SUPREME COURT OF INDIA

Rajesh @ Raju Chandulal Gandhi

Vs.

State of Gujarat

Crl.A.No.252 of 2002

(R.P. Sethi and K.G. Balakrishnan JJ.)

07.03.2002

JUDGMENT

R.P.Sethi, J.

1. Fairly conceding that in a criminal case while hearing an appeal by special leave this Court cannot ordinarily embark upon a re- appreciation of evidence, in view of concurrent findings Mr.Sushil Kumar, learned Senior Counsel for the appellant has contended that without appreciating afresh their testimony, the statements of Rakesh Pravinchandra Kinarivala (PW1) and Satish (PW12), the alleged eye- witnesses cannot be accepted as their presence on spot is highly improbable. In support of his contention he has referred to circumstances which allegedly show that the FIR had been ante-timed only for the purposes of planting the aforesaid witnesses as eye-witnesses to the occurrence. Non-mention of the FIR number and the name of the witnesses in the inquest panchanama (Exh.37) has been cited as an instance to probabilise that the aforesaid witnesses were introduced later. Learned counsel has further submitted that as despite taking finger prints from the place of occurrence and sending it to the expert for his opinion, the prosecution did not produce the opinion of the expert in the court, which amounted to withholding of evidence, the courts should have drawn an inference against the prosecution. It is submitted that the well settled position of law is that where suppression of evidence is proved, a presumption of law has to be drawn that if such an evidence was actually produced, the same would have gone against the party withholding it. Presence of blood at various places inside the house of the deceased is suggested to be a strong ground to hold that occurrence had not taken place outside the house as deposed by eye-witnesses but the deceased was killed inside the house by some miscreants. The appellants are alleged to have been implicated merely on suspicion and convicted completely ignoring the submissions made on their behalf.

2. In order to appreciate the submissions of the learned counsel for the appellants, it is necessary to have a resume of the facts of the case leading to the conviction and sentence of the appellants. Montu a young lad, nephew of deceased Girish Namdar, had allegedly abducted damsel Namrata, daughter of Mukesh Chandulal Gandhi and sister of Accused Sachin (A2) and Accused Duniya (A3). According to the prosecution, seeds of enmity

between the families of complainant and the accused-party had been sown on account of love affair between Namrata and Montu. The enmity thus conceived is stated to be the motive for the ghastly and macabre killing of Girish Namdar.

3. On 7.2.1993 at about 1.00 p.m. Girish Namdar @ Girish Ambalal Gandhi is stated to have come to his farm known as Namdar Farm which is situated near Vatva Village about 10-15 kilometers from the metropolitan city of Ahmedabad. The accused are stated to have hatched a conspiracy, in furtherance of which they committed the crime. The accused persons came at the farm in a Maruti Fronti Model car. On hearing the blow of horn, the deceased called the visitors inside his house through his Cook Satish (PW12). Rajesh (A1) and Duniya (A3) came inside the house whereas Sachin (A2) remained in the car. Accused Rajesh and Duniya initiated the talk about the proposed marriage of Montu with Namrata. The issue was hotly debated but as the deceased allegedly did not agree to the proposal, A1 and A3 got enraged and agitated. When A-1 started to leave the house, the deceased persuaded him to sit by catching hold of him and offered him wine but A1 refused to oblige him. As A1 went out, the deceased also came out of his house to see him off near the sitting portion in front of the house. Again there was some talk between the deceased and A1 about Namrata. A-1 felt that the deceased was the only obstruction and impediment between the relationship of Namrata and Montu. The deceased consoled him that some conciliation and settlement shall be reached by calling the fathers of the two lovers. It is alleged by the prosecution that A-1 called the deceased on the side and took him near the Maruti car where A-1 called Sachin (A-2) and Duniya (A-3) to take out weapons from the car. Rajesh (A1) took out revolver from his pocket and Sachin (A2) and Duniya (A3) took out sharp edged weapons from the rear side of the Maruti car with which they started assaulting the deceased. Girish Namdar was given several blows one after the other by the accused persons. Rakesh (PW1) who was standing there was threatened at the point of revolver by Rajesh (A1) to get out therefrom and get into the house, since he happened to be the son of sister of the deceased, to which he obeyed. The cook, Satish (PW12) who was talking on phone to the wife of the deceased Uma, was intercepted and the complainant Rakesh took the telephone from the hands of Satish and told Uma, his aunt, about the assault on Girish by the accused persons requesting her to immediately rush to the spot with somebody. When Rakesh again came out of the house, he was threatened and directed to go inside. He received another telephone call from Smt.Uma, his aunt who was enquiring from him as to what was earlier told to her was correct or not. Satish (PW12) who was a cook was threatened by the accused to run away from the spot. Sachin (A-2) came inside the house of the deceased and snapped the telephone connection and broke the telephone instrument. By the time Rakesh (PW1) came out from the house, Girish had virtually succumbed to the injuries received by him from the accused persons who had by that time fled away from the scene of occurrence.

