

Chhagan Dame vs The State Of Gujarat on 23 March, 1993

Equivalent citations: AIR1994SC454, 1994CRILJ56, AIR 1994 SUPREME COURT 454, 1993 AIR SCW 3865 1995 SCC(CRI) 182, 1995 SCC(CRI) 182

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Bench: G.N. Ray

JUDGMENT

1. This is an appeal under Section 379, Cr. P.C. read with the provisions of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The appellant (original accused No. 1) was tried along with Bai Shontu, a lady (original accused No. 2) under Section 302 read with Section 34, I.P.C. but acquitted. The State preferred an appeal to the High Court against the said order of acquittal. The High Court, however, confirmed the acquittal of A-2, but convicted the appellant herein under Section 302, I.P.C. and sentenced him to imprisonment for life.

2. The prosecution case is as follows:

The deceased was the wife of the appellant. It is alleged that the appellant was having illicit relationship with accused No. 2 and therefore there was some misunderstanding between the appellant and the deceased. On the day of occurrence, i.e. on 24th December, 1972 at about 7.30 a.m. when the deceased was going for her work, accused No. 1 came there and gave her knife blows and accused No. 2 caught hold of the deceased and started beating her. On hearing some cries, people gathered and in the meantime the accused ran away. This occurrence was witnessed by PW-2, the daughter and the PW-3, the son i.e. the children of the appellant and the deceased. PW-3 went to her grand-mother and told her that his father has killed his mother. Thereupon, PW-6 came to the scene of the occurrence and her statement was recorded first by the police who came to the scene of occurrence on some telephone message. Thereafter, the police officer recorded the statements of PW-2 and PW-3 and sent the dead body for post mortem. The Doctor, M.T. Bhatt conducted the post mortem and found the incised injuries and opined that the cause of death is shock due to internal haemorrhage caused by injuries to liver, spleen and right lung. A case was registered and after completion of the investigation the charge-sheet was filed. The accused pleaded not guilty. The prosecution mainly relied on the evidence of PW-2 and PW-3 and sought corroboration from the evidence of PW-4, Nanalal Shankarlal and PW-6, the grandmother. The trial Court after having noticed that both PW-2 and PW-3 are children did not administer oath and recorded some questions and answers and proceeded to record their evidence. After having examined the evidence of these two eye-witnesses as well as that of PW-4 and PW-6, the trial Court felt that it was not safe to place implicit reliance upon their evidence

and acquitted both the accused. The High Court, however, after having considered the evidence of PW-2 and PW-3 found accused No. 1, namely, the appellant guilty and accordingly convicted him and sentenced him to imprisonment for life.

3. Since this is a regular appeal, we have gone through the evidence of PW-2, PW-3, PW-4 and PW-6 meticulously. PW-2 was aged about 8 to 10 years and by way of cross-examination to a question put to her, she stated that if she tells a lie, the police will beat her and she was afraid of police. She stated that at about 7.30 a.m. when her mother was going for work and on the way her father, namely, the appellant came and started giving blows with a knife. She also saw accused No. 2 inflicting knife blows on the deceased. Thereafter, the father ran away. She further deposed that as soon as her father started running away, jakalben and one Maharaj (PW-4) came there. She sent her brother (PW-3) to inform the grand-mother. In the cross-examination, she admitted that she was afraid of the police personnel and that before informing the Court, one police officer and two other policemen told her to tell only whatever she had seen and that the police officer recorded her statement and they went on saying that she had to give her evidence according to her statement already recorded. She further admitted that the police first recorded the statement of her maternal grandmother and then her statement. She does not say that she informed anybody nor mentioned about her father having stabbed the deceased to PW-4. Having considered the answers given by her, namely, that she was made to give evidence according to her statement under Section 162, creates doubt whether she could have been tutored. In the case of a child witness, the Court has to carefully consider whether the child was under the influence of any tutoring. In the case, her answers to the questions in the cross-examination clearly indicate that she was tutored and she was made to give evidence in accordance with the earlier statement recorded under Section 162. Therefore, we find it highly unsafe to place reliance on her evidence. PW-3 was another child eye-witness and the son of the appellant and the deceased. He deposed that on the day of incidence, he was going to the residence of PW-6 along with the deceased and PW-2 was also there and they were going with their mother when their father, namely, the appellant came there with two more persons with cycles and started beating the deceased. He then went to his grand-mother and told her that his father had killed the deceased. In the cross-examination, he admitted that he was informed by one lady about the incident and that was how he indicated to his grandmother. He further clearly admitted that the said lady told him that someone was beating the deceased and he ran towards the place of incident and when he reached the place of incident, the accused had ran away from the place of occurrence. These answers would indicate that he went to the scene of the occurrence only after the accused had ran away and therefore he could not have seen the appellant inflicting any injury on the deceased. PW-3 further implicated 3 more persons including accused No. 2. In these circumstances, we find it highly unsafe to rely on the evidence of the eye-witnesses. PW-3 also admitted in the cross-examination that the police personnel met him and that he was afraid of the police and had given the evidence as told by the police personnel. This again shows that he was under the influence of the police and the possibility of tutoring cannot be excluded. If the evidence of these two witnesses is excluded, then PW-4's evidence is of no consequence. However, he deposed that he heard some cries and came out from his cottage and saw a lady lying and only saw one person having a knife in his hand. He further said that he saw a girl at the scene of occurrence who told him that the person having a knife was her father. But PW-2 in her evidence nowhere stated that she told PW-4 that the person holding the knife was her father. Under these circumstances, PW-4's evidence also becomes highly doubtful. The

learned Sessions Judge has considered all evidence in detail and given good reasons for rejecting the same. The view taken by him cannot be said to be unreasonable and does not call for any interference in an appeal against acquittal by the High Court. For all these reasons, the conviction and sentence awarded to the appellant are set aside and his bail bonds shall be cancelled.

4. The appeal is accordingly allowed.