appellant submitted that Addl. Sessions Judge, Junagadh has rightly given benefit of doubt to the accused as the so-called eyewitnesses have not supported the prosecution version. He has also submitted that the High Court erroneously relied upon the evidence of PW7, Babu Govind, who had been treated hostile by the prosecution, for arriving at the conclusion that appellant was seen by him giving the knife blows to the deceased. He also contended that the incriminating evidence which is relied upon by the prosecution for recovery of blood stained knife and clothes of the accused, could not be relied upon because the panchas have not supported the said recovery. As against this, learned counsel for the respondent submitted that the High Court has scanned the entire evidence in proper perspective and, therefore, the judgment and order passed by the High Court does not call for any interference.

The High Court, in our view, has rightly relied upon some part of the evidence of a hostile witness. P.W.7 has not supported the prosecution story in its entirety. He has stated before the Court that two persons were quarrelling at the scene of incident and one of them was accused no.2, who was having a knife with him at the time of incident; In his deposition, he had identified the appellant as the persons giving knife blow on the deceased. He has also stated that the person who was causing injury with knife was accused no.2. His evidence also establishes the prosecution case with regard to

the time, place and weapon of offence being knife and also that person having knife was accused no.2. Some part of his evidence is corroborated by P.Ws 11 and 12. It has come on record that PW7 had immediately informed PW11 Bhagwan Jina and PW12 Nanu Bhima about the incident that two persons were fighting near the Jaigurudev Farm and one person was having knife in his hand and that he has already inflicted one blow. PW12 has also further stated that PW7 Babu Govind had informed that Laxman Chana had inflicted knife blow. This witness was cross-examined in detail with regard to this aspect but nothing could be found out from the cross- examination. On the basis of the aforesaid information P.W. 2 lodged the FIR at 5.00 p.m. Accused no.2 (appellant) was arrested and from his person extensively blood stained bush-shirt, banian and other clothes were seized. Bush-shirt and banian contained human blood A group, which was blood group of the deceased. The Investigating Officer had prepared the seizure panchnama of the clothes and of the arrest of accused. Further, the High Court has rightly relied upon the discovery of Muddamal knife at the instance of the appellant, which was hidden beneath ashes of the fire place in the kitchen of the appellant. The said knife also contained blood having A group. For that purpose the High Court has relied upon the panch witness PW20, Bhika Lakhman, who was working as Electric Supervisor in Una sugar factory.

From the aforesaid evidence on record, in our view, it cannot be said that the High Court erred in relying upon some portion of the evidence of P.W. 7 who was cross-examined by the prosecution. It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence [Re: Bhagwan Singh v. State of Haryana (1976) 1 SCC 389 and Sat Paul v. Delhi Administration (1976) 1 SCC 727]. In the present case, apart from the evidence of P.W.7, the prosecution version that he saw that appellant was having knife in his hand and was quarreling with the deceased gets corroboration from the evidence of P.Ws 11 and 12 to whom he disclosed the incident immediately. On the basis of the said information, within one hour, FIR was lodged disclosing the name of the appellant as the person who has inflicted the knife blow. Number of incised wounds are found as per the Postmortem report. The prosecution version gets further corroboration from discovery of Muddamal knife containing human blood Group A. Further the bush-shirt and baniyan which were put on by the accused at the time of incident were having extensive blood stains which were also found containing human blood group A. Learned counsel for the appellant, however, contended that accused is also having blood Group A and that he was having injury on the thigh as per the evidence of the Doctor. In our view, there is no substance in his contention because as per the medical evidence, the injuries caused to the accused were minor and that because of such injuries, there would not be extensive bloodstains on the bush-shirt and baniyan put on by the accused. In his 313 statement also, accused has not explained how he got bloodstains on his bush-shirt and baniyan. He has also not denied the recovery of the said bush-shirt and baniyan from his person at the time of his arrest.

Hence, considering the above stated evidence on record, it cannot be said that High Court committed any error in convicting the appellant for the offence punishable under Section 302 IPC.

In the result, the appeal is dismissed.