Solanki Chimanbhai Ukabhai vs State Of Gujarat on 22 February, 1983

Equivalent citations: AIR1983SC484, 1983CRILJ822, 1983(1)CRIMES625(SC), (1983)2GLR870, 1983(1)SCALE198, (1983)2SCC174, AIR 1983 SUPREME COURT 484, 1983 (2) SCC 174, 1983 (2) 24 GUJLR 870, (1983) 2 GUJ LR 870, 1983 CRILR(SC MAH GUJ) 212, 1983 UJ (SC) 401, 1983 (1) CRILC 424, 1983 (24) GUJLR 870, 1983 (1) CRIMES 625, 1983 GUJLH 576, 1983 BBCJ 103, 1983 CRIAPPR(SC) 189, 1983 SCC(CRI) 379, 1983 SC CRIR 303, (1983) 1 SCJ 339, (1983) MAD LJ(CRI) 505

Bench: D.A. Desai, R.B. Misra

JUDGMENT

Misra, J.

1. The present appeal is directed against the judgment and order of the High Court of Gujarat, dated 15th of July, 1975 allowing the appeal filed by the State of Gujarat and setting aside the order of acquittal passed by the Sessions Judge, and convicting the appellant under Section 302 IPC and sentencing him to suffer rigorous imprisonment for life.

2. The appellant and the deceased Manorbhai Veribhai had a common ancestor and they were cousins at fourth degree. They lived in the same neighbourhood. The western wall of the house of the deceased touched the eastern wall of the house of the appellant. Beyond the house of the appellant lies the wade land belonging to the deceased which is used for storing fire-wood and cow-dung cakes. There was some bad blood between the appellant and the deceased inasmuch as the brother of the appellant was murdered and Magan, the son of the deceased, was prosecuted in that connection. But eventually he was acquitted. The deceased had also received a fracture injury on his arm in that incident and in that connection the appellant along with others was also prosecuted. The said case, however, was compromised between the parties. Sometime thereafter the appellant had inflicted dharia blows on Magan, son of the deceased and that gave rise to another prosecution against the appellant, but that was also compromised at a later stage. The fact, however, remains that ever since the murder of the brother of the appellant, the relations between the two families had been strained.

3. The prosecution case as unfolded in the first information report and the evidence on the record is that on 25th of February, 1973 filthy water was thrown in the wada land of the deceased. The deceased suspected that this had been done by the appellant. He, therefore, rebuked him. The appellant on the other hand denied the throwing of filthy water in the wada land of the deceased and

threatened to teach him a lesson for his wrong accusation. The deceased returned to his house from his wada land and sat near Navania (bathing place) in front of the care of his house and was smoking hubble bubble, when the appellant returned with a spear. He gave a kick to the deceased on his back. As a result of the kick the deceased fell down and the appellant gave two or three spear blows on the chest of the deceased.

4. According to the prosecution this incident was seen by three persons (1) Bai Dhuliben, PW 4, widow of the deceased, (2) Savita, PW 3, grand-daughter of the deceased, and (3) Babubhai Mangalbhai, PW 8, a neighbour of the deceased. Some oilier persons residing in the neigh bourhood also came to the scene of the occurrence on hearing the cries of Dhuliben. The appellant, thereafter, decamped with his spear. The deceased died instantaneously on the spot. Bai Dhuliben asked one Chimanbhai Ranchhodbhai, PW 9, to send a telegram to her sons who were posted at Ahmedabad informing them that their father has been murdered by the appellant. She also proceeded to the house of Police Patel but he was not available at his home. She, however, contacted Ranchhodbhai Bhavsing, PW 11 and Somabhai Bhaijibhai, both of whom were employed as village police at village Dedarda at the material time. Somabhai thereafter went to the house of the deceased and sat near the deadbody. Ranchhodbhai accompanied Bai Dhuliben to the Police Station at Borsad who lodged the-first information report at about 9.30 p.m. giving details of the occurrence. N.J. Jadhav, PW 15, Police Sub-inspector, proceeded to village Dedarda, after recording the first information report and reached there a about 11 p.m. He immediately made a search of the house of the appellant but he was not to be found there. After the necessary formalities of Panchnama and the preparation of the inquest report, he sent the dead body to the Municipal Hospital at Borsad. Dr. M.D. Desai, PW 2, performed the postmortem examination of the dead body. After investigation the police submitted a chargesheet against the appellant and he was sent up to stand his trial for the alleged offence of murder before the Court of Sessions.

