

HAJABHAI RAJASHIBHAI ODEDARA

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v.

STATE OF GUJARAT

(Criminal Appeal No. 644 of 2022)

JULY 11, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

*Penal Code, 1860: ss. 302, 307, 328 – Murder – Prosecution case that the accused and co-accused with the object of getting married, hatched a conspiracy and killed the mother and the uncle of co-accused by strangulation – Parties also tried to kill the brother of the co-accused but he survived and became the eye-witness – On investigation recovery of pesticide bottle from the place of occurrence – Co-accused being minor, tried by Juvenile Court – Conviction of accused u/ss. 302, 307 and 328 by the courts below – Justification of – Held: Justified – Though there are some contradictions in the different statements of brother of the co-accused who deposed the name of the accused, however, looking to his tender age and the fact that he suffered injuries on the neck which was proved by the doctor, the benefit of doubt given to him – Furthermore, it was established that the accused had purchased the bottle of the pesticide found from the place of occurrence – Also the accused failed to explain the said incriminating material/circumstances found against him.*

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**Dismissing the appeal, the Court**

**HELD: 1.1** Considering the overall facts and circumstances of the case, it cannot be said that the trial court as well as the High Court have committed any error convicting the accused for having killed S and her brother. Thus, the conviction and sentence imposed by the trial court, as affirmed by the High Court is upheld. [Para 7][978-B-C]

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**1.2** It is true that while convicting the accused, heavy reliance is placed on the deposition of PW66, who is the eye-witness. However, the fact remains that five statements were recorded of PW66 in which for the first time in the statement recorded on 25.03.2009 the name of the accused surfaced. The

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- A first statement of the PW66 was recorded before the Executive Magistrate which was treated as a dying declaration in which PW66 stated that there were three unknown persons. The name of the accused was not disclosed. Even in the subsequent statements also the name of the appellant-accused was not disclosed. May be because when the earlier statements were recorded co-accused was present all throughout and even PW66 was attempted to be killed and may have been threatened. Also looking to his tender age and the fact that he suffered injuries on the neck which has been established and proved by the prosecution by examining the doctor, the benefit of doubt can be given to PW66. However,
- B at the same time the accused may not be convicted on the deposition of the sole witness PW66. There must be some further evidence to connect the accused with the commission of the offence. The other circumstances which implicate the accused is recovery of the bottle of pesticide from the place of occurrence which was purchased by the accused prior to the commission of the offence. The same has been established and proved by the prosecution by examining PW58 and PW60. There is no reason to doubt the deposition of PW58 and PW60. They are cross-examined by the accused. However, they have fully supported the case of the prosecution. The accused also failed to explain the said incriminating material/circumstances found against him.[Para 6.1][977-B-H; 978-A]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 644 of 2022.

- F From the Judgment and Order dated 25.03.2019 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No.11 of 2015.

Harinder Mohan Singh, Ms. Shabana, Advs. for the Appellant.

Ms. Deepanwita Priyanka, Adv. for the Respondent.

The Judgment of the Court was delivered by

- G **M. R. SHAH, J.**

- H 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.03.2019 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No.11 of 2015 by which the High Court has dismissed the said appeal preferred by the appellant herein – original

accused and has confirmed the judgment and order of conviction passed by the learned Trial Court convicting the appellant herein – original accused for the offence punishable under Sections 302, 307, & 328 of the IPC, the original accused has preferred the present appeal. A

2. The appellant herein – original accused was tried by the learned Trial Court for the offences punishable under Sections 302, 307, 328, 120B & 201 of the IPC and under the provisions of the Arms Act. B

