

Hargovandas Devrajbhai Patel

Vs

State of Gujarat

(M. M. Punchhi, M. Srinivasan JJ)

18.11.1997

JUDGMENT

SRINIVASAN,J.

1.The appellants are police officers.The first of them was a Sub Inspector and the others were Constables.They were charged with offences under Sections 201, 304 and 302 read with Section 34 I.P.C.The Court of Additional Sessions Judge, Mahesana acquitted them by given benefit of doubt and the High Court reversing the said conclusion convicted them under Section 302 part II and Section 201 read with Section 114 I.P.C.and awarded 7 years rigorous imprisonment and 2-1/1 years rigorous imprisonment besides a fine of Rs.100/- There was one other accused by name Ramaji Sursangji Thakor who died during the pendency of the appeal in the High Court resulting in its abatement against him.

2.The prosecution case was as follows:

(i) On July 19, 1992, two residents of Bhalesaravas locality of Vadnagar town came to the police station around 10.30 P.M.and informed the P.S.I (first appellant) that one man had entered their mohallah and they had tied him up and detained there.The first appellant alongwith appellants 2 and 6 and two other constables went in police jeep taking the two informants with them.They returned within half an hour with an unknown person.The said person was shouting all the time.He was saying sometimes that his father was serving in the Railways and sometimes that his father was serving in the Railways.Appellants 1 to 5 were interrogating that person who had given his name as Kantuji Mohansing of Rajpura village (Katosan).He was severely beaten by the appellants.At that time one Rasiklal Dave (PW 4) a resident nearby came to the police station and enquired about the same.He also enquired Kantuji about him and went away.The said Kantuji became unconscious during the interrogation.The appellants took him the police jeep saying that they were taking him to hospital.As they did not return for more than three hours, the Head Constable Ramanbharathi (complainant) tried to contact the Circle Police Inspector of Kheralu and the D.S.P.of Mehesana by phone but in vain. He made an entry in the Station Diary and sent a wireless message to police constable Ratansing through constable Gambhirji.As he was not feeling well he called H.C.Vadansing at about 7.10 AM on 20.7.82 and handed over charge of the police station and went home.(ii) On 20.7.82 the first appellant had registered an offence under Section 122 (c) of Bombay Police Act against one Thakarda Parbatji Bhikhaji of Jagapura who was brought to the police station in the morning by him.The said Parbatji was not the man who was interrogated in the police station on 19.7.82 night.On 21.7.82 some relatives of Kantuji came to the police station and the complainant learnt from them that

Kantuji's whereabouts were not known since 19.7.92. On 22.7.82, the complainant lodged a complaint before Circle Police Inspector of Kheralu and on the basis of the same registered a complaint against the appellants at a Vadnagar police station for the offence of commission of murder of Kantuji Mohansing and for concealing the dead body with a view of screening them from legal punishment. (iii) Thereafter investigation was started by Circle Police Inspector and a dead body was found lying in the jungle between Danta and Ambaji. It was in a decomposed state and the clothes thereon were similar to those worn by Kantuji when he was brought to the police station on the 19th. The relatives of Kantuji identified the clothes and also other articles put on the person of the dead body and also identified the body to be that of Kantuji. The appellants were arrested and after completion of investigation they were chargesheeted.

3. The accused put forward a case that the man who was brought to the police station on 19.7.82 was one Parbatji Bhikhaji of Jagapura village and he was taken for investigation of an offence of house breaking committed in Bhalesaravas locality and as he was not found to have been involved in that offence, he was brought back to the police station in the morning and the first appellant registered a complaint under Section 122 (c), Bombay Police Act. The said Parbatji is alive and no offence was committed by them.

4. The Additional Sessions Judge, Mahesana framed the following points for determination:

(i) Whether it is proved that the dead body found at Trishuliya Dhata, between Danta Ambaji, on 23.7.82 was of Kantuji Mohansing Thakor of village Rajpur (Katonsan) Taluka: Viramgam?

(2) If yes, whether said Kantuji died a homicidal death?

(3) Whether it is proved that between the night of 19.7.82 and 20.7.82 all the accused or any of them, with aid and abetment of each other or by sharing common intention, had intentionally killed said Kantuji at Vadnagar police station as alleged?

(4) Whether it is proved that all the accused or any of them had thrown the dead body of Kantuji Mohansing the place from where it was found with the intention of screening the offenders from legal punishment?

