Umedbhai Jadavbhai vs The State Of Gujarat on 16 December, 1977

Equivalent citations: 1978 AIR 424, 1978 SCR (2) 471, AIR 1978 SUPREME COURT 424, (1978) 1 SCC 228, (1978) 1 SC WR 368, 1978 CRI APP R (SC) 57, 1978 SCC(CRI) 108, (1978) 2 SCR 471, 1978 SC CRI R 66, 19 GUJLR 268

Author: P.K. Goswami

Bench: P.K. Goswami, V.D. Tulzapurkar

PETITIONER:
UMEDBHAI JADAVBHAI

Vs.

RESPONDENT:
THE STATE OF GUJARAT

DATE OF JUDGMENT16/12/1977

BENCH:
GOSWAMI, P.K.
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GOSWAMI, P.K.
TULZAPURKAR, V.D.

CITATION:
1978 AIR 424 1978 SCR (2) 471
1978 SCC (1) 228

ACT:
Appeal against 'acquittal u/s 378 Criminal Procedure Code, 1973-Entertainment of an appeal is justified only under special circumstances-High Court is entitled to reappreciate the entire evidence.
Evidence-Circumstantial 'evidence-In a case resting on circumstantial evidence. all the circumstances brought out by the prosecution must inevitably and exclusively point out to the guilt of the accused.

HEADNOTE:
The appellant accused was charged and tried for the offence of murder of his wife on the night between 20th and 21st November 1972, but acquitted by the Sessions Judge. On state appeal against acquittal u/s 378 Crl.P.C., 1973 the

Gujarat High Court on reappraisal of the evidence in the case, disbelieved the theory of theft and the venue of assault, found the appellant guilty, convicted him for the offence u/s 302 I.P.C. and sentenced him to imprisonment for life.

Dismissing the appeal, the Court.

HELD : (1) In an appeal against acquittal, the High Court would not ordinarily interfere with the trial court's conclusion unless there are compelling reasons to do so, inter alia, on account of manifest errors of law or of fact resulting in miscarriage of justice. [475E]

(2) Entertainment of the appeal by the High Court against an acquittal will be justified only under special circumstances. Once the appeal was rightly entertained against the order of acquittal the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily the High Court would give due importance to the opinion of the Sessions Judge, if the same were arrived at after proper appreciation of the evidence.

In the present case, this rule will not be applicable where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case. [475G, 476C-D]

(3) In a case resting on circumstantial evidence all the circumstances brought out by the prosecution, must inevitably and exclusively point to the guilt of the accused and there should be no circumstances which may reasonably be considered consistent with the innocence of the accused. Even in the case of circumstantial evidence, the Court will have to bear in mind the cumulative effect of all the circumstances in a given case and weigh them as an integrated whole. Any missing link may be fatal to the prosecution case. [475FG]

(4) In the instant case :-(a) The High Court was justified in entertaining the appeal against acquittal. An absolutely erroneous conclusion on such an important aspect has led to a failure of justice. The Sessions Judge has committed a manifest error of record when he held that 'there was a pool of blood in the outer room and trail of blood-stains leading from the outer room to the inner-room" and relying on which he came to the conclusion that "the victim was stabbed in the outer-room while she was running from the outer room into the inner-room". There was no evidence oral or documentary to substantiate it. But on the contrary, as noticed and relied on by the High Court was the Panchnama (Ext. 15 revealing the significant fact that there' were blood stains on the pillows where the head rests, the mattress and on the bed spread (chadar), one of the important circumstance-to establish that the incident had taken place while the victim was sleeping on the bed on the floor. The evidence was of profuse bleeding on the bed and there was no "Pool of blood in the outer room". [475H, 476A-

C]
4 7 2
(b) The assault took place while the deceased was asleep on her bed and since there was no violence on the door or any part of the house by which it could be suggested that an outsider came into the room, the accused alone had the exclusive opportunity to cause the seven injuries in a closed room resulting in her death. [477C-D]
(c) The story of theft is absolutely false. 'The fact that he shouted "thief, thief" is a deliberate false plea in answer to an inevitable charge against him. [478B]
(d) The High Court was absolutely correct in appreciation of the entire circumstances and reaching the conclusion of guilt of the appellant. It is not a case in which it could be said that two views may be reasonably taken of the true tell-tale of the circumstances, revealed in' the evidence against the accused. [478C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 314 of 1974.

From the Judgment and Order dated 15th April 1974, of the Gujarat High Court in Criminal Appeal No. 632 of 1973. V. S. Desai, M. V. Goswami for the Appellant. G. A. Shah, M. N. Shroff and Miss Radha Rangaswamy for Respondent.