4. First Information Report was lodged by Rakesh (PW1) at Vatva Police Station which was registered as No.49/93 (Exhibit 68) at about 2.40 p.m. After completion of the investigation, the charge- sheet was presented against the accused persons before the Metropolitan Magistrate who committed them to the Court of Sessions for standing the trial for the offences punishable under Sections 120B, 452, 302 IPC and also under Section 25(1)(b) of

the Arms Act and Section 135(1) of the Bombay Police Act. The accused pleaded not guilty and claimed to be tried.

5. In order to prove its case the prosecution produced 14 witnesses and relied upon documentary evidence. The defence of the accused was of total denial. No evidence was led in defence.

6. After the conclusion of the trial and on appreciation of evidence, the trial court found the accused persons guilty for all the offences with which they were charged except the charge under Section 135 (1) of the Bombay Police Act. The trial court held that prosecution had successfully established that the deceased Girish died a homicidal death. The injuries sustained by him were inflicted by the accused persons which they had caused after hatching a conspiracy. Rajesh (A-1) was established to be in possession of a revolver without having a licence though the same was not used during the occurrence. The motive for commission of the crime was held established. In appeal, the High Court re-appreciated the whole of the evidence and held that "we have no hesitation to accord our concurrence with the impugned judgment and order, while rejecting the appeal at the instance of the original accused. It has, evidently, been emerged from the proved set of facts and circumstances, which preceded the main incident coupled with the deep-seated motive generated out of the cordiality and close relationship between Namrata and Montu that all the three accused persons, who are related to each other had hatched a criminal conspiracy and they are the real authors of macabre murder".

7. FIR (Exhibit 68) is shown to have been recorded on 7.2.1993 at 2.40 p.m. in which the time of occurrence is stated to be 1.15 p.m. The distance between the place of occurrence and the police station has been mentioned as 4 kilometers. The said information had been recorded on the basis of the statement of Rakesh (PW1) who vividly explained the details of the occurrence. In the inquest panchanama (Exh.P37) which is stated to have started at 3 p.m. and completed at 3.45 p.m., the name of the complainant or the number of the FIR is not mentioned. However, in the Panchanama (Exh.P32) stated to have been recorded between 4 to 6 p.m., the name of Rakesh (PW1) and FIR No.49/93 are specifically mentioned. In his statement, recorded in the court, Rakesh (PW1) has stated that after about 30-35 minutes of the occurrence, the police came on spot. The police took him and others to the police station and recorded his complaint marked Exhibit 24/1. He claims to have shown the place of incident to the police. The police had made panchanama of the scene of offence and collected articles from the said place and seized the Maruti car.

