PETITIONER:
PRADUMANSINH KALUBHA

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT21/01/1992

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
YOGESHWAR DAYAL (J)

CITATION:
1992 AIR 881 1992 SCR (1) 259
1992 SCC Supl. (2) 62 JT 1992 (1) 280
1992 SCALE (1)155

ACT:
Indian Penal Code 1860:
Section 304 Part II-Appellant-Prosecution of-Caused death by delivering knife blow on chest of deceased-Acquittal by trial court-Conviction by High Court-Held appellant's involvement in crime-Clearly established-High Court has demonstrated conclusion of trial court wrong and not sustainable on evidence.
Indian Evidence Act, 1872 :
Section 27-Weapon-Seizure of-Not material-When direct evidence available of involvement of accused.

HEADNOTE:
The prosecution alleged that the Harijans and the Garasia-Durbars in the township of Thangadh in the respondent-State were not keeping good relationship for the past six months and that the brother of the appellant who was the manager of a Cinema Talkies assaulted a Harijan teacher and that thereafter the Harijans boycotted the theatre.

On February 12, 1978, the deceased who was a Harijan painter had gone alongwith two other at about 6.00 P.M. for purchasing Datan and that when they proceeded to purchase a brush as desired by the deceased they turned back to pick up the Datan before it was too late. In the process, the deceased came in contact and unwittingly brushed with the appellant who had been passing alongwith the other two accused. Infuriated by the collision, the appellant scolded the deceased as untouchable drew out his knife and inflicted a blow on his chest. P.Ws. 4 and 5 were on the spot purchasing Datans from the vendor. The other two persons who accompanied the appellant assaulted the companions of the deceased with sticks. The deceased fell down with bleeding injury and the appellant and his associates left the place. the deceased was rushed to the Hospital, but died the same night.

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On recording the statement of PW 4 who was on the spot alongwith PW 5 a case was registered. The crime though originally registered for the offence under Section 307, IPC, was altered to Section 302, IPC. After investigation

the appellant and two others were charge-sheeted.

The prosecution adduced evidence to prove the relationship between the two factions and details of the investigation. The defence plea was that the incident did not happen in the manner in which it had been stated, and that the appellant was not involved. It was alleged that there was a collision between the cyclists followed by a commotion in the course of which injuries had been sustained by the deceased. Evidence was adduced to prove this plea.

The Sessions Judge rejected the prosecution case, considered the defence version more probable and acquitted the accused persons. The trial court found that the genesis of the crime as put forward was improbable. The appellant had mingled with Harijans boys as a sportsman in the past, and there was no reason for him to be annoyed and that the injuries sustained by the two companions of the deceased were simple and superficial and could be self inflicted and that if they were assaulted by all the four accused the assault would have resulted in more serious injuries.

On appeal by the State, the High Court convicted the appellant for the offence under Section 304 Part II, IPC and sentenced him to undergo imprisonment for a term of five years. It re-examined the entire evidence and concluded that the account given by the eye-witness was true, that the reasons given by the Trial Court for rejecting the same as not sustainable. It found no infirmity in the evidence of the witnesses and their testimony wholly reliable. On the medical evidence it found that the deceased was stabbed in the left loin from the side, the wound being cavity deep resulting in a cut of the spleen and the kidney, and lent corroboration to the testimony of the 4 PW s that the appellant had given a knife blow on the left loin of the deceased.

In the appeal to this Court it was contended that the High Court had disregarded the principles for dealing with an appeal against an order of acquittal, and that the absence of blood on the spot where the incident occurred and the weapon seized throw doubt on the credibility of the investigation. The failure to examine non-Harijan witnesses was also commented upon as amounting to suppression of material evidence.

