

CASE NO.:
Appeal (crl.) 1080 of 1997

PETITIONER:
Vijaybhai Bhanabhai Patel

RESPONDENT:
Navnitbhai Nathubhai Patel & Ors.

DATE OF JUDGMENT: 26/03/2004

BENCH:
K.G. Balakrishnan & B.N. Srikrishna.

JUDGMENT:
J U D G M E N T

WITH

CRIMINAL APPEAL NO. 1081 OF 1997

K.G. BALAKRISHNAN, J.

These two appeals arise from the same Judgment passed by the Division Bench of High Court of Gujarat whereby the respondents herein were acquitted of the charges framed against them under Sections 144, 148, 302 read with Section 149 and Section 135 of Bombay Police Act. Among the five respondents, the 5th respondent passed away during the pendency of the appeals. All the respondents were found guilty by the Addl. Sessions Judge, Surat for all the offences charged against them and for the main offence under Section 302 read with Section 149, they had been sentenced to undergo imprisonment for life.

In the appeal filed by these respondents, the High Court was of the view that the prosecution failed to bring home their guilt. Accused no. 5 was the paternal uncle of deceased Natwarlal Bhanubhai. Accused No. 2 is the son-in-law of accused no. 5. Accused No. 1 is a brother of Accused No. 2. Accused no. 3 and accused no. 4 are cousins of accused no. 2. The prosecution case was that on 13th November, 1985, all the accused formed themselves into an unlawful assembly and went to the house of the deceased and forcibly took him to a nearby Babul tree and caused him a series of injuries and he died on the spot. PW 7 is the widow of deceased and PW 4 is the son of the deceased. At the time of the incident, some children were playing in the neighbourhood. On seeing the assault, they made a noise and after hearing the noise, PW 2, PW 3 and PW 11, the brother of the deceased came to the place of occurrence. PW 11 took the injured Natwarlal Bhanubhai to the Civil Hospital at Surat where the Doctor examined him and declared him to be dead.

From the side of the prosecution, PW 7 and PW 4 were examined as eyewitnesses. PW 11, who gave the FI statement deposed that he had seen the accused persons at the place of the incident. The High Court held that there were certain infirmities in the prosecution case, and hence the accused persons were not guilty of the offences charged against them.

The learned Counsel for the appellant submitted that PW 7 and PW 4 who claimed to be eyewitnesses cannot be believed for various reasons. It was submitted that the incident happened on 13.11.1985 but these two witnesses were questioned by the Investigation Officer only on 15.11.1985. No proper explanation was given by the Investigation Officer. There is evidence to show that the Investigation Officer had visited the house of the deceased on the very next day. It seems that there was an attempt by the prosecution to show that PW 7 the widow of the deceased was unconscious during this period and therefore, she could not be questioned by the Police. But they could have questioned PW

4, the son of the deceased at least on the very next day. The delay in questioning these witnesses by the Investigation Officer is a serious mistake on the part of the prosecution. We do not think that the High Court erred in disbelieving these witnesses.

PW 11, the brother of the deceased gave the FI Statement wherein he stated that he was the eyewitness. He gave a detailed account regarding the alleged manner in which the incident happened but when he was examined as a witness, he stated that he came to the scene of occurrence only after the incident and the accused were found standing near the deceased with various weapons. Therefore, the evidence of PW 11 also is tainted with certain embellishments. The learned Counsel for the respondents pointed out various infirmities in the prosecution case. According to PW 7 and PW 4, the accused came to their house, pulled the deceased out of the house and took him to a nearby babul tree. Why the accused who were armed with weapons did not assault the deceased at the house itself still remained a mystery? This caused some suspicion as the defence version was that the deceased was having an affair with another woman and in that connection, there was a quarrel and he must have been done away with by some other assailants and they brought the dead body near the Babul tree and left it there.

This being an appeal against acquittal, this Court would be slow in reversing the finding entered by the High Court unless there is perverse and erroneous appreciation of evidence. If the High Court, for acquitting the accused has given certain tenable reasons, this Court would not be justified in interfering with such acquittal. We do not think that the High Court has taken a view which was not plausible in view of the overall evidence given by the prosecution. Though, the prosecution could establish a serious and strong suspicion against the respondents, we do not think that this case calls for reversal of the Judgment of the High Court.

The appeals filed by the de-facto complainant and by the State are dismissed accordingly.