

Takdir Samsuddin Sheikh vs State Of Gujarat & Anr on 21 October, 2011

Equivalent citations: AIR 2012 SUPREME COURT 37, 2011 (10) SCC 158, 2011 AIR SCW 6486, 2012 (2) AIR JHAR R 454, 2011 CRILR(SC MAH GUJ) 910, 2011 (4) CRIMES 232, 2011 (12) SCALE 158, (2012) 1 MH LJ (CRI) 37, 2012 (1) SCC(CRI) 218, 2012 ALL MR(CRI) 688, (2011) 2 CRILR(RAJ) 910, 2011 CRILR(SC&MP) 910, 2011 (4) CHANDCRIC 41 NOC, (2011) 4 CURCRIR 257, (2011) 4 DLT(CRL) 257, (2011) 3 RECCRIR 173, (2011) 50 OCR 912, (2012) 1 UC 61, (2012) 77 ALLCRIC 274

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Bench: A.K. Patnaik, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 831 OF 2010

Takdir Samsuddin Sheikh

...Appellant

Versus

State of Gujarat & Anr.

...Respondents

With

CRIMINAL APPEAL NO. 832 OF 2010

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Both these appeals have been preferred against the judgment and order dated 4.5.2009 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No.278 of 2002, by which it has affirmed the judgment and order passed by the Sessions Court dated 14.12.2001 in Sessions Case No.24 of 2001 in which the appellants got convicted under Section 302 read with Section 114 of the Indian Penal Code, 1860 (hereinafter called "IPC") and sentenced to life imprisonment with a fine of Rs.1000/- each.

2. Facts and circumstances giving rise to these appeals are :-

(a) That Shri Bharat Rajendraprasad Trivedi (PW.1) lodged the complaint on 21.9.2000 that the complainant, deceased along with both the appellants had gone to see the land in their two cars. The complainant (PW.1) and deceased were in one car, while appellant No.1 in another car being driven by the appellant No.2. Thereafter, they came back and decided to meet the owner of the land Smt. Jadaavben Ambalal Parmar (PW.3). Thereafter, at about 2.30 p.m. when they were coming back in their respective cars, both the appellants asked the deceased and complainant to stop their car. Both the appellants got down from the car with swords and started giving indiscriminate blows to Moiyuddin Shaikh, deceased, when the complainant and deceased had come out from their cars after receiving signal given by the appellants. The complainant got scared and started running away. He was chased by the appellant Rameshbhai Ramlal Kahar.

(b) The complainant Bharat Rajendraprasad Trivedi informed the brother of the deceased on telephone about the incident and also filed the complaint with Vadodara Taluka Police Station vide C.R. No.94 of 2000. The police reached the place of incident and recovered the dead body. The dead body was sent for post-mortem in S.S.G. Hospital Vadodara.

According to the post-mortem report, a total of 33 injuries had been caused on the body of the deceased. In the opinion of the Doctor, the cause of death was shock and haemorrhage following multiple incised wounds.

(c) The Investigating Officer had been searching for the appellants. Both the appellants/accused were arrested on 3.10.2000 while they were travelling in the Car No.GJ-6 JJ-

2408 on the highway. The car was checked and in the dicky of the car blood stained clothes were found. Blood stained swords were also recovered on the disclosure statements of the appellants. One of the swords was not having the handle.

(d) After conclusion of the investigation, the police submitted the charge-sheet and the matter was committed to the Sessions Court, Vadodara. After conclusion of the trial, the Sessions Court vide judgment and order dated 14.12.2001 convicted the appellants under Section 302 read with Section 114 IPC and both of them have been sentenced to life imprisonment with a fine of Rs.1,000/- each.

3. Being aggrieved, both the appellants preferred appeal before the High Court which has been dismissed vide impugned judgment and order dated 4.5.2009. Hence, these appeals.

4. We have heard Mr. Vikas Singh and Mr. Nachiketa Joshi learned counsel for the appellants and Mrs. Hemantika Wahi with Ms. Jesal, learned counsel for the State.

5. Learned counsel for the appellants have submitted that recovery of the blood stained clothes after 13 days from the car of the appellants is totally improbable and so is the recovery of blood stained swords. Recoveries made after such a long period cannot be relied upon as it can be presumed that the incriminating articles/materials had been planted. There had been material contradictions/embellishments/improvements in the statements of witnesses which made the case of the prosecution totally improbable.

Complainant (PW.1), deceased and appellant No.1 were partners in the business of sale and purchase of lands. In fact, there is sufficient material on record to show that in the sale transaction of land from Smt. Jadaavben Ambalal Parmar (PW.3), as the entire amount of consideration had not been paid to her by the deceased Moiyuddin Shaikh and she had raised hue and cry, a large number of persons from the village had gathered and there was a scuffle, so, it was probable that those villagers might have killed Moiyuddin Shaikh, deceased. It was not even possible for two appellants to cause as much as 33 injuries to the deceased. This defence taken by the appellants had not been given proper weightage by the courts below.

The complainant who was partner in the Firm along with the deceased and appellant no.1 herein could have also created the mischief as he would be the beneficiary in terms of money by eliminating one partner Moiyuddin Shaikh and getting convicted appellant No.1. In view of the above, the impugned judgment and order is liable to be set aside, and appeals deserve to be allowed.

6. Per contra, Mrs. Hemantika Wahi, learned Standing counsel for the State has opposed the appeal contending that the facts of the case do not warrant interference with concurrent findings of facts by the two courts. The courts below have rightly appreciated the evidence on record. Contradictions, being trivial in nature had rightly been ignored. Recoveries made in the case have rightly been believed. The appellants could be apprehended on 3.10.2000.