(5) What offence, the seven accused or any of them, are proved to have committed?"

5. The prosecution examined twelve witnesses and marked several documents. After considering the evidence the trial judge answered the first point in the affirmative and points 2 to 4 in the negative. He held on the fifth point that none of the accused was proved to have committed any offence for which they stood charged. Consequently he gave benefit of doubt to the accused and acquitted them under Section 232 Cr.P.C.

6. The state of Gujarat preferred an appeal. The High Court reversed the conclusion of the trial court and found the appellants to be guilty. Both the judges of the Division Bench wrote separate but concurrent judgments convicting the appellants under Section 304 part II read with Section 114 I.P.C. as well as Section 201 I.P.C. The appellants have preferred this appeal challenging the same.

7. We have heard learned counsel on both sides at length and perused the entire record. At the outset,

it is to be noticed that the case rests on circumstantial evidence and there is not eye witness for the occurrence of the offence. It has been repeatedly laid down by this Court that circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of event must be established beyond reasonable doubt and the circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In other words the only inference that could be drawn from the circumstances should be in support of the case of prosecution and wholly incompatible with the innocence of the accused. It is unnecessary to refer to the rulings on the subject except to cite a decision relied on by the learned counsel for the appellant. In *State of Punjab Versus Bhajan Singh AIR 1975 S.C.258* this Court held that the circumstantial evidence was suffering from a number of infirmities and the doctor was unable to find the cause of death because the dead bodies were in decomposed stage. In such circumstances the Court opined that it could not be said that the death of persons whose bodies were recovered was homicidal. This Court also observed that suspicion against accused by itself, however strong it may be, is not sufficient to take place of proof and warrant a finding of guilt of accused.

8. Bearing the above principles in mind if the evidence in this case is analysed, it is clear that there are several links in the chain missing and it is not possible to hold that the established circumstances lead on an irresistible inference that the accused were guilty of the offence with which they stood charged.

9. The trial judge has not doubt held that the dead body found at Trishuliya Dhata between Danta and Ambaji on 23.7.82 was that of Kantuji Mohansingh of Village Rajpur (Katosan). The said conclusion was arrived at by the trial Judge on the basis of the identification made with the aid of the dress and other things found on the body such as talisman, plastic sandals etc. But there are several discrepancies in the evidence of those witnesses including the colour of the dress worn by the person who was brought to the police station on the night of 19.7.1992. Even assuming that such discrepancies are not very material, there are some unexplained factors and unanswered questions which cause grave doubt on the identification of the body to be that of Kantuji. According to the evidence of Jayantibhai Kakubha, a cousin brother of Kantuji, both of them had gone to Visnagar to consult Dr. Motibhai Chaudhari in his dispensary with regard to Eczema from which Kantuji was suffering. As there was a rush of patients in the dispensary, Kantuji said that they would come again on the next day and therefore both had gone to Visnagar S.T. Bus station at about 7.30 P.M. in order to return to Rajpur. According to the witness, Kantuji had boarded a bus which was proceeding to Vadnagar when he had gone to the water room for drinking water and he was left behind. Kantuji was admittedly sufficiently educated so as to read the board displaying the destination of the bus. There was no reason whatever for him to go to Vadnagar and that too leaving his cousin brother in the lurch. It is not in evidence that at that time there was no bus to (Katosan) Rajpur and that one had to go to Vadnagar and proceed from there to Rajpur. The prosecution has failed to adduce any evidence on this aspect of the matter.

10. Secondly, the wife of Kantuji was not examined in Court who would have been the best person to identify the dead body to be that of Kantuji. There is no explanation for not examining her.

11. The doctor who performed the post mortem (PW-1) has deposed that it was not possible to identify as to whose dead body it was as the same was highly decomposed. In the circumstances we are unable to persuade ourselves to accept the correctness of the finding of the trial judge that the dead body was that of Kantuji even though it has been affirmed by the High Court.