The Judgment of the Court was delivered by GOSWAMI, J.-Deceased Minakshi is the wife of the accused Umbedbhai Jadavbhai, who is the appellant in this appeal under section 2(a) of the Enlargement of Criminal Appellate Jurisdiction (Act 28), Act 1970 against the judgment and order of the Gujarat High Court. He was acquitted by the Sessions Judge, but on appeal by the, State, the High Court convicted him under section 302 I.P.C. for murder of his wife and sentenced him to imprisonment for life. Minakshi was a young girl of 20 years and was married to the accused on June 30, 1972. On the very day of marriage, she came to the house of the accused and returned to, her parents' house at Umalla after about 5 or 7 days. She was sent back to Panolkampa to the, house of the parents' in law on or about October 14, 1972. From Panolkampa, she came to the house of the accused at Zadeshwar on 19-11-72 and she was to leaves for Umalla, her parents' place on 21-11-72.

On the night between 20th and 21st November, 1972 at about 3.30 A.M., the neighbourhood was alerted by the accused shouting from his 'Agasi' (terrace) 'Run, Run, thieves have entered". Immediately Mahalaxmi (PW 4) whose house was almost opposite to that of the accused with a path intervening and who was talking in her courtyard with Sedaben (PW 5) came running to the house of the accused. There was death in the village and they were awake, Some other neighbours also came including Ishvarbhai Hirabhai (PW

6). First Ishvarbhai went to the upper Storey of the house of the accused accompanied by two others. He saw the accused and his brother Dinesh standing in the 'Agasi'. When he asked the accused as to

what had taken place, he replied "thief inside'. He also stated that the accused appeared to be nervous. When he 'went inside, he saw Minakshi lying with injuries between the outer and the inner room. He then shouted to the women to come up and they al saw Minakshi lying injured and restless. He did not ask the accused or Dinesh as to what had taken place. It also does not appear that the accused or Dinesh gave any further information to him about the incident. Harikrishna (PW 11) Ayurvedic Doctor, was called by the son of Jesingbhai, husband of Sadaben, and he came to the house of the accused at 4.20 A.M. and found Minakshi absolutely unconscious although bleeding from the injuries. After he rendered first aid, she died within 8 or ten minutes. The Doctor (PW 2), who held autopsy of the dead body of the Minakshi on the following morning, found the following injuries :-

> "1. An incised wound 2"x 1" wide in middle x muscle deep, at the, root of, the thumb on the back of the right hand.
>
> 2. A verticle incised wound of the size, of 1"XI," inside x muscle, deep over the upper part of the right side of the neck.
>
> 3. A horizontal incised wound on the middle of the left side of the neck, 1-1/2"x1/4" x muscle deep.
>
> 4. A horizontal incised wound on the upper part of the leftside of the neck 1 X2"X+" X muscle deep
>
> 5. An oblique incised wound on the upper part of the left 1/X" side of the neck behind the left ear of the size of 1 2 x muscle deep .
>
> 6. A horizontal incised wound on the root of the left side of the neck of the size of 1/2"X1/4" x muscle deep.
>
> 7. An incised wound of the size of 1"X1/4"

x muscle deep over the left shoulder laterally".

According to the Doctor all those injuries were antemortem and the cause of death was shock and haemorrhage due to the multiple wounds in the neck. When the knife (Article No.

8), produced by the accused, was shown to him, he said that the injuries could be caused by such an instrument. There were four injuries on the left side of the neck of the deceased and one was on the right hand side of the neck. The right hand side carotid artery (injury No. 2) was cut and according to the Doctor, any cut on the carotid artery was necessarily fatal. The third injury was on the jugular vein and that was also necessarily fatal, according to the doctor. He also stated that when the victim was attacked, she could not be standing and was sleeping or was in a reclining position. The doctor further stated that the first and the seventh injuries were can" when the deceased was offering some resistance and these could be caused while the victim was standing and even after the 2nd and the

3rd. injuries. According to the doctor, even after all these injuries, the deceased could be conscious for about 15 to 20 minutes after she bad received these injuries and she might have been able to speak in slow and whispering condition. There was no injury to the vocal chord.

The prosecution wanted to establish that the accused was not well disposed forwards his wife and in fact was planning for a divorce. In this connection an anonymous letter (Article