Therefore, the question of recovery of blood stained clothes or swords could not arise prior to that. The appeals lack merit and are liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

8. The sheet anchor of the argument on behalf of the appellants had been the contradictions/improvements in the statement of the witnesses. They are most immaterial and irrelevant for the trial. In case the earnest deed had not been seen/examined by the complainant (PW.1), as deposed by him, it could not be presumed that the complainant, who was a partner in the Firm had seen it. In case, the complainant had not been the witness to the said earnest deed it is quite natural that though he was present at the time of executing the earnest deed he might have not seen it. Another incident cited is that he did not disclose as to whether he had not told the deceased as what was the agreement/understanding in respect of sharing the benefit in the transaction of land with Smt. Jadaavben Ambalal Parmar (PW.3).

9. We are of the view that all omissions/contradictions pointed out by the appellants' counsel had been trivial in nature, which do not go to the root of the cause.

It is settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions/improvements/embellishments etc. had been of such magnitude that they may materially affect the trial.

Minor contradictions, inconsistencies, omissions or improvements on trivial matters without affecting the case of the prosecution should not be made the court to reject the evidence in its entirety.

The court after going through the entire evidence must form an opinion about the credibility of the witnesses and the appellate court in natural course would not be justified in reviewing the same again without justifiable reasons.

(Vide: Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra, (2010) 13 SCC 657).

10. The complainant Shri Bharat Rajendraprasad Trivedi (PW.1) is the sole eye-witness. It has been submitted on behalf of the appellants that being a sole and an interested witness, his evidence cannot be relied upon without corroboration. The submissions advanced in this respect had been that Shri Bharat Rajendraprasad Trivedi (PW.1) being a partner in the Firm would be beneficiary in the transaction of land involved herein in case one partner had been eliminated and other partner landed in jail. Such an argument is not acceptable for two reasons:

(i) While appreciating the evidence of witness considering him as the interested witness, the court must bear in mind that the term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some other reason. (Vide: Kartik Malhar v. State of Bihar, (1996) 1 SCC 614; and Rakesh & Anr. v. State of Madhya Pradesh, JT 2011 (10) SC 525).

(ii) This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the

testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-

honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. (See: *Vadivelu Thevar v. The State of Madras*, AIR 1957 SC 614; *Sunil Kumar v. State Govt. of NCT of Delhi*, (2003) 11 SCC 367; *Namdeo v. State of Maharashtra*, (2007) 14 SCC 150; and *Bipin Kumar Mondal v. State of West Bengal*, AIR 2010 SC 3638).

11. We do not find any force in the submissions advanced on behalf of the appellants that it was not possible for two persons to cause 33 injuries on the person of the deceased and therefore, the villagers could have caused such injuries. Had it been so, as the scuffle took place in the presence of the appellants, they could have given the full details of the incident and further disclosed as to whether those villagers reached the place of occurrence with swords.

Had it been so, Smt. Jadaavben Ambalal Parmar (PW.3) and her son Sureshbhai Ambalal Parmar (PW.5) could have also been involved in the case.

12. As the courts below have discussed each and every factual and legal aspect of the case elaborately, we do not think it proper to re-examine every point. Presence of the complainant along with deceased and appellants was natural as being partners, they had gone to see the land. In case, there was some scuffle at the place of incident for the reason that the entire consideration for land had not been paid to Smt. Jadaavben Ambalal Parmar (PW.3), what was the occasion for the villagers to chase the deceased and kill him and that is too, without harming complainant and the appellants. More so, in case only agreement to sell had been executed, question of making payment of full consideration would not arise. However, Sureshbhai Ambalal Parmar (PW.5) had stated that sale deed and agreement to sell had been executed simultaneously. We fail to understand in case the sale deed is being executed, what was the occasion for executing the agreement to sell in respect of the same land in the same transaction. Shri Vasimuddin Jenuddin Shaikh (PW.4), brother of the deceased has admitted that immediately after the incident he received the phone call from the complainant regarding the incident. This very fact makes the prosecution case most probable. FIR had been lodged promptly. Thus, there was no time for any kind of manipulation.

13. After appreciating the evidence, the two courts below reached the following conclusions:

(i) Bharat Trivedi (PW.1) is an eye-witness. He had accompanied deceased at the time when the incident had taken place.

Though, he was subjected to cross-examination, nothing substantial could be elicited.

(ii) Death of the deceased is proved. Appellants were arrested after 13 days and from the dickey of their car clothes stained with blood were discovered.

(iii) The evidence of Bharat Trivedi (PW.1) is fully trustworthy and he is not an interested witness.

(iv) In fact, Bharat Trivedi (PW.1) had informed brother of deceased about the incident without any loss of time.

(v) Bharat Trivedi (PW.1) stated that he had made phone call from STD, PCO booth whereas the relevant witness Budhabhai Prajapati (PW.6) stated that accused had made call from his place but this discrepancy is insignificant. All the witnesses are trustworthy.

(vi) Principle of falsus in uno falsus in omnibus is not applicable to a criminal trial in India.

(vii) The assertion by Bharat Trivedi (PW.1) that he was with the deceased could not be demonstrated to be untrue merely because Bharat Trivedi (PW.1) had not informed the police first but had informed brother of the deceased.

14. We had been taken through the entire record by learned counsel for the parties. We do not find any ground on the basis of which we may reach the conclusion that any of the findings recorded by the courts below is improbable or does not require affirmation.

15. In view of the above, we do not see any cogent reason to interfere with the impugned judgments and order. The appeals lack merit and are accordingly dismissed.

.....J. (Dr. B.S. CHAUHAN)J. (A.K. PATNAIK) New
Delhi, October 21, 2011