2.1 As per the case of the prosecution the co-accused Jagrutiben and the appellant – accused fell in love. As per the case of the prosecution, the appellant and the co-accused - Jagrutiben wanted to get married. They hatched a conspiracy to kill all the family members of Jagrutiben. According to the case of the prosecution, in furtherance of a criminal conspiracy, the appellant – accused and Jagrutiben killed the mother of Jagrutiben - Simbhiben and her brother, Mukesh by strangulation. According to the case of the prosecution, they also tried to kill another son, namely Rajdeep (PW66) by strangulation. However, the accused left Rajdeep under the belief that he had died. However, Rajdeep - PW66 survived. He was examined by the doctors. The dying declaration of Rajdeep – PW66 was recorded in presence of the Executive Magistrate which was recorded on 05.03.2009. On the strength of the dying declaration of Rajdeep which came to be recorded on 05.03.2009, the police Sub-Inspector lodged the FIR dated 06.03.2009. During the course of the investigation, further statements of Rajdeep the sole witness, were recorded on 16.03.2009, 24.03.2009 and 25.03.2009. On the basis of the statement of the Rajdeep recorded on 25.03.2009, in which Rajdeep disclosed the name of the appellant and his sister Jagrutiben, the investigation proceeded. Thereafter the appellant – accused was arrested. The post mortem reports of the Simbhiben and Mukesh revealed that the cause of death was asphyxia on account of strangulation. From the place of the occurrence, a bottle of pesticides was also recovered and collected as muddamal. It was found during the course of the investigation that it was the appellant – accused who purchased the said pesticide bottle which was found from the place of the occurrence. The statements of the relevant witnesses were recorded suggesting that it was the appellant – accused who purchased the bottle of the pesticide which was found and recovered from the place of occurrence. On the conclusion of the investigation, the Investigating Officer filed the charge-sheet. The case was committed to the Court of C  
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A Sessions. The accused pleaded not guilty. The co-accused Jagrutiben, being a minor, was tried by the Juvenile Court. The accused pleaded not guilty and therefore he came to be tried by the trial Court for the aforesaid offences.

2.3 Before the learned Trial Court the prosecution heavily relied upon the deposition of the child witness – Rajdeep who was examined as PW66. According to the prosecution, Rajdeep was the sole eye-witness who was also tried to be killed but could survive. That the learned Trial Court convicted the accused for the offences under Sections 302, 307 & 328 of the IPC. Relying upon the deposition of the sole eye-witnesses – Ex.PW66 and also considering the other surrounding circumstances namely, recovery of the bottle of pesticide from the place of occurrence which was purchased by the accused, the learned Trial Court convicted and sentenced the accused to undergo life imprisonment with fine of Rs.50,000/- for the offence punishable under Section 302 of the IPC; to undergo life imprisonment with fine of Rs.25,000/- for the offence under D Section 307 of the IPC. The learned Trial Court also sentenced the accused to undergo five years R.I. for the offence punishable under Section 328 of the IPC with fine of Rs.25,000/-.

2.4 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence by the learned Trial Court, the accused E preferred the appeal before the High Court. By the impugned judgment and order the High Court has dismissed the said appeal and has confirmed the judgment and order of conviction and sentence passed by the learned Trial Court.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the accused has preferred the F present appeal.

3. Shri Harinder Mohan Singh, learned counsel has appeared on behalf of the appellant and Ms. Deepanwita Priyanka, learned counsel has appeared on behalf of the respondent – State.

G 3.1 Shri Harinder Mohan Singh, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave/serious error in dismissing the appeal and confirming the judgment and order of conviction passed by the learned Trial Court convicting the accused for H the offences punishable under Sections 302, 307 & 328 of the IPC or having committed the murder of Simbhiben and her brother Mukesh.

3.2 It is vehemently submitted by learned counsel appearing for the accused that in the present case the High Court has confirmed the conviction solely relying upon the deposition of Rajdeep – PW66. It is contended that, considering the fact that four different statements of Rajdeep were recorded and in all the statements Rajdeep has come out with different versions of the incident as in the earliest of the four statements, Rajdeep did not implicate the appellant – accused and for the first time the name of the appellant surfaced in the last statement of the Rajdeep recorded on 25.03.2009, the conviction passed on the deposition of Rajdeep – PW66 is unsustainable. It is submitted that therefore, both, the learned Trial Court and the High Court have committed a grave error in convicting the appellant – accused relying upon the deposition of PW66.

3.3 It is further submitted by learned counsel appearing on behalf of the accused that in the present case as such except PW66 all other witnesses including panch witnesses have turned hostile. It is urged that therefore when most of the witnesses have not supported the case of the prosecution, the appellant has been wrongly convicted by the learned Trial Court.

3.4 It is further submitted by learned counsel appearing on behalf of the accused that as such the prosecution has failed to prove the motive on the part of the appellant – accused to kill anyone.

3.5 It is contended by Shri Harinder, learned counsel appearing on behalf of the appellant – accused that even the story of pesticide introduced by the prosecution is unbelievable when PW58 even did not identify the accused. Therefore, the findings recorded in para 79 recorded by the High Court can be said to be perverse.

3.6 It is submitted that it is an admitted position that as per the medical reports both the deceased died due to strangulation and that no poison was found from the stomach of the deceased. Therefore, the prosecution version on the pesticides is not believable.

Making above submissions it is prayed to allow the present appeal.