12. The position of the prosecution is worse when the question of identify of the person who was interrogated in the police station on the 19th is considered. It is the case of prosecution that two residents of Bhalesaravas locality came to the police station at about 10.30 P.M. on 19.7.82 and informed the P.S.I. that they had apprehended one stranger looking like a goonda and thereafter the accused went with them to apprehend the said person and brought him to the police station. PW 7 has been examined by the prosecution to be one of the persons who reported at the police station about the stranger who has been apprehended in Bhalesaravas locality. The other person who accompanied him whose name is given as Udaiji Mohanji has not been examined. According to PW 7 the stranger claimed to be a person belonging to Jagapura and that his name was Parbatji Bhikhaji. According to PW7 he had been the said man after two or three days. His evidence has been disbelieved by the trial court as created evidence. Nothing has been suggested to PW7 as to why he should speak falsehood. He was not treated as a hostile witness. According to his evidence several people in the locality were with him and they made the stranger sit near the electric pole in their Vas when the said witness and Udaiji Mohanji went to the police station. There is no reason why no other person from the locality has been examined to show that the person who was taken to the police station on the night of the 19th was Kantuji or at any rate it was not Parbatji.

13. Further, if Kantuji who was a railway servant had by mistake or because of the exigency of the situation gone to Bhalesaravas as he got into a bus going to Vadnagar instead of Rajpur, there is nothing on record to show why he should go into the mohalla of PW7. It passes one's comprehension that Kantuji failed to disclose his identity and the fact that he was a railway servant when the people of the locality apprehended him and made him sit near the electric pole. There is also no evidence on record that Kantuji looked like a goonda.

14. The High Court has placed reliance on the evidence of complainant PW3, police constable Purushotam PW5 and police constable Gambhirji, PW.11 besides that of Rasik Lal Dave, a resident near the police station. A perusal of their evidence shows that the witnesses are not speaking the truth, in particular the evidence of Rasik Lal Dave is highly artificial and unnatural. As regards the complainant, the High Court failed to take note of one important circumstance that he engaged a lawyer of his own in the Court of Sessions to represent him. That shows that he took personal interest in the case. Apart from that the various contradictions pointed out by the trial court in the evidence of the said witnesses are very relevant and material and are sufficient to make it unacceptable. We do not think it necessary to repeat what the trial court has pointed out in its judgment in this regard. The High Court has chosen to differ from the trial court taking the view that the contradictions are not material. The High Court has also proceeded on a presumption that the person whose dead body was found in Trishulya Dhata was the same as the one who was taken to the police station for interrogation on 19.7.1982. Even assuming that the person who was taken to the police station was not Parbatji, it is not possible to hold on the basis of the available evidence that Kantuji was taken to the police station. There is nothing on record to indicate the offence for which Kantuji was brought to the police station and interrogated.

15. The most important aspect of the case which is also clinching, in our opinion, is that there is absolutely no evidence worthy of acceptance to prove that the person whose dead body was found later was beaten by the accused to such an extent that he became unconscious. The evidence of PW1 the doctor is that there are any marks of violence or wounds or the person either anti-mortem or post mortem, it could be said so even if the dead body is de-composed. The same witness has stated clearly that there were no blood stains or soaking of the blood on the clothes which were on the dead body. PW 3, the complainant has deposed that the person who was being interrogated was only slapped by the accused. He has nowhere deposed that the said person was beaten. Even Rasik Lal

Dave (PW-4) whose evidence has been found by us to be unworthy of acceptance has not gone to the extent of saying that he saw the accused beating the person who was in the police station. No doubt he has deposed that he told the police officers that it was not proper to beat people. That statement of his is absolutely worthless when he had not stated positively that the accused that the person who was at the police station. On the other hand, he had stated in his cross examination that in his presence beating did not take place and that the man did not tell him that he was being beaten.

16. We have no hesitation to hold that the evidence on record does not support the case of the prosecution that the accused beat Kantuji when he was being interrogated at the police station. If there was no beating the death could not be said to be homicidal. Unfortunately, the High Court has omitted to consider these aspects of the matter and failed to note that several links are missing in the chain of events. Hence, we have to hold that the prosecution has failed to prove that the accused had committed the offences alleged against them.

17. Learned counsel for the appellants have rightly pointed out that the High Court ought to have considered the case of each of the appellants individually and determined the extent of guilt of each of them. As we are holding that the appellants are not guilty of the offences for which they were charged, it is unnecessary for us to consider the case of each appellant individually.

18. In the result the appeal is allowed and the judgment of the High Court in Criminal Appeal No. 765 of 1983 on its file is set aside. The appellants are acquitted and their bail bonds stand cancelled.