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Dismissing the appeal, this Court,

HELD : 1. The High Court has carefully analysed the entire evidence and has demonstrated how the trial court has gone wrong and the conclusions drawn by the trial court are not sustainable on the evidence. The evidence placed on record as found by the High Court is truthful and proved the fact beyond the shadow of doubt, and the involvement of the appellant in the crime is clearly established. [p.268 C-D]

2. The nature of the injuries sustained by the deceased and the medical evidence justify the inference that there would not have been the possibility of any blood stain remaining on the spot for the injured was immediately removed from there and the place is one trampled upon by the public. [267 G]

3. In a case where there is direct evidence, even the seizure of the weapon is not very material. [p. 268 A]

4. P.W. 4 the complainant and P.W. 5 the person who accompanied the deceased to the hospital have consistently shown that the injured was taken in a push-cart to the Government hospital and the medical officer was not available. He was brought to the dispensary where PW 16 the doctor’s wife gave preliminary treatment. Thereafter, the injured was taken by the brother in a car to the Rajkot

Hospital. P.W. 16 corroborates the evidence of P.W. 5. The fact that the brother of the deceased could not disclose the identity of the assailant at the earliest opportunity is of no consequence. He was only anxious to rush the injured to the hospital If he had not probed into the cause of the assault or the identity of the assailant in that situation or carried a wrong impression about the involvement of some persons on the basis of the information conveyed to him by persons who had no direct knowledge, no inference can be drawn that there was an attempt to foist the case. [p. 266 D-F]

5. It is unlikely that the near relation of the deceased would allow the real culprit to escape and implicate some innocent person if he had the opportunity to know the real state of affairs. If he could not get reliable information, it is not likely that he would implicate some innocent person without leaving the matter to be investigated. [p. 266 F-G]

6. The vague suggestion that the brother of the deceased had in the first instance implicated appellant's brother and changed his

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stand later is not established on material. The brother of the deceased said that he learnt about the assault while he was at work. Since P.W. 4 had already left for the police station, it is not necessary for the deceased's brother to make any statement to the police at that stage. There is no proof that he had given a contrary statement at Rajkot. [pp. 266 G-H; 267 A]

7. The trial court was not, therefore, justified in rushing to the conclusion that the whole case was concocted to falsely implicate the appellant on account of the strained relationship between the two groups. It had on conjecture and strained reasoning arrived at the conclusion that the prosecution case is not true. [267 A; 268 D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No 149 of 1981.

From the Judgment and Order dated 16/17.12.1980 of the Ahmedabad High Court in Crl. A. No 24 of 1979.

N.N. Keshwani and R.N. Keshwani for the Appellants.

Bhushan Dave, Anip Sachthey and Vimal Dev Jat for the Respondents.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. The appellant, Pradumansinh Kalubha, along with others was tried for the murder of one Keshav Uka on 12.2.1978 and acquitted by the Trial Judge. On appeal by the State, the High Court of Gujarat convicted the appellant for the offence under section 304 Part II of the Indian Penal Code and sentenced him to undergo imprisonment for a term of five years. The appeal by special leave is directed against such conviction and sentence.

The occurrence happened at about 6.00 P.M. in Piplawala Chowk just in front of a shop. The prosecution case briefly stated is this : Keshav Uka was a Harijan Painter residing in a Harijan Colony to the north of the Chowk. The Durbars of the village had strained relationship with Harijans and there had been tension since the last six months prior to the occurrence on account of the boycott by the Harijans of the cinema theatre owned by Anopsinh, brother of the appellant. The deceased along with two others was on his way to get brush and Datan. While he had been turning

towards the entrance, he unwittingly brushed with the appellant, who had been passing along with the other two accused. Infuriated by the

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collision, the appellant scolded the deceased, drew out his knife and dealt a blow on his chest. The other two accused dealt blows on the companions of the deceased and caused injuries. They slipped away from the place while the deceased fell down with bleeding injury. He was immediately rushed to the hospital and thereafter to the Nursing Home of Dr. Thakkar where Gayatri Devi gave some first aid. Keshav Uka was removed to the Government Hospital, Rajkot. He succumbed to the injuries on the way.

