

Rameshbhai Mohanbhai Koli & Ors vs State Of Gujarat on 20 October, 2010

Equivalent citations: 2011 AIR SCW 378, (2011) 97 ALLINDCAS 156 (SC), AIR 2011 SC (CRIMINAL) 120, AIR 2011 SC (SUPP) 577, (2010) 2 MADLW(CRI) 1377, (2010) 47 OCR 1003, 2010 CRILR(SC&MP) 896, (2010) 4 CRIMES 325, (2010) 2 CRILR(RAJ) 896, (2010) 4 DLT(CRL) 229, (2010) 4 CURCRIR 189, (2010) 11 SCALE 120, 2010 ALLMR(CRI) 3968, (2010) 4 MAD LJ(CRI) 495, (2011) 1 ALLCRILR 477, 2011 (3) SCC (CRI) 102, (2011) 2 KCCR 68, (2011) 1 GUJ LR 860, 2011 (11) SCC 111, 2010 CRILR(SC MAH GUJ) 896, 2011 CRI LJ (SUPP) 442 (SC)

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Bench: Anil R. Dave, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1146 OF 2008

Rameshbhai Mohanbhai Koli & Ors. Appellant(s)

Versus

State of Gujarat Respondent(s)

WITH

CRIMINAL APPEAL NO. 1166 OF 2009

JUDGMENT

P. Sathasivam, J.

1) These appeals are directed against the impugned judgment and final order dated 25.10.2007 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 1422 of 2005 whereby the High Court dismissed the appeal filed by the appellants confirming the order dated 23.08.2004 passed by the trial Court convicting them under Section 302 of the India Penal Code (hereinafter

referred to as `IPC') read with Section 34 IPC and also under Section 135 of the Bombay Police Act awarding each of them to undergo rigorous imprisonment (RI) for life and fine of Rs.5,000/-, in default, to further undergo RI for one year for the offences under Section 302 read with Section 34 and also awarded RI for one year and fine of Rs.1,000/-, in default, RI for one month for the offence under Section 135 of the Bombay Police Act.

2) "The case of the prosecution" as unfolded during the course of investigation was:

a) On 16.09.1999, at about 1715 hrs., Prakashbhai Raveshia, (Chairman of Morbi Nagrik Bank, Morbi), the deceased, accompanied with Ashokbhai Laljibhai Kathrani PW 106, Director in the aforesaid Bank came out of the Bank. It is the case of the prosecution that immediately after coming out of the Bank, Rameshbhai Mohanbhai Koli - appellant herein approached the deceased and asked him about the loan facility and the manner in which the loan application form was to be filled. During the course of investigation, it was further revealed that immediately thereafter, Rameshbhai Mohanbhai Koli (A1), appellant No. 1 herein, exhorted the other appellants (A2-A4) to attack the deceased. On such exhortation, A2-A4 attacked the deceased with knives and later on A1 joined them. During the investigation, it was further stated by the witnesses that, after the attack, two of the accused ran away on a motorcycle from the place of occurrence. It is important to mention here that in addition to PW-

106, the aforesaid incident was witnessed by as many as 8 witnesses, some of whom were natural witnesses being tea or pan vendor present at the place of occurrence. It was further revealed that original Accused Nos. 5-7 had conspired to eliminate Prakashbhai Raveshia and in furtherance of that conspiracy engaged the services of the appellants herein. During the panchnama (Exh.384) of the place of occurrence amongst other articles, a blood stained loan application form bearing the name and address of the appellant Rameshbhai Mohanbhai Koli (A1) was seized by the police. As regards the injuries on the person of the deceased, the post-mortem report (Exh. 206) revealed that the deceased suffered 18 injuries out of which 17 were incised wounds. It may be mentioned here that large number of injuries/incised wounds were found on the neck and the chest of the deceased.