7) addressed to the deceased with the envelope found in the bag of the deceased was relied upon by the prosecution. The letter was addressed to the deceased by "Your anonymous elder brother". This was dated 19th of September, 1972. Since the accused denied his handwriting in this letter, the handwriting expert (PW 17) was examined and he was of opinion that the specimen handwriting which the accused gave and the writing in another admitted letter of the accused were similar to the disputed anonymous letter. The Sessions Judge did not rely upon the evidence of the handwriting expert and held that the, motive was not established. The High Court took a contrary view. This letter went to show that the accused was indifferent to the deceased and since she herself had realised that the accused was not at all interested in her and was not at all a loving husband, a proposal for divorce was suggested therein. The letter proceeds "According to me he (the accused) will give you a divorce. When a question of divorce will come for a clever girl like you, it would be said to be too bad for you, your family and for society. And if this question will come two to three years later then it will also become difficult to arrange your marriage in good family. So, although, much time has not yet been elapsed since you have got married therefore do think properly if you want to think on this matter. You should inform Umed, by writing him a letter stating that 'it is very difficult for me to pass my life with you'. So it will be said that the girl might have seen 'some defect in boy". Babubhai, the father of the deceased (PW 14) mentioned about the reported unwillingness of the accused at first to marry the deceased but latter on he wrote him a letter expressing his willingness. That letter had, however, not been produced. The father stated that according to him, the relation between daughter and the accused was not cordial. From the above, the prosecution tried to establish a motive for the crime. The Sessions Judge did not accept this part of the case. The High Court, on the other hand, did. Dealing with the point that the accused alone had the opportunity of committing the crime, the Sessions Judge ruled out that theory stating "Though there is no evidence as to theft, there is equally no conclusive evidence to show that there was no theft". The Sessions Judge was not prepared to hold that the theory of the accused that thieves had entered into his house was false. The Sessions Judge then dealt with the position of the body of the deceased which was found in between the outer and the inner rooms of the upper floor. It was lying in the communicating door between the two rooms. The bead was in the inner room and the legs were in the outer room. Minakshi's bed was about 2 or 3 feet from her bead. According to the Sessions Judge, the victim must have run from the outer room into the inner room when she was stabbed to death. Therefore, the theory of the prosecution that the accused inflicted knife blows upon her when she was sleeping or reclining on her bed cannot be accepted. The Sessions Judge also held as significant the fact of the accused shouting for the neighbours while the deceased was still alive. This point was very much emphasised even by Mr. Desai, the learned counsel for the appellant. Would the accused take a risk of inviting the neighbours to his house when the deceased was alive and she was likely to name him if he was the real murderer, said the learned counsel ?

There were two injuries on the right palm of the accused, viz. (I A horizontal incised wound on the palm of the right hand at the root of the finger, two in number, one at the root of the little finger measuring 1" x 1/3" of superficial nature and (2) the other on the root of the ring and middle finger 2-1/2" x 1/8" superficial in nature. According to the accused, these injuries were received on the previous day while cleaning blade after 'shaving. The Sessions Judge further observed as follows :-

> "It is then significant to note that there was a pool of blood in the outer room. There were scattered stains of blood leading from the outer room to the inner room. The fact that there was a pool of blood in the outer room and trail of blood-stains leading from the outer room to the inner room certainly suggests that the victim was stabbed in outer room while she was running from the outer room into the inner room".

After bestowing our anxious consideration to all the facts and circumstances of the case and to the submissions of the learned counsel for the accused, since we are clearly of opinion that the High Court was right in interfering with the order of acquittal, we are not disposed to write a lengthy judgment.

In an appeal against acquittal, the High Court would not ordinarily interfere with the trial court's conclusion unless' there are compelling reasons to do so,inter alia, on account of manifest errors of law or of fact resultingin miscarriage of justice. We are satisfied in this case that the High Court was justified in intervening in the matter for the reasons to follow.

It is well established that in a case resting on circumstantial evidence all the circumstances brought out by the prosecution, must inevitably and exclusively point to the guilt of the accused and there should be no circumstance which may reasonable be considered consistent with the innocence of the accused. Even in the case of cir- cumstantial evidence, the court will have to bear in mind the cumulative effect of all the circumstances in a given case and weigh them as an integrated whole. Any missing link may be fatal to the prosecution case.

We will first consider whether the High Court was justified in entertaining the appeal and secondly in' interfering with the order of acquittal. Entertainment of the appeal by the High Court against an acquittal will be justified only under special circumstances. They exist in this case. We find that the Sessions Judgehas committed a manifest error of blood in the outer room and trial of blood-stains leading from the outer room to the inner room." We do not find a little of evidence, oral or documentary to substantiate the above statement in the judgement of the Sessions Judge relying on which be came to the conclusion "that the victim was stabbed in the outer room while she was running from the outer room into the inner room The Sessions Judge fell into a grave error by coming to this grossly erroneous conclusion absolutely unsupported by any evidence.

Did the assault on the deceased take place while she was asleep lying on her bed? Or was it outside the inner room. when she was going out for the purpose of urinating as pleaded by the accused ? This aspect was the crux of the case. Since the Sessions Judge committed a manifest error in holding that the victim was stabbed in the outer room which can by no means be supported by the evidence on record, the High Court was justified in entertaining the appeal against acquittal. An absolutely

erroneous conclusion on such an important aspect in this particular case has led to a failure of justice.

Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to re-appreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions, Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances. of the case.