4. Present appeal is vehemently opposed by learned counsel on behalf of the State.

4.1 It is vehemently submitted by learned counsel appearing on behalf of the State that in the facts and circumstances of the case no

- A error has been committed by the learned Trial Court in convicting the accused.

4.2 It is contended that the present case is a case of double murder. That in fact the accused also tried to kill witness Rajdeep – PW66 by strangulation, however, he survived and in fact he is the eye-witness.

- B That by believing the eye-witness neither the learned Trial Court nor the High Court has committed any error in convicting the accused relying upon the deposition of the eye-witnesses – Rajdeep – PW66.

4.3 It is submitted that for the injuries sustained by Rajdeep, in the incident, he took the treatment in the hospital which fact has been established and proved by the prosecution by examining the doctor who treated Rajdeep.

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- 4.4 It is further submitted that it may be true that there are some contradictions in the different statements of Rajdeep. However, looking to the mental condition of Rajdeep at the relevant time and being a child who had seen his two of his family members being killed and also there was an attempt to kill him, and when his initial statements were recorded, Jagrutiben – co-accused all throughout was present therefore he might not have been able to state the correct facts. However subsequently when his statement was recorded on 25.03.2009 he was under the protective umbrella of police under which he stated the true facts. It is submitted that when the injuries of the Rajdeep have been established and proved by the prosecution by examining the doctor, no error has been committed by the learned Trial Court and the High Court relying upon the deposition of Rajdeep.
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- 4.5 It is submitted that even otherwise, the presence of the accused at the place of occurrence has been established and proved by the prosecution by examining PW58 and PW60. It is submitted that a bottle of the pesticide was found from the place of occurrence which was purchased by the accused himself. It is submitted that it may be true that the deceased might not have died due to pesticide. However, an attempt was made to administer the poison as the pesticide was found on the clothes of the deceased. It is submitted that to be doubly sure the accused even tried to administer the pesticide. It is contended that the accused has failed to explain his presence and purchase of pesticide. Therefore, the conviction of the accused is sustainable.
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5. We have heard the learned counsel for the respective parties at length. We have reappreciated the entire evidence on record. A

6. At the outset, it is required to be noted that this case is of double murder. It is also required to be noted that on appreciation of evidence and considering the overall surrounding circumstances, the learned Trial Court convicted the accused for having killed two persons and the same has been affirmed by the High Court. B

6.1 Having gone through the judgment and order passed by the learned Trial Court as well as the High Court it can be seen and it is true that while convicting the accused, heavy reliance is placed on the deposition of Rajdeep – PW66, who is the eye-witness. However, the fact remains that five statements were recorded of Rajdeep right from 05.03.2009 to 25.03.2009 in which for the first time in the statement recorded on 25.03.2009 the name of the accused surfaced. The first statement of the Rajdeep was recorded on 05.03.2009 which was before the Executive Magistrate which was treated as a dying declaration in which Rajdeep stated that there were three unknown persons. The name of the accused was not disclosed. Even in the subsequent statements also the name of the appellant – accused was not disclosed. May be because when the earlier statements were recorded co-accused Jagrutiben was present all throughout and even Rajdeep was attempted to be killed and may have been threatened. Also looking to his tender age and the fact that he suffered injuries on the neck which has been established and proved by the prosecution by examining the doctor, the benefit of doubt can be given to Rajdeep. However, at the same time the accused may not be convicted on the deposition of the sole witness Rajdeep. There must be some further evidence to connect the accused with the commission of the offence. The other circumstances which implicate the accused is recovery of the bottle of pesticide from the place of occurrence which was purchased by the accused prior to the commission of the offence. The purchase of the bottle of the pesticide which was found from the place of occurrence purchased by the accused has been established and proved by the prosecution by examining PW58 and PW60. We see no reason to doubt the deposition of PW58 and PW60. They are cross-examined by the accused. However, they have fully supported the case of the prosecution. We see no reason to doubt their evidence. The accused has also failed to explain the aforesaid incriminating material/circumstances found against him namely the C  
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A purchase of pesticides by him, prior to the occurrence and that the very bottle of pesticide which was purchased by him was found from the place of occurrence.

7. Under the circumstances and considering the overall facts and circumstances of the case it cannot be said that the learned Trial Court as well as the High Court have committed any error convicting the accused for having killed Simbhiben and her brother Mukesh. For the reason stated above we confirm the conviction and sentence imposed by the learned Trial Court affirmed by the High Court.

8. In view of the above discussion and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

Nidhi Jain

Appeal dismissed.