(b) During the course of further investigation, after arrest of the appellants herein, all of them made separate disclosure statements showing their willingness to disclose the respective places where they had hidden the knives used in the commission of offence. Pursuant to such disclosures made by the appellants, they led the police to the places where they have concealed the knives used in the commission of offence. The knives recovered at the instance of the appellants Rameshbhai Mohanbhai Koli (A1), Narottam Prejji Koli (A2) and Pravin @ Dalo Lashubhai Koli (A4) were stained with blood. Blood stained clothes worn by Pravin @ Dalo Lashubhai Koli (A4) at the time of incident were also got recovered. The police also recovered the blood stained seat of the motorcycle used by two of the accused to run away from the place of occurrence.

c) The aforesaid articles, namely, the loan application form, the knives, blood stained clothes of the appellant Pravin @ Dalo Lashubhai Koli (A4) and the blood stained seat of the motorcycle were sent for forensic examination. The FSL and serological report (Exh 250) opined that the blood stains on

the aforesaid articles were of group 'O'. The blood group of the deceased also belongs to group 'O'.

d) On completion of the investigation, a charge sheet was filed in the Court of J.M.F.C. Morbi who committed the case to the Court of Additional Sessions Judge at Morbi where it was numbered as Sessions Case No. 34 of 2000.

e) The Additional Sessions Judge II, Fast Track Court, Gondol at District Rajkot recorded the evidence, heard the parties, appreciated the evidence and vide judgment dated 23.08.2004 convicted accused Nos. 1, 2 and 3 and original accused No.4 for the offences punishable, as afore-mentioned, and original accused Nos. 5, 6 and 7 were convicted for the offences under Section 302 read with Section 120-B IPC and sentenced them to suffer R.I for life and imposed a fine of Rs.5,000/-, in default, R.I. for one year, and also further directed accused Nos. 5 and 6 each to pay Rs.1,50,000/- as compensation to the widow of the deceased Prakashbhai Raveshia. However, the trial Judge acquitted accused No.8 for the offences punishable under Section 312 IPC for harbouring the accused.

f) The appellants herein with original accused No.4 preferred Criminal Appeal No. 1422 of 2005 in the High Court of Gujarat at Ahmedabad challenging the judgment and order of conviction passed by the Additional Sessions Judge, Second Fast Track Court, Gondal.

g) The High Court, by the impugned judgment and final order dated 25.10.2007, confirmed the conviction of the appellants herein and dismissed their appeal. However, Criminal Appeal Nos. 1544, 1925 and 2234 of 2004 which were also heard together along with the present appellant's appeal and by the same impugned judgment, confirmed the conviction of the appellant and accused No.4 and allowed the appeal filed by the original accused Nos. 5, 6 and 7 and acquitted them of the alleged offences and set aside the sentence awarded to them holding that there was no conspiracy.

3) Heard Mr. Vimal Chandra S. Dave, learned counsel for the appellants and Mr. Nitin Sangra, learned counsel for the respondent-State.

Points for determination:

4) (i) Whether the High Court was justified in confirming the conviction and sentence imposed by the trial Court when all the eye-witnesses did not support the case of the prosecution as against accused Nos. 1, 2 and 3 i.e., the appellants herein;

(ii) Whether the Courts below are justified in convicting and awarding life sentence based on circumstantial evidence;

(iii) Since the whole prosecution case hinges upon circumstantial evidence which in the present case does not complete the chain as there are missing links, in such event conviction is sustainable.

5) We have carefully perused the relevant materials and considered the rival submissions.

Discussion

6) It was highlighted by the learned counsel for the appellants that the appellants were not instrumental in committing the crime as they had no motive or mens rea to commit murder of Prakashbhai Raveshia who had rivalry with accused Nos. 6 and 7 and who had so many enemies in political field. It was also projected that since all the eye-witnesses examined on the side of the prosecution turned hostile, their statements cannot be relied upon in the absence of other cogent, convincing and reliable evidence. It was also their case that the test identification parade also failed to bring home the complexity of the appellants and mere recovery of knife and other materials, panchnama of the scene of occurrence and FSL Report are not sufficient to convict the appellants.

