

Supreme Court of India

Kathi Ramku Alighbai vs State Of Gujarat on 24 March, 1993

Equivalent citations: AIR 1993 SC 2472

Bench: K J Reddy, G Ray

JUDGMENT

1. Heard learned Counsel.

2. This is an appeal under Section 379, Cr.P.C. read with Section 2 of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The appellant-sole accused in this case was tried for offence punishable under Section 302, Indian Penal Code for causing the murder of Vashram Mughji-the deceased in the case. The prosecution relied on the three eye-witnesses PWs 2, 3 and 10. The trial court pointing out some discrepancies in their evidence acquitted the appellant. The State preferred an appeal and the High Court having examined the evidence of each of the witnesses came to the conclusion that the reasons given by the trial court are wholly unsound for rejecting their evidence and accordingly allowed the appeal and convicted the appellant. The prosecution case is as follows:

The material witnesses-the deceased and the accused belong to village Nani Parabdi near Rajkot. There was an enmity between the accused and the members of the family of the deceased and the dispute was about a land that started 10 years back. Father of the accused filed a case against the deceased and his family members. The agricultural lands of the accused were adjacent to the land of the deceased and several cases were filed because of that dispute. On the day of occurrence, i.e. on 17-9-1979, at about 6-00 a.m., the deceased was returning after answering the call of nature. PW-2 the nephew and PW-10 the son of the deceased were sleeping in the upstairs room. PW-3 brother of the deceased lives in the same house in the ground floor. They heard the alarming cries of the deceased and they opened the windows and the door and saw the accused stabbing the deceased with a knife. They came out of the house by then and they found the injured body lying in one Bavanji's house. They saw the accused running away. They immediately asked him as to what has happened. He said that Ramku has stabbed him. Then they took the injured to the hospital but he was declared dead. Immediately after that PW-10 went and gave a report to the Police Sub-Inspector at about 9.30 a.m. and the same was sent to the Magistrate on the same day. The accused was also arrested at 3.30 p.m. and the knife was recovered. The doctor, who conducted the post mortem, found nearly nine incised wounds all over the body and on internal examination he found the vital organs injured and he opined that death was due to profuse intra the races haemorrhage and shock due to injury to the lungs and liver. That injury is sufficient in the ordinary course of nature for causing death. After completion of the investigation the charge-sheet was laid. The prosecution examined twelve witnesses in all. Out of them PWs 2, 3 and 10 figured as eye witnesses. The trial court pointing out certain discrepancies rejected the same. We have examined the reasons given by the trial court and we are inclined to agree with the High Court that the said reasonings are wholly unsound. Since this is a regular appeal, we would proceed to examine the evidence of the three eye-witnesses. First, we will take up the evidence of PW 10 son of the deceased who gave the earliest report. He deposed that he was studying in B.Com Final year in the Junagadh college. He used to go to college from his village in the morning. He was at his uncle's (PW-3) house. The night before the incident they used to sleep along with his cousin (PW-2). On that day, they were sleeping on the

upstair. On the ground floor PW-3 was staying and he used to sleep in the sitting room. In the morning they heard the cries 'help' 'help' emanating from his father and coming from the western side. He and PW-2 got up from the room which was in the western side and saw the accused inflicting blows on the deceased on the chest and other parts of the body. The deceased then ran towards the house to take shelter and fell near the house of Bavanji. Both of them went to the place where the injured had fallen. By then, PW-3 also reached the place and all the three of them had asked the deceased as to what has happened and the reply was that Ramku had stabbed him with a knife. By then, some of the neighbours also gathered there. They carried the injured to the house. They thought he was still alive and brought a taxi and took him to the government hospital. The doctor examined him and declared that he was no more. The information was sent to the police. The police Sub-Inspector came and then went back to the police station to register a complaint where PW-10 gave the report as (Ex.A). In the cross-examination, PW-10 admitted that he saw the accused stabbing the father. Then a lengthy cross-examination proceeded about location of the room, the windows, the door and the neighbourhood. The witness has given cogent answers and he stated that he did not shout 'run' 'run' and the witness was confronted with some earliest statement before the police. The witness has asserted in the cross-examination that his father told them with difficulty that Ramku had stabbed him and became unconscious. He denied the suggestion that his father died near the house of Bavanji. He also denied the suggestion that by the time his father spoke these words the other villagers gathered there. In this context, he was confronted with his earlier statement where he is supposed to have stated that his father was stabbed by Ramku. He also admitted that he lodged his complaint but did not tell others who stabbed his father. This is not a serious discrepancy because most of the villagers might have come to know about the incident. He denied the suggestion that the complaint (Ex-A) was first lodged at Nani Parabdi and not at Dhoraji Police Station. He also admitted that he and PW-2 came out from the back side of the house. Commenting upon it, learned Counsel submitted that if the occurrence had taken place in the western side there was no reason as to why they came from the back side of the house and it does suggest that the occurrence had taken place on the back side, i.e. near Bavanji's house. In such a case he would not have witnessed. We see no force in this submission. The witnesses had categorically stated that they heard the shouts from the front side and perhaps they saw the deceased walking that side and knowing that he might have reached that place and thought that they should march from the backyard. However, this is a very minor detail on the basis of which the evidence of PW-10 cannot be rejected. We have examined the earlier statement and we have also examined the Ex-A, viz. the first information given within a short while and we do not find any variation or contradiction. The witness had given all the necessary details in the complaint and the same is supported by PW-2 and PW-3. The medical evidence also stands corroboration to the version given by the witnesses. To the same effect is the evidence of PW 2 and PW-3. One thing that is to be noted is that the presence of the three witnesses at that hour in the house cannot be disputed. The occurrence has taken place somewhere between 5 and 6 a.m. Admittedly, the deceased was attacked in the vicinity. What all the three witnesses have consistently stated is that they heard the cries from the house before they opened the window and door which is a natural instinct. They saw the accused running away. This is a very natural version and there is a ring of truth in that. The two other witnesses also were cross examined on the same line. Some of the discrepancies pointed out by the learned Sessions Judge are in respect of a presence of a tin which the deceased would have taken before answering the call of nature and presence of the watch and

shoes. The learned Sessions Judge pointed out certain discrepancies in the evidence of these three eye witnesses. According to the learned Sessions Judge, there is material omission on the part of PW-10. The least that can be said is that learned Sessions Judge has overlooked the facts that these minor details might not have been mentioned in the earliest report. On the basis of these discrepancies, the learned Sessions Judge commented that it becomes highly doubtful whether he actually saw the accused from the windows and therefore, this is a vital discrepancy in the evidence. Like that, the learned Sessions Judge has pointed out certain other so-called infirmities in the evidence of these witnesses. We have examined the reasons given by the learned Sessions Judge for the purpose of rejecting the evidence of all the three eye-witnesses and we find that they do not(stand to) scrutiny at all.

3. In this case, the three eye-witnesses have given consistent version which find place in the earliest report which was given within a very short time. At any rate, there are no indications whatsoever about false implication. Having carefully gone through the evidence of the three eye-witnesses, we agree with the High Court that the reasonings of the learned Sessions Judge are wholly unsound and the view taken by him is equally unreasonable. The only view possible is the one that has been taken by the High Court. There are no merits in this appeal. The appeal is dismissed accordingly. The appellant who is on bail shall surrender and serve out the sentence.