8. According to the statement of this witness, he left the place of occurrence in the company of the police after about 30 to 40 minutes of the occurrence, i.e. 1.45-2.00 p.m. He claims to be at the police station upto 4.30 p.m. The Panchanama Exh.37 was started to be drawn at 3 p.m. and completed at 3.45 p.m., obviously when the aforesaid witness was not on the spot and the FIR was being recorded at the police station. Panchanama Exh.P-37 only refers to the message received from the Control Room regarding some scuffle having taken place in the Namdar Farm. When the police came on the spot consequent upon the information, they found the dead body of Girish lying there. PW1 and others were sent to the police station for

the purpose of recording the statement of PW1 and registering a case and panchama was prepared during the aforesaid period. Non mentioning of the name of the aforesaid witness and the FIR number is, therefore, obvious. Learned counsel for the appellants referred to the statement of Abdul Rehman Munshi (PW14) who has stated on oath that he received information from the Control Room at 2.10 p.m. that in Namdar Farm near Vatva there has been a big quarrel. He along with other police officials came on the spot where they saw dead body of Girish Namdar. On inquiry, nephew of the deceased lodged a detailed complaint which was sent to Vatva police station for registration. The report was written by one Mr.Jadhav. The complaint was sent through policeman at the police station. After recording the complaint and registering it scene, of occurrence was visited and inquest panchanama of the dead body was made which is Exhibit P-37. In cross-examination, the witness has denied the suggestion that the recording of the complaint in the case started at 4.00 p.m. and was over by 4.45 p.m. Pointing out to the contradiction in the statement of PW 1 and PW14, the learned senior counsel submitted that the circumstances of the case probabilised that the FIR was ante-timed to facilitate the introduction of the alleged eye-witnesses.

9. It is true that PW1, in his statement, has stated that he was taken to the police station where the complaint was recorded. There does not appear to be any material contradiction between his statement and the statement of PW14 except that IO has stated that complaint though lodged before him was sent through policeman at the police station. He has not contradicted the version of the PW1 that he had gone to the police station alongwith other policemen. There is nothing on the record to show that the investigating officer had known the FIR number of the case at the time when he recorded panchanma Exh.P-37 or at the time of recording of the aforesaid panchanama PW1 was present at the place of occurrence. Possibly, it appears that after taking his statement PW1 was sent to the police station where detailed complaint marked 24/1 was recorded and he remained there at the police station upto 4.30 p.m. or 4.55 p.m. and during that interval Panchanama Exh.37 was recorded at the spot. Otherwise also merely non mentioning of the number of crime registered upon FIR or name of prosecution witness in Exh.P-37 would not lead the court to believe that the FIR had been ante-timed in view of the unequivocal, reliable and confidence inspiring testimony of PW1. The trial court in para 39 of its judgment dealt with this aspect of the matter and found that on the date of incident firstly police staff of Aslali police station and thereafter persons of Ahmedabad city (Vatva) Police Station had come which means police from Aslali and Vatwa Police station had come at the scene of occurrence. Before recording the complaint there was some discussion whether the complainant would go to Vatva police station or Aslali police station. At the time of recording the complaint Satish (PW12) and family members of Girish were stated to be present. Abdul Rehman (PW14) in his cross-examination has stated that before he reached Namdar Farm, police of Aslali Police Station had come there. The Namdar farm is situated where the jurisdiction of two police stations, namely, Aslali and Vatva meets. It was decided on spot to get the complaint recorded at Vatva Police Station. In this regard the trial court held:

> "A question has been raised in this case why in inquest panchanama, there is no mention of name of Rakesh and Crime Register number. If we look to the inquest