The crime was registered against the accused persons on recording the statement of Jivabhai who was on the spot along with Purshottam. The injured persons also arrived at the Police Station while the statement was being recorded. The crime originally registered for the offence under section 307 was altered to section 302. After investigation the three persons were chargesheeted.

Jivabhai and Purshottam Khanabhai, both Harijans, claimed that they were near the scene when the occurrence happened. Besides these two witnesses, the two injured also narrated the incident. The medical evidence disclosed that the deceased had an incised wound while the two witnesses had suffered minor injuries. The prosecution adduced evidence to prove the relationship between the two factions and details of the investigation.

The defence plea was that the incident did not happen in the manner in which it had been stated. The appellant was not involved. There was a collision between the cyclists at the south-eastern side of the chowk followed by a commotion in the course of which injuries had been sustained by Keshav Uka. The defence evidence was also adduced.

The learned Sessions Judge rejected the prosecution case, considered the defence version more probable and acquitted the accused persons. Reversing the judgment and the order of the Trial Court, the High Court re-examined entire evidence and arrived at the conclusion that the account given by the eye-witnesses is true and that the reasons given by the Trial Court for rejecting the same are not sustainable.

The High Court was, however, of the view that the act would amount only to an offence under section 304 part II as it cannot be said that the appellant had any intention to cause death or such bodily injury as he knew to be sufficient to cause death, but caused injury which was likely to cause death.

The learned counsel for the appellant in challenging the conviction and sentence maintained that the High Court had disregarded the principles

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for dealing with an appeal against an order of acquittal. When the trial court had given the cogent reasons for its findings and the view taken by the trial court was reasonable and plausible, the High Court should not have upset the finding and recorded the conviction. It was pointed out that the High Court had not found the order as perverse and that the whole approach of High Court was faulty and the conviction is clearly unwarranted and unsustainable. The learned counsel has taken us through the entire evidence of the case, the appeal being one against the conviction by the High Court on reversal of the order of acquittal in an attempt to make out that the appreciation of

the evidence by the trial court which had the advantage of seeing the witness is not improper and the view taken by the trial court is reasonable. Before dealing in detail the arguments advanced, it shall be useful to refer in short to the background and the sequence of events and the nature of the evidence that have been placed on record.

The prosecution story as narrated by the witnesses is this. The Harijans and the Garasia-Durbars in the township of Thangadh were not keeping good relationship for the past six months. Anopsinh, the brother of the appellant, was the manager of Vasuki Talkies on the South-East of the chowk. A Harijan teacher was assaulted by Anopsinh and thereafter the Harijans boycotted the theatre.

On February 12, 1978, Keshav Uka had gone to Piplawala Chowk with Jagjivan Gokal and Govind Hamir from Nava-Harijanvas at about 6.00 P.M. for purchasing Datan. When they proceeded to purchase a brush as desired by the deceased who was a painter, they turned back to pick up the Datan before it is too late. In that process, the deceased came in contact with the appellant who was annoyed. He scolded the deceased as untouchable and inflicted a knife blow. Bhalabhai Jivabhai and Parshottam Khanabhai were on the spot purchasing Datans from the vendors. The other two persons who accompanied the appellant assaulted the companions of the deceased with sticks. The deceased fell down with bleeding injury and the appellant and his associates left the place. This occurrence happened just in front of Harish Stores. The deceased though rushed to the hospital died on the same night. The companions of the deceased as well as the two persons who were on the spot were put up as eye-witnesses to the occurrence. The witnesses supported the prosecution and gave a consistent account.

The reasons given by the learned Sessions Judge for discarding the prosecution case are these: The genesis of the crime as put forwarded is improbable. The appellant had mingled with Harijans boys as a sportsman

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in the past and there was no reason for him to be annoyed. The injury sustained by Jagjivan and Govind were simple and superficial and could be self-inflicted. If they were assaulted by accused 2, 3 and 4 with sticks, the assault would have resulted in more serious injuries. Therefore, the prosecution story regarding the assault on these two witness is concocted and this cuts at the root of the prosecution version regarding the incident and renders it totally improbable.