7) In the instant case, all the eye-witnesses examined on the prosecution side have en bloc turned hostile due to influence and pressure of the accused persons which included a sitting MLA of the ruling party. This aspect has been analyzed by the trial Court while convicting and awarding sentence on the accused/appellants. This Court has noted and observed in a large number of cases that witnesses may lie but circumstances do not. On going through the entire materials, particularly, the chain of circumstances, we are satisfied that the prosecution has been successful in bringing home the guilt of the appellants herein for the commission of murder of Prakashbhai Raveshia and the eye-witnesses turning hostile, do not, in any manner, create a dent in the case of the prosecution.

Hostile witness

8) It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (vide *Bhagwan Singh v. The State of Haryana*, AIR 1976 SC 202; *Rabindra Kumar Dey v. State of Orissa*, AIR 1977 SC 170; *Syad Akbar v. State of Karnataka*, AIR 1979 SC 1848 and *Khujji @ Surendra Tiwari v. State of Madhya Pradesh*, AIR 1991 SC 1853).

9) In *State of U.P. v. Ramesh Prasad Misra and Anr.*, AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543; *Gagan Kanojia and Anr. v. State of Punjab*, (2006) 13 SCC 516; *Radha Mohan Singh @ Lal Saheb and Ors. v. State of U.P.*, AIR 2006 SC 951; *Sarvesh Naraian Shukla v. Daroga Singh and Ors.*, AIR 2008 SC 320 and *Subbu Singh v. State*, (2009) 6 SCC 462.

10) In *C. Muniappan & Ors. vs. State of Tamil Nadu*, JT 2010 (9) SC 95, this Court, after considering all the earlier decisions on this point, summarized the law applicable to the case of hostile witnesses

as under:

"70.1 The evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. 70.2 In the instant case, some of the material witnesses i.e. B. Kamal (PW.86); and R. Maruthu (PW.51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. 70.3 Some omissions, improvements in the evidence of the PWs have been pointed out by the learned Counsel for the appellants, but we find them to be very trivial in nature.

71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (vide *Sohrab and Anr. v. The State of M.P.*, AIR 1972 SC 2020; *State of U.P. v. M.K. Anthony*, AIR 1985 SC 48; *Bharwada Bhogini Bhai Hirji Bhai v. State of Gujarat*, AIR 1983 SC 753; *State of Rajasthan v. Om Prakash*, AIR 2007 SC 2257; *Prithu @ Prithi Chand and Anr. v. State of Himachal Pradesh*, (2009) 11 SCC 588; *State of U.P. v. Santosh Kumar and Ors.*, (2009) 9 SCC 626 and *State v. Saravanan and Anr*, AIR 2009 SC 151)"

11) From the analysis of the statements, answers in the cross-examination, earlier statement under Section 164 of Cr.P.C. before the Magistrate and in the light of the above principles, we agree with the conclusion arrived at by the trial Court and approved by the High Court.

12) The piece of evidence which the prosecution sought to rely upon against the appellants is the various panchnamas including discovery panchnama of the weapons i.e., knives used in the commission of the offence, recovery of motorcycle, NC register, recovery of seat of motorcycle. The prosecution highlighted that A1 to A4 have shown their willingness to show the muddamal knives which have been used for murdering Prakashbhai Raveshia and, therefore, panchas were called and preliminary panchnamas were drawn and thereafter, at the instance of A1 to A4 knives were recovered which were stained with blood group of 'O' which is similar to the blood group of the deceased Prakashbhai Raveshia. The prosecution has examined and relied upon Rameshbhai Arjan PW-14, (Exh.292), who is panch witness of the discovery panchnama of the recovery of knife (muddamal article No. 25) at the instance of A3. The prosecution has also examined and relied upon the evidence of Navinchandra Parshottam Shah PW-15, (Exh.302), who is panch witness of the panchnama of recovery of knife (muddamal Article No. 37) recovered at the instance of A2. The other witness examined and relied on by the prosecution is Bhavanbhai Jagabhai Malkiya, PW-18 (Exh.311), who is the panch witness of the panchnama under which the muddamal knife (Article No.