Panchanama which is completed at 3.45, there is no mention of crime Register number. But thereafter within 15 minutes, the panchanma of scene of offence is prepared, there is mention of Crime Register No. and the sections of offences and who is the complainant is given. From this, it cannot be said that inquest panchanama is First Information Report. In that there is possible that on inquiry from Rakesh, the complaint was recorded, it was sent to Vatva Police Station for registration of the offence and on the other side, the work of preparing inquest panchanama was immediately started. What is correct and what is wrong, can be decided from the facts. In this case at that time the complainant was started recording, and where it was recorded and where it was started recording and in that if there is some miscalculation of time in recording complaint, preparing inquest panchanama and panchanama of scene of offence, of where or at which place the complaint was recorded, in that there is no scope for saying that looking to the facts of the case, a false case has been concocted and therefore, the facts stated by Umaben, complainant and Satish Maharaj get support from medical evidence. As stated above, when police came, all the information is received, cannot be said to be incorrect or wrong. Police had reached the farm on the information received from Control room that there is quarrel in the farm. When they reached the farm, there was truth in it. And the persons who can give information regarding the incident were present at the scene, so there was no question of asking as to who had informed the control room. And the persons present there, on asking as to who was know about the incident, it was known that Rakesh was knowing about the incident, it can be said that police had received First Information Report from Rakesh. Again in this case, it transpires that there was message from control room, does not mean that there was telephonic message or information. But the information was given by wireless, that fact is disclosed. Therefore, why message was not noted down and what was message on phone. There is no scope for receiving other particulars and thereafter concocting false story. There is no scope for the same. If message is received that there is quarrel on the farm and if police reaches there and so that particular message is only the First Information and if thereafter any if any complaint is recorded, it cannot be said that the same cannot be treated as First Information. It also cannot be said that in this case the inquest panchanama Ex.37 was started and completed, that is the first information. Because there is sufficient evidence that before the same was started writing, before that police had received so much information. In this inquest panchanama, there is no name of the complainant or accused and before recording complaint, directly inquest panchnama cannot be prepared. Lastly if no body is present and if Rakesh or Satish Maharaj would not have been present there, even complaint of Umaben would also be recorded. In this case when there is mention of presence of Umaben in Inquest Panchanama, it cannot be said that no complaint was recorded and only panchanama was drawn. To the most, it can happen that after recording the complaint, Rakesh can be sent for registration of the complaint to the police station, which is nereby as complainant. The person who has to lodge a complaint, he has to lodge the complaint, put his signature, receive its copy and that would take sometime and after Rakesh was sent there, in the meanwhile inquest panchnama might have started. And after Rakesh must have returned from police station after lodging the complaint, the panchanama

of scene of offence must have been drawn and after starting panchnama of scene of offence, it is known that complaint is registered, in the said panchnama note about it must have been made. In this connection when inquest was started, police has stated one fact that what is the reason for doing inquest? On what basis or information the said deadbody was found at that place? and only fact is noted in that. On 7.2.93 they were present at Vatva Police Station, Police Inspector, who had given particulars about this inquest, as per his say, when he was present at Vatva Police Station, at about 14.40 they have received message from Control room that there is a quarrel in Namdar Farm in Vatva village. So they would reach there. Therefore, immediately they came to Vatva in Namdar farm. On reaching Namdar farm, they saw that there was murder of Girish Ambalala and his dead body is lying there. In that, the facts which are stated that when they reached the farm and the dead body was lying in murdered position and the particulars regarding the same were noted down and not the particulars about the dead body lying at the time and was seen by them at that time. In that inquest also, the injuries caused to Girishbhai are noted. And there is opinion to know the definite reason about the death of Girishbhai, the dead body is sent to Civil Hospital for post mortem examination. An opinion in that regard is given, by panchas and panchanama is prepared to know the exact reason for which injuries death of Girishbhai is caused. For that medical evidence is necessary. For that it was decided to send dead body for P.M. - Examination. In this way, inquest panchnama is FIR which cannot be mean like that. In this way considering the timely evidence, it is difficult to hold that the prosecution case against the accused is false."