5. The defence of the appellant was one of total denial. He controverted all the material allegations levelled against him.

6. The learned Sessions Judge after considering the evidence of the three eye witnesses, (i) Bai Dhuliben, P.W. 4, (ii) Savita, P.W. 3, (iii) Babubhai, Mangalbhai, P.W. 8 and the evidence of Dr. M.D. Desai, P.W. 2. came to the conclusion that the prosecution had failed to bring home the charge of murder against the appellant. The principal reason which weighed with the learned Sessions Judge in acquitting the appellant was that one of the injuries found on the person of the deceased was of such a nature that it could not have been caused by a spear and under the circumstances medical evidence not only failed to support the case of the prosecution but rather ran counter to the prosecution case. In view of the medical report and medical evidence the learned Sessions Judge did not think it safe to rely on the testimony of eye witnesses. Besides, he found that these witnesses had tried to improve the case from stage to stage and that they were interested witnesses.

7. Against this judgment of the Sessions Judge the State of Gujarat went up in appeal and the High Court in its turn set aside the order of acquittal passed by the Sessions Judge and convicted the appellant under Section 302 sentencing him to life imprisonment, as stated earlier.

8. The High Court preferred to rely on the testimony of the eye witnesses in preference to the evidence of the doctor and indeed in its opinion the evidence of the doctor supported the prosecution case rather than belying the same.

9. The High Court was fully alive to the legal position about the power of the appellate court. The appellate court while dealing with an appeal against the order of acquittal has full power to review at large the evidence on which the order of acquittal is founded and to reach a conclusion that upon such evidence the order of acquittal should be reversed. However, in exercising that power the appellate court should give proper weight and consideration to the following matters: (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of the appellate court in disturbing a finding of fact arrived at by a Judge, who had the advantage of seeing the witnesses, which finding would not certainly be disturbed if two reasonable conclusions can be reached on the basis of the evidence on record. The High Court has considered the evidence in the light of the aforesaid principles laid down by this Court in S.H. Kemkar v. State of Maharashtra and Bhimsingh v. State of Maharashtra

10. The learned Sessions Judge discarded the evidence of the eye witnesses mainly because of the admission made by the doctor, PW 2. The doctor in his cross-examination said:

> It is possible that two different instruments might have been used for causing external injuries Nos. i and 2, because external injury No. 1 is the incised wound and the external injury No. 2 is the stab wound. External injury No. 1 is more likely to have been caused when he might be in lying position rather than in sitting one. Looking to the nature of injury No. 1 it is not correct to say that the assailant might be standing and the victim might be sleeping flat. Injuries No. 1 and 2 are possible by a blow with dagger at the hands of the assailant, surmounting the victim.
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> The learned Sessions Judge merely on the basis that two different instruments might have been used for external injuries Nos. 1 and 2 thought that the doctor's evidence belied the prosecution case. It will be relevant at this stage to refer to the three injuries:
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> (1) Incised wound 3" X 1" X 2" deep at the 4th left intercostal space, about 21/2" from midline oblique in direction from supero-lateral to inferomedial. (2) Stab wound 1" X 1/2" X 4" deep at the third left intercostal space about 4" from midline, horizontal in direction. (3) Abrasion 1/4" X 1/4" at the tip of nose.