33) was recovered at the instance of A4 which was used for commission of the offence. The prosecution has also examined and relied upon the evidence of Govindlal Shantilal Joshi, PW-26 (Exh.338), who is the panch witness of the discovery panchnama of the muddamal knife (Article No. 28) recovered at the instance of A1 and Ex.340 is the panchnama of the mud. These panchnamas are Exhs.293, 303, 312, 339 and 340. The above panch witnesses have confirmed the contents of panchnamas in their oral testimony before the Court. They have also asserted that A1 to A4 had shown their willingness and on this basis, the preliminary panchnama was drawn and thereafter, the accused have taken the panchas and the police personnel at the place where they have concealed the knives and recovered the knives from those places. It is true that in muddamal article No. 25 which was recovered at the instance of A3 was not having a blood stain. This aspect had been considered by the trial Court and rightly concluded that the said muddamal article cannot be ignored.

13) As rightly believed by the trial Court as well as the High Court as to the oral testimony of those panch witnesses as well as the panchnamas, we also feel that there is no manner of doubt in the statements made by the accused, their willingness and the preparation of preliminary panchnamas and finally recovery of concealed knives from the places shown by the accused. This material evidence of discovery of knives through proper panchnamas is sufficient to connect the accused with the crime.

14) Another important piece of evidence in the form of panchnama of the scene of offence is Exh.384. The prosecution has relied upon the oral testimony of Vijaybhai Bhagvanjibhai Zariya, PW-35 Exh.383 and Babubhai Chakubhai Vania, PW-68 Exh.519. It is true that both the panchas have turned hostile and not supported the case of the prosecution, however, panchnama has been exhibited in the cross-examination of PW-35. As requested by the State counsel, we verified the said panchnama which is available in the paper-book (vide page No. 2081) which is an application form bearing No. 001351 of A1 Rameshbhai Mohanbhai Vaghani with his residential address was found wherein he applied for a loan of Rs.60,000/- for the purpose of purchasing rickshaw and on the said form also blood stains were found. In view of the same, the said form was recovered while preparing panchnama of scene of offence. This document is one of the circumstances against A1 about his presence at the time of occurrence at the place of incident. This evidence can be relied upon to show that A1 was present at the place of offence at the relevant time.

15) In the same manner, though panchas of several other panchnamas in respect of recovery of handkerchief, seat of motor cycle and other articles with blood stains have turned hostile and not supported the prosecution case, those panchnamas were exhibited during the examination of investigating officer and for a limited purpose, therefore, they can be relied upon.

16) Yet another piece of evidence is FSL report (Exh.250), forwarding letters of muddamal weapons, clothes, etc. which are at Exhs. 244, 245, 246, 247, 248, 249 and 250 respectively. The perusal of the FSL report clearly shows that the muddamal articles were found to be stained with blood of 'O' group which is the same as blood group of the deceased Prakashbhai Raveshia. This is also one of the important circumstances which connect the accused with the crime. All these materials and the evidence of panchas, as discussed, and circumstances, unmistakably lead to the conclusion that A1 to A4 are the culprits and the complicity for commission of murder of the deceased is proved. These

aspects have been fully discussed by the trial Court and rightly affirmed by the High Court. We also agree with these aspects in toto.

17) In *Mehbub Samsuddin Malek and Others vs. State of Gujarat*, (1996) 10 SCC 480, this Court held that recovery of gupti at the instance of the accused from a dilapidated building concealed below a heap of earth which found stained with human blood group of 'B'. Clothes of the deceased also stained with the same blood group, to lead evidence regarding discovery of blood cannot be disbelieved merely because the house is in a dilapidated condition and it cannot be said that the gupti was found from an open place accessible to all.