The conduct of Bhala Jiva in going to the police station instead of accompanying Parshottam Khanna to the hospital when the injured was in a critical condition is strange. The complaint could not have been recorded at 7.00 P.M. The time had been deliberately advanced. The presence of the two injured persons at the time when the statement was recorded when they admitted having gone to the colony and then to the dispensary indicate the deliberations and delay in recording the complaint. That casts suspicion regarding the truth of the earliest version. The panchnama on the injuries of the witness could not have been drawn up at the time shown.

Kanji Uka, the brother of the deceased, was informed about the attack. He rushed to the dispensary and on being told about the serious condition got down a car and took the injured to the Rajkot Hospital. The injured was conscious and could speak. The eye-witnesses were also present in the dispensary. Kanji Uka had, therefore, the opportunity to

khow the identity of the assailants. He had not however implicated the appellant and had on the other hand alleged that the crime was committed by the appellant's brother, Anopsinh. It is by an afterthought that the appellant has been implicated. The material contradiction in the evidence of the witnesses reveal that they are not witnesses of truth. The prosecution story is, therefore, wholly improbable. The true genesis of the crime was not disclosed and after deliberations the concocted story was set up. On account of the strained relationship between the Harijans and the Garasia and the tension prevailing in the immediate past, it was quite unsafe to accept the testimony of the eye-witnesses without independent corroboration. As such evidence is not forthcoming, the prosecution has to fail. On such reasoning, the acquittal was recorded.

The High Court after analysing the entire evidence has taken the contrary view and found no infirmity in the evidence of the witnesses and their testimony wholly reliable. The High Court found on the medical evidence that the deceased was stabbed in the left loin from the side the wound being cavity deep resulted in a cut of the spleen and the kidney. The medical evidence lends corroboration to the testimony of the four

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witnesses that appellant had given a knife blow on the left loin of the deceased. Regarding the injuries of the two witnesses, the High Court said "True it is that the injury to both these witnesses were simple and superficial in nature and could be self-inflicted. In order to reach the conclusion that they are self-inflicted injuries, there must be basis because all injuries which are caused on accessible parts of the body can be self-inflicted but they necessarily need not be self-inflicted." On examining the prosecution evidence, the High Court negatived the suggestion that the injuries are self-inflicted.

The accused persons were coming from the cinema side and proceeding towards the village. They were persons known to the witnesses and could be easily identified. The High Court said that merely because in the first information Ex.21 details regarding the injuries caused to these two prosecution witnesses are given, it cannot be urged that there was a meeting of minds between the prosecution witnesses. No serious infirmity has been brought out in the cross-examination of these prosecution witnesses to create a doubt regarding the correctness of their testimony as regards the incident in question.

The High Court then considered the evidence of PW-4 (Bhalabhai Jivabhai) and PW-5 (Parshottam Khana). PW-4 is the complainant and PW-5 is the person who accompanied the deceased to the hospital. They have consistently shown to the fact that the injured was taken in a push cart to the government hospital and the medical officer was not available. He was brought to the dispensary of Dr. Thakar where Gayatriben the doctor's wife gave preliminary treatment. Thereafter, the injured was taken by the brother in a car to the Rajkot Hospital. Gayatriben (PW-16) corroborates the evidence of Parshottam Khana. The fact the Kanji Uka could not disclose the identity of the assailant at the earliest opportunity is of no consequence. He was only anxious to rush the injured to the hospital. If he had not probed into the cause of the assault or the identity of the assailant in that situation or carrying a wrong impression about the involvement of some persons on the basis of the information conveyed to him by persons who had no direct knowledge, no inference can be drawn that there

was an attempt to foist the case. It is unlikely that the near relation of the deceased would allow the real culprit to escape and implicate some innocent person if he had the opportunity to know the real state of affairs. If in a case, where he could not get reliable information, it is not likely that he would implicate some innocent person without leaving the matter to be investigated. The vague suggestion that Kanji Uka had in the first instance implicated Anopsinh and changed his stand later is not established on material. Kanji Uka said that he learnt about the assault