In the opinion of Dr. Desai, injuries Nos. 1 and 2 were possible by a sharp cutting instrument and injury No. 3 was possible by friction with rough surface or by a fall. Dr. Desai however, specifically deposed that injuries Nos. 1 and 2 were possible by piercing blow given by a spear. Other internal injuries noticed by the doctor were corresponding to external injuries Nos. 1 and 2. According to the doctor the cause of injuries Nos. 1 and 2 singly or cumulatively was sufficient in the ordinary course

of nature to cause death. According to him, the cause of death was shock and haemorrhage due to external and internal injuries noticed by him.

11. The High Court appraising the evidence of the doctor observed as follows :

> It is the positive evidence of Dr. Desai in examination-in-chief that both the aforesaid injuries were possible by a sharp cutting instrument such as the spear before the Court. Under cross- examination all that has been elicited from the doctor is that two different weapons might have been used for causing the aforesaid injuries, since one of the injuries was an incised wound and the other was a stab wound. Be it noted, however, that it has not been elicited in cross-examination that one weapon such as a spear could not have caused both the injuries. To say that two different weapons might have been used for causing two different injuries is not equivalent to saying that one weapon could not have caused both the injuries. In fact, even according to what the doctor has stated at ihe conclusion of his cross-examination, both the injuries were possible by a blow given by a dagger if the assailant inflicted the blows while sitting on the person of the deceased. It is difficult to conclude, therefore, on the testimony of Dr. Desai, that both the injuries could not possibly have been caused by the same weapon to the deceased or that a spear could not have caused the first injury.
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> The Court also observed that the possibility cannot be ruled out that injury No. 1 could have been caused to the deceased if the blade of the spear had landed sidewise on his person. In the absence of any specific cross-examination of the medical witness with a view to establish that injury No. 1 could never have been caused by a spear, one would be entering into the realm of conjecture in holding that injury No. 1 was not possible by a spear.

12. In the opinion of the High Court it would not be proper to discard the testimony of eye witnesses, if it was otherwise satisfactory, on the simple ground that the medical testimony was in conflict with the testimony of the witnesses, insofar as they depose to the injuries on the deceased having been caused by a spear.

13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries: taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

14. The main ground on which the evidence of the eye witnesses have been discarded by the Sessions Judge, as observed earlier, was that the medical evidence belied the prosecution case. The High Court, in our opinion was fully justified in coming to the conclusion that medical evidence did not

belie the prosecution case, rather it was in support of the prosecution case. In the view that the High Court took about the medical evidence, it proceeded to consider the worth of the evidence of the eye witnesses. In the opinion of the High Court all the three witnesses were possible witnesses and their presence was quite natural. P.W. 4, being the widow of the deceased was likely to be present at home and see the incident herself. P.W. 3 was also the grand-daughter of the deceased. Her presence at house is also a likely one. The third witness was a neighbour. The evidence of P.W. 4 was sought to be challenged on the ground that in her deposition before the police she had not named P.W. 3, the granddaughter of the deceased as present at the time of the occurrence and the evidence of P.W. 3, the grand-daughter, who was aged seven years or eight years, was sought to be discarded on the ground that her name was not given by P.W. 4 in her statement before the police. The High Court has dealt with both these criticisms and has rightly come to the conclusion that all the three witnesses were natural witnesses and were present at the place of occurrence. The High Court has discussed the evidence of these three witnesses at great length and has also considered the grounds on which the testimony of these witnesses has been discarded by the Sessions Judge. It has given cogent reasons for relying on the testimony of the three witnesses. No exception, in our opinion, can be taken to the appraisal of the evidence made by the High Court. It is not necessary to repeat those reasons in great detail. In the opinion of the High Court the conclusion arrived at by the Sessions Judge was not a possible conclusion on the basis of the material on the record. On these findings the High Court set aside the order of acquittal and convicted the appellant for the offence under Section 302. The petitioner has now come to challenge the order of the High Court by filing the present appeal.

15. We have heard the counsel for the parties and also perused the judgment of the High Court and we are satisfied that the order of reversal passed by the High Court is fully warranted and justified by the evidence on record. We find no force in the appeal. It is accordingly dismissed.