10. On this aspect the High Court held that merely, "on account of some irregularities in mentioning the names or noting the timing during the course of investigation by the prosecution or some discrepancies and contradictions, which are at the micro-level could not be said to be sufficient and efficient to discard and dislodge the otherwise weighty and very important, serious and sound testimony of eye-witness, PW1, Rakesh, one of the close relatives of the deceased, whose presence, we have found, quite natural and whose evidence is, also, found to be quite reliable and dependable and, rightly, accepted by the trial court". After going through the testimony of the prosecution witnesses particularly those of PWs1 and 14, perusing the record including FIR No.49/93, Exhibits 37 and Exhibit 32, we are of the opinion that the plea of ante-timing of the FIR is the figment of imagination of the defence and not a reality. Assuming that the FIR number and the name of the complainant was known at the time of recording of Panchanama (Exh.P- 37) and it was not mentioned therein, such circumstance would not probabilise the defence version that the FIR had been ante-timed, in view of the cogent, reliable and confidence inspiring testimony of Rakesh (PW1), Satish (PW12) and Umaben (PW10).

11. Taking advantage of the statement of Dr.Pratik Navjibha Patel (PW9) in which, during cross-examination, he had stated that the death had occurred within 9-12 hours before the post-mortem examination, the learned counsel has submitted that the deceased must have died much before 1.15 p.m. as concededly the post mortem examination was conducted between 6.10 p.m. to 7.00 p.m. A perusal of his statement shows that in reply to a further question in the cross-examination the aforesaid witness had stated "it may be that the death

might have occurred between 9-12 hours. This 9 to 12 hours means the 9 to 12 hours before the time I started the post mortem and completed the post-mortem". At another place the said witness had stated "I can say that probably the death of the deceased might have occurred within about 12 hours from the time of starting the post-mortem examination". The doctor had formed his opinion on the basis of rigor mortis and the lividity found at the time of post-mortem. There is, therefore, no medical expert opinion about the exact time of death. Otherwise also the opinion of the doctor cannot be substituted for the statement of the eye-witnesses who have been believed by both the courts. From the statements of Rakesh (PW1), Umaben (PW10) and Satish (PW12) it is established that deceased was alive upto 1.15 p.m. and had died after receiving about 30 injuries on his person mostly with sharp edged weapons. Even on this ground also it would not be probable to hold that the First Information Report had been ante-timed.

12. Both the trial court as well as the High Court have found on facts that the First Information Report was lodged without delay and its copy despatched to the Magistrate. The delay of receipt of the copy of the FIR by the magistrate, if any, was held to have been properly accounted for by the prosecution. Abdul Rehman (PW14) who is the investigating officer had stated that after registration of the case a report under Section 157 Cr.P.C. was also sent. The circumstances emerging from the prosecution evidence show that the occurrence had taken place at about 1.15 p.m., the information of the scuffle was received by the police at 2.10 p.m., Smt.Umaben (PW10) reached on the spot at 2.30 p.m. and Rakesh (PW1) sent to the police station for recording the FIR at 2.40 p.m. The Inquest (Exh.P-37) was prepared between 3.00-3.45 p.m. and Inquest (Exh.P-32) between 4 to 6 p.m. The events of circumstances narrated by the witnesses do not leave any doubt in our mind to hold that the occurrence had actually taken place at about 1.15 p.m. in consequence of which Girish Namdar died and the FIR was registered on the basis of the statement of Rakesh (PW1) at 2.40 p.m. in Police Station Vatva.

13. Relying upon the judgment of *Meharaj Singh (L/Nk.) v. State of U.P.*[1] the learned counsel appearing for the appellants has submitted that FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led in the trial. The object of insisting upon prompt lodging of the FIR is to obtain information regarding the circumstances in which the crime was committed including the names of actual culprits and the part played by them, the weapon of offence used as also the names of the witnesses. One of the external checks which the courts generally look for is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. The absence of details in the inquest report may be indicative of the fact that the prosecution story was still in embryo and had not given any shape and that the FIR came to be recorded later on after due deliberations and consultation and was then ante-timed to give it a colour of prompt lodged FIR. The reliance of learned counsel for the appellant on Meharaj Singh