

Koli Lakhmanbhai Chanabhai

Vs

State of Gujarat

Criminal Appeal No. 507 of 1997

(G. B. Pattanaik, M. B. Shah JJ)

16.11.1999

JUDGMENT

SHAH, J-

1. This appeal is filed against the judgment and order dated 21-2-1997 in Criminal Appeal No. 395 of 1985 passed by the High court of Gujarat whereby the Court partly allowed the appeal of the state and set aside the judgement and order dated 31-1-1985 rendered in Sessions Case No. 85 of 1984 by the Additional Sessions judge, Junagadh acquitting the appellant and convicted him for the offence punishable under Section 302 IPC and imposed sentence for life.

2. It is the prosecution story that original Accused 1 approached the father of PW 2, Bhana Puna for construction of a house at Una, District Junagadh. Father of PW 2 gave some amount, which resulted in close relationship between two families. Thereafter, deceased Naran Puna had gone to Bombay for further studies in the year 1974 and stayed with the family of Accuse 1. It is alleged that Accused 1 was having five to six wives and Narmada was one of them with whom the deceased developed some relations; hence the deceased was thrashed by the accused and thereafter at the request of PW 2 he was permitted to go to Una. Subsequently, Accused 1 (father of the appellant) and the appellant (Accused 2) hatched a conspiracy at Bombay that deceased Naran Puna, younger brother of PW 2 be done to death on accent of misconduct or misbehavior of the deceased with the wife of Accused 1. In the present appeal, we are not required to consider the evidence relating to the said part of the incident as the incident in question had taken place after ten years, on 17-7-1984 between 3.00 to 4.00 p.m. on Una-Veraval Rad. It is the prosecution version that Accused 2 inflicted several knife-blows on deceased Naran Puna on account of enmity and ill-well of Accused 1 with the deceased. PW 2 Bhana Puna, Brother of deceased on receipt of the information at about 3.30 p.m. that his brother was done to death near the farm of Jaigurudev, rushed to that place where he found several persons among whom PW 7 Babu Govind and PW 11 Bhagwan Jana were present. On enquiry, he learnt that Laxman Chana (appellant) had committed murder of deceased Naran. He thereafter lodged FIR at 5.00p.m. at Ina Police station. After completing the investigation, the appellant was charged with the offence punishable under Section 302 read with Section 109 IPC and both of them were also charged with the offence punishable under Section 120-B IPC. The learned Additional Sessions Judge after recording the evidence of the prosecution witnesses and on appraisal and assessment thereof came to the conclusion that the prosecution case was not established beyond reasonable doubt, hence he acquitted the accused by giving the benefit of doubt. Against that judgment and order the appeal filed by the State Government was partly allowed and the appellant was convicted as stated above. That order is challenged in this appeal.

3. At the time of hearing of this appeal, learned counsel for the appellant submitted that the

Additional Sessions Judge, Junagadh has rightly given the benefit of doubt to the accused as the so-called eyewitnesses have not supported the prosecution version. He has also submitted that the High Court erroneously relied upon the evidence of PW 7 had immediately informed PW 11 and 12. It has come on record that PW 12 Nanu Bhima about the incident that two persons were fighting near the Jaigurudev Farm and one person was having a knife in his hand and that he had already inflicted one blow. PW 12 has also further stated that PW 7 Babu Govind has informed that Laxman Chana had inflicted knife-blow. This witness was cross-examined in detail with regard to this aspect but nothing could be found out from the cross-examination. On the basis of the aforesaid information PW 2 lodged the FIR at 5.00p.m. Accused 2 (appellant) was arrested and from his person extensively bloodstained bush shirt, banana and other clothes were seized. Bush shirt and banian contained human blood of 'A' group, which was the blood group of the deceased. The investigating officer had prepared the seizure Panchnama of the clothes and of the arrest of the accused. Further, the High Court has rightly relied upon the discovery of Muddamal knife at the instance of the appellant, which was hidden beneath the ashes of the fireplace in kitchen of the appellant. The said knife also contained blood having 'A' group. For that purpose the High Court has relied upon the panch witness PW 20, Bhika Lakhman, who was working as Electric Supervisor in Una sugar Factory.

5. From the aforesaid evidence on record, in our view, it cannot be said that the High Court erred in relying upon some portion of the evidence of PW 7 who was cross-examined by the prosecution. It is settled law that evidence of a hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. In the present case, apart from the evidence of PW 7, the prosecution version that he saw that the deceased gets corroboration from the evidence of PWs 11 and 12 to whom he disclosed the incident immediately. On the basis of the said information, within one hour, FIR was lodged disclosing the name of the appellant as the person who had inflicted the knife-blow. A number of incised wounds are found as per the post-mortem report. The prosecution version gets further corroboration from discovery of Muddamal Knife containing human blood Group 'A'. Further the bush shirt and banian which were put on by the accused at the time of incident were having extensive bloodstains which were also found containing human blood Group 'A'. Learned counsel for the appellant, however, contended that the accused is also having Blood Group 'A' and that he was having injury on the thigh as per the evidence of doctor. In our view, there is no substance in his contention because as per the medical evidence, the injuries caused to the accused were minor and that because of such injuries, there would not be extensive bloodstains on the bush shirt and banian put on by the accused. In his Section 313 statement also, the accused has not explained how he got bloodstains on his bush shirt and banian. He has also not denied the recovery of the said bush shirt and banian from his person at the time of his arrest.

6. Hence, considering the above-stated evidence on record, it cannot be said that the High Court committed any error in convicting the appellant for the offence punishable under Section 302 IPC.

7. In the result, the appeal is dismissed.