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while he was at work. Since Bhala Jiva had already left for the police station, it is not necessary for Kanji Uka to make any statement to the police at that stage. There is no proof that he had given a contrary statement at Rajkot. The trial court was not, therefore, justified in rushing to the conclusion that the whole case was concocted to falsely implicate the appellant on account of the strained relationship between the two groups.

It has been argued before us that till the time Kanji Uka disclosed the name of Anopsinh as accused before Rajkot police, the witnesses did not know as to who had stabbed the deceased. The witnesses met Kanji Uka at the dispensary. Had they known the name of the appellant that information would have been collected by Kanji Uka. As already pointed out Kanji Uka was more anxious to remove the injured to the hospital and if he did not make any attempt to gather information regarding the incident and had only whatever information he got from other sources at the Rajkot Police Station, it would not follow that the witnesses are not truthful.

It was then maintained that the Sub-Inspector Thakur could not get any information regarding the assailant's name though he met Parshottam and the injured persons at the dispensary. The Inspector has clearly deposed that on getting the information about the incident, he rushed to the spot to verify whether such an incident has happened and having seen the injured, he immediately proceeded to make necessary arrangements to maintain law and order. He did not register a case before proceeding to the hospital or start the investigation. It was not, therefore, necessary to interrogate the persons present there. He went to the police station where the complaint was registered, made arrangements for standing the injured to the hospital, visited the scene and proceeded with the investigation. At that stage, he had questioned the witnesses. There is, therefore, nothing suspicious in the steps taken by the investigating officer. There cannot also be any suppression by the police from the fact that the deceased according to PW-17 was conscious and had answered her queries. She is not aware as to what answer the deceased has given to the police officer.

According to the learned counsel, the absence of blood on the spot near the Harish Stores, the absence of blood in the weapon seized throws doubt on the credibility of the investigation. The failure to examine non-harijans witnesses is also commented upon amounting the suppression of material evidence. The nature of the injuries sustained by the deceased and the medical evidence justify the inference that there would not have been the possibility of any blood stain remaining on the spot for the injured was immediately removed from there and the place is one trampled

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upon by the public. It is quite possible that a large crowed gathered at the scene immediately after the occurrence and

if no blood could be detected by the inspector, it is not possible to infere that the incidence did not happen at the spot. The presence of blood in the weapon is also of no consequence and no incriminating statement has been made by the accused on the production of the same. In a case where there is direct evidence, even the seizure of the weapon is not very material.

It has been contended that the acquittal may not be disturbed unless the findings of the trial court are perverse and without cogent reasons for differing from the trial court the reversal is not justified according to the counsel. It is also a case where two views are possible and that which is favourable to the accused has to prevail, it is argued. Though the proposition of law and the principles to be followed are not disputable, we find no force in the argument. We find that the High Court has carefully analysed the entire evidence and has demonstrated how the trial court has gone wrong and the conclusions drawn by the trial court are not sustainable on the evidence. It is not a case where the High Court has failed to observe the caution or misdirected itself in drawing the conclusions. We agree that the trial court had on conjecture and strained reasoning arrived at the conclusion that the prosecution case is not true. The evidence placed on record as found by the High Court is truthful and proved the fact beyond the shadow of doubt and the involvement of the appellant in the crime is clearly established. We find no reason to interfere with the judgment of the High Court.

For the foregoing reasons, the appeal must fail. The appeal is accordingly dismissed.

N.V.K. Appeal dismissed.

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