18) The recovery of respective weapons of offence at the instance of the appellants in the instant case speaks volume. The evidence in the present case convincingly establishes that the respective places from where the recoveries were effected were exclusively within the knowledge of the appellants and the same could not have been effected by the investigating agency in the absence of the disclosure statements made by the appellants.

19) Another factor which strengthens the case of the prosecution against the appellants is the serological report which opines that the knives recovered at the instance of A1, A2, & A4 contained blood of group 'O' which is that of the deceased. This circumstance is highly incriminating and conclusively establishes the case against the appellants. All the recovery panchnamas in the instant case were fully supported by the panch witnesses i.e. PW-14, PW-15, PW-18 and PW-26.

20) The recovery of the blood-stained seat of the motorcycle used by the accused to flee from the scene of offence which as per the FSL report contained blood of group 'O' is another vital circumstance against the appellants herein.

21) The appellants herein have denied the factum of recoveries at their instance is a false plea inasmuch as the recoveries have been duly proved by the prosecution by leading cogent and reliable evidence which has not been shaken by the defence. A false plea taken by an accused in a case of circumstantial evidence is an additional link in the chain of circumstances. [Vide *Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116 and *Mehbub Samsuddin Malek & Ors. vs. State of Gujarat* (1996) 10 SCC 480].

22) We have already observed that the prosecution has established that FSL report has clearly certified that the blood found on the knife was of human origin. This question fell for consideration in *State of Rajasthan vs. Teja Ram & Ors.*, (1999) 3 SCC 507 and this Court held that it would be an incriminating circumstance if the blood on the weapon was found to be of human origin. The same view has been reiterated in *Molai and Another vs. State of M.P.*, (1999) 9 SCC 581.

Evidence of Investigating Officer

23) An argument was advanced about reliance based on the evidence of investigating officer. This Court in *State of U.P. vs. Krishna Gopal and Another*, (1988) 4 SCC 302 has held that courts of law have to judge the evidence before them by applying the well recognized test of basic human

probabilities. Prima facie, public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. [vide State of Kerala vs. M. M. Mathew & Anr., (1978) 4 SCC 65]]

24) In *Modan Singh vs. State of Rajasthan*, (1978) 4 SCC 435, it was observed that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in *Mohd. Aslam vs. State of Maharashtra*, (2001) 9 SCC 362. In *Anter Singh vs. State of Rajasthan*, (2004) 10 SCC 657, it was further held that even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.

25) This Court has held in large number of cases that merely because the panch-witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the Investigating Officer alone. In the instant case, it is not the case of defence that the testimony of Investigating Officer suffer from any infirmity or doubt. [Vide *Modan Singh's case* (supra) *Krishna Gopal's case* (supra) and *Anter Singh's case* (supra)].

26) In view of the above principles and in the light of the discussion about the recovery as stated and concluded earlier, those materials produced by the prosecution are relevant, acceptable and rightly connected these circumstances with the appellants.

27) Finally, appellants relied on the acquittal of co-accused Nos. 5 to 7. The acquittal of accused Nos. 5 to 7 does not in any manner wash away the case against the appellants which has been convincingly established on the basis of circumstances. It is relevant to note that the recovery of blood stained loan form application bearing name and address of appellant Rameshbhai Mohanbhai Koli (A1) from the scene of offence and the serological report which opines the blood to be of group 'O' which is the blood group of the deceased conclusively establishes the presence of A-1 at the scene of offence. Even though the panch-witness PW-35, Vijaybhai has turned hostile to the prosecution but the spot panchnama has been cogently and convincingly proved through the testimony of the Investigating Officer PW-160.

28) In the light of the above discussion, we are unable to accept the case of the appellants, on the other hand, we are satisfied that the prosecution has established its case insofar as the appellants and rightly convicted and sentenced by the trial Court and affirmed by the High Court. The appeals are devoid of any merits, consequently, they are dismissed.

.....J. (P. SATHASIVAM)J. (ANIL R. DAVE) NEW
DELHI;

OCTOBER 20, 2010.