The High Court on the other hand after examining the evidence came to the following conclusion :-

> "The significant fact, that there were blood stains on pillow where the head rests, is one of the important circumstances in our opinion, to establish that the incident had taken place while the victim was sleeping in the bed on the floor".

We are in agreement with the above conclusion of the High Court and would like to add that this receives support from the Panchnama (Ext. 15) where it is noted that the pillows, mattress and bed spread (Chadar) covering the mattress were soaked in blood ("Lohi Wada"' in Gujarati). The evidence was of profuse bleeding on the bed and there was no "pool of blood in the outer room".

According to the accused, 'some thieves came and in the process of snatching ornaments from his wife, who was going out to the terrace for urinating, was attacked in this brutal manner resulting in her death. He also made the same statement in an informations which he had lodged at the Police Station next morning.

It is inconceivable that the young couple while alone inside the. inner room at night would keep the outer-door of the- house open to enable thieves to enter. The accused and his wife were alone inside the room and she was found to have 7 incised wounds, five of which were on the neck. it is impossible to conceive that the accused would not be roused from sleep even on the first assault with: a knife-

on his wife 'sleeping near him on the floor, it an outsider had attacked her all of a sudden or in the process of snatching her ornaments. It would be natural then that the accused would see the thief or thieves inside the room and would come to her help to save her from further assault. Such a conduct of the accused is not revealed in the evidence. If the intention of the intruders was theft., nothing was stolen and the seven incised wounds, two of which were caused while resisting the attack, were not necessary to be inflicted on the deceased by the theives. Whoever caused the injuries on the deceased, had the inten- tion to cause her death.

Thus the place where the assault took place assumes great importance. If the version of the accused is true that his wife opened the door of the inner room and went out to urinate when she was attacked, there would have been no blood on the pillows, the mattress and on the bed spread (Chadar). The deceased Minakshi was found lying injured unable to speak suggesting near

unconsciousness, her head lying about 2 to 3 feet from the bed and legs towards the door. The ornaments on her person were intact. We are clearly of opinionthat the assault took place while the deceased was asleep on her bedand since there was no sign of violence on the door or on any part of the house (vide evidence of PW 18) by which it could be suggested that an outsider came inside the room, the accused alone had the exclusive opportunity to causel these injuries in a closed room resulting in her death.

It was very strenuously contended by Mr. Desai that if the accused were the author of the injuries, he would not call out for the neighbours to come while his wife was alive, taking a great risk of her implicating him. We have given anxious consideration to this submission, but cannot agree that there was any risk involved in alerting the neighbours at the time chosen by the accused after he has seen the most precarious condition of the deceased. The evidence clearly discloses that there was no speech from the deceased when the neighbours came. She was "groaning " and was "restless" but "could not speak". After. these severe injuries on the neck already bleeding profusely, the restlessness of the deceased. stated by a witness (PW 4) and "groaning" of the deceased deposed to by another witness (PW 5) unfold the last stage of the condition of the dying woman before breathing her last. The doctor (PWl 1) who came within about an hour of the accused shouting "thief thief" found the deceased "absolutely unconscious" and, after he had rendered first aid and applied bandage, she died within about ten minutes of his arrival. The evidence of the doctor who held autopsy of the deceased also runs counter to the submission of Mr. Desai. We are, therefore, unable to hold that the accused who knew the actual condition of the deceased at the time of his shouting had any risk on his part to call the neighbours at the time he chose after infliction of the injuries on her. There would be sufficient loss of blood by then from the neck injuries and we have the evidence of the witnesses that she was unable It to speak and also died within about an. hour of the accused alerting the neighbours.

47 8 When the, neighbours came, the accused was found standing with his brother, Dinesh (not examined as a' 'witness) in the terrace. There was no' one else inside the house. At that time the accused "appeared to be nervous" as stated by Ishvarbhai (PW 6). The witness also stated that when he asked him as to what had taken place the accused replied "thief inside". In the normal course, we should have found the accused or his brother near the deceased rendering some aid to her. There is, however, no evidence to this effect and nothing has been brought out in the course of cross-examination. On the fateful night the accused was late in coming to his house at 11.00 P.M. from a "Bhujia Party". We do not find anything from the conduct of the accused to hold in his favour. The fact that he shouted "theif theif" is a deliberate false plea in answer to an inevitable charge against him. We agree with the High Court that the plea of the accused about the story of theft is absolutely false. We are clearly of opinion that the High Court was absolutely correct in appreciation of the entire circumstances and reaching the conclusion of guilt of the, appellant. It is not at all possible to support the- acquittal of'- the accused by the Sessions Judge in any view 'of-the matter. It is not a case in which it could be said that two views may be reasonably taken of the true tell-tale of the circumstances revealed in the evidence against the accused. The appeal is dismissed.

Appeal dismissed.

S. R. 47 9