

CASE NO.:
Appeal (crl.) 1301-1302 of 1998

PETITIONER:
Khima Vikamshi & Ors.

RESPONDENT:
State of Gujarat

DATE OF JUDGMENT: 27/03/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

The case of the prosecution against the appellants herein is that in view of some old enmity entertained by the appellants they along with another minor accused formed themselves into an unlawful assembly and waylaid one Samant Naran on 11th November, 1982 when the said person along with his daughter-in-law Bai Raji (PW-4) was going to Dwarka to consult a doctor in regard to the ailment of said PW-4. It is the prosecution case that all the accused attacked the deceased with axe and sticks consequent to which said Samant Naran suffered multiple bleeding injuries and fell down. The efforts of PW-4 to save her father-in-law went in vain and after the attack it is stated that all the accused persons ran away from the place of incident. PW-4 who shouted for help could only attract the attention of the father-in-law's brother by name Malde (PW-5) who happened to pass that way. The said PW-5 on hearing the cries of PW-4 came to the place of incident and noticing the condition of his brother went to his Wadi and brought a bullock cart in which with the help of PW-4 he put the injured Samant Naran and brought him to the village of the injured. It is the prosecution case that when the injured was brought to his village, his son, wife and other members of the family were present. From the said village, the injured was taken to village Bhatiya for treatment along with PW-3 who is another brother of the injured (who was in the village when the injured was brought there), PW-4 the daughter-in-law and PW-5 the other brother. At Bhatiya, the doctor who examined the injured advised further treatment at Jamnagar, therefore, the injured along with the said doctor, PWs. 3, 4 and 5 were taken in a tempo to Jamnagar but on the way the injured died, therefore, they decided to bring the body back to the village but on the way they stopped at Kalyanpur Police Station where PW-3 lodged a complaint. The Police after investigation arrested the accused, made some recoveries and on completion of the investigation, filed a charge-sheet against all the accused for offences punishable under Sections 147, 148, 149, 302 read with Section 149 IPC before the Additional Sessions Judge, Jamnagar. The case of the minor was separated and was referred to the appropriate forum.

The learned Sessions Judge who held the trial came to the conclusion that the prosecution had not established the offences alleged against the accused and accordingly acquitted them of all the charges. On appeal by the State before the High Court of Gujarat at Ahmedabad, the High Court on re-appreciation of the material on record reversed the judgment of the learned Sessions Judge and convicted the appellants for offences punishable under

Section 302 read with Section 149 IPC as also for offences punishable under Sections 147 and 148 IPC. He awarded the sentence of imprisonment for life to the appellants.

It is against the said judgment of the High Court, the appellants are before us in these appeals.

We have heard Shri Sushil Kumar, learned senior counsel for the appellants and Ms. Sumita Hazarika, learned counsel appearing for the State.

It is to be seen that the sole eye-witness to the incident in question is PW-4 who, as stated above, is the daughter-in-law of the deceased. The appellants have very seriously questioned the presence of this witness on more than one ground. Primarily, it is contended that PW-4 admittedly is a pardanashin lady and as is the custom in the area from which she hails, normally women are accompanied by other women when they go out of the house.

Therefore, it is strange that in this particular case even though other woman like her mother-in-law was available to accompany her, she should have still gone with her father-in-law to see the doctor at Dwarka. It is also pointed out that her husband was also available in the house but he also did not accompany PW-4. It is then contended that from the topography of the place of incident, it is clear that the place at which the deceased was attacked was on a road on either side of which there were fields and because of the rains on the previous day, agricultural activities were expected to go on and in spite of the said fact no independent witnesses were present which is highly unlikely. It is also pointed out from the evidence of PW-4 that according to her, the accused persons were hiding and were not seen by her until they started attacking the deceased which is also highly artificial since the place where the incident took place was visible from a long distance; there being no obstructions for vision. Learned counsel appearing for the appellants contended that the Sessions Court rightly appreciating these discrepancies and suspicious circumstances in the evidence of PW-4 discarded her evidence, and that in such a situation, the High Court ought not to have accepted her evidence to base a conviction. It is the contention of the appellants that if PW-4's evidence is to be rejected there is no other material to base a conviction of the appellants.

We do find substantial force in the argument advanced on behalf of the appellants. We would not have taken serious note of certain minor discrepancies found in the evidence of PW-4 but for the fact that there are certain glaring suspicious circumstances creating serious doubts in our mind as to the actual presence of PW-4 at the time of the incident. As contended by the learned counsel for the appellants, in view of the fact that PW-4 has admitted that she is a pardanashin lady, her accompanying the deceased alone at the time of incident itself is a doubtful circumstance; more so in the background of the fact that her husband and mother-in-law were available in the house when she left the house for Dwarka, and the prosecution has not come out with any explanation as to why any one of them did not accompany her to Dwarka. Then again her statement that she saw the accused persons for the first time when they started assaulting the deceased, is also highly unnatural because from the topography of the place of the incident, it is clear that the area in question was a flat land with visibility to a considerably long distance, hence, if really PW-4 was present at the time of the incident, she would have noticed the accused persons much earlier than when they started assaulting the victim. Even the case of the prosecution that despite there being agricultural lands on which agricultural operations were expected to go on, there was no other villager(s) at the time of the incident, also makes the prosecution case doubtful. The timing of the arrival of PW-5 who is none other than the brother of the victim, immediately after the assailants took to their heels, also seems artificial to our minds. At this stage, we may

notice that even though the victim had suffered multiple bleeding injuries, the investigating agency has not picked up any blood-stained earth to show that the incident in question had taken place, as stated by the prosecution. While discussing this aspect of the case, the most important omission that we find in the prosecution case is the absence of any blood-stain either on the clothes or on the person of PWs.-4 and 5. It is the prosecution case that PW-4 actually fell on the body of the victim to prevent further assault and later on she and PW-5 lifted the victim and put him in a bullock-cart and travelled with the victim right through up to the time when the victim breathed his last. In such circumstances, we find it difficult that if really PWs.4 and 5 were at the place of the incident, as stated by the prosecution, then their clothes would not have been blood-stained. Failure on the part of the investigating agency to recover any such blood-stained clothes from PWs.4 and 5 creates serious doubts in our minds as to the presence of these witnesses at the time of the incident in question. Even the sudden arrival of PW-5, when no other independent villager was available at the time of the incident, is too much of a co-incidence to accept, given the background of the omissions and discrepancies pointed out by us hereinabove in the prosecution case.

In the above background, if we examine the subsequent narration of facts by the prosecution, we notice that when the victim was brought to the village, his wife and son (husband of PW-4) were present in the village. They have not been examined by the prosecution. There was a Police outpost nearby but no complaint was lodged by any of the relatives, but the prosecution alleges that the victim was taken to village Bhatiya along with PWs.3, 4 and 5 in a bullock-cart where the doctor advised that the victim be taken to Jamnagar which was acted upon by hiring a tempo but on the way the victim died. It was on return from the said place while bringing the body back to the village that PW-3 decided to file a Police complaint at Kalyanpur Police Station. Here again, the complaint was lodged by PW-3 who is not an eye-witness while PW-4, an eye-witness and PW-5 the other brother who came immediately after the assault, were there to lodge the complaint but for reasons best known to them, it was PW-3 who lodged the complaint. What is surprising in regard to lodging of the complaint is that PW-3 says that he lodged the complaint based on the information given to him by PW-5 but PW-5 in his evidence says that he had not told anything about the incident in question to PW-3. Even PW-4 categorically states that she had not given the details of the incident to PW-3. If that be so, the prosecution has not explained how PW-3 came to know about the particulars of the incident and the names of the accused persons which were mentioned in the complaint. We also notice that there is difference in the name of A-3 as originally mentioned in the complaint which was subsequently corrected at the instance of PW-3. Thus, from the above discussion of the prosecution case, we notice the following circumstances which, in our opinion, create serious doubts as to its truthfulness :-

- (i) The active role played by PW-4 even though admittedly she was a pardanashin lady, to the exclusion of her husband and mother-in-law by accompanying her father-in-law to the doctor at Dwarka then to the doctor at Bhatia and onwards to Jamnagar ;
- (ii) Absence of any blood stain on the person and clothes of PWs. 4 and 5 inspite of their holding the body of the victim and travelling with the victim in bullock cart and tempo for long distance;
- (iii) Absence of any blood stained earth at the place of incident;
- (iv) Absence of any independent witness at the place of

incident;

(v) Non accompanying of the wife and son of the deceased;

(vi) Non filing of complaint at the police outpost in the village;

(vii) Serious discrepancies in the evidence of PW-3.

The above omissions and discrepancies, in our opinion, are sufficient to create a reasonable doubt as to the genuineness of the prosecution case.

At this stage, we must note another aspect of the prosecution case which requires our comments. According to the prosecution, the investigating agency recovered certain weapons at the instance of the accused persons as per the various Panchnamas made on 12th November, 1982 to which PW-10 is the Panch witness. But a perusal of the evidence of PW-10 clearly shows that these weapons were actually shown to him on the previous day itself by the accused persons and the recoveries were allegedly made on the next day under the above noted Panchnamas. This also adds to the bundle of suspicious circumstances noted by us hereinabove in the prosecution case.

From a perusal of the judgment of the High Court, we find that the abovesaid omissions and discrepancies have not been given due weight while appreciating the prosecution case by the High Court which, in our opinion, has proceeded mechanically to accept the evidence of the prosecution in spite of the fact that the trial court has taken into consideration all these circumstances and has given the benefit of doubt to the accused persons.

For the reasons stated above, we are of the considered opinion that the High Court has erred in reversing the findings of the learned Sessions Judge, therefore, these appeals succeed. We set aside the judgment of the High Court and acquit the appellants. The appellants if in custody shall be released forthwith, if not required in any other case. If the appellants are on bail, their bailbonds shall stand discharged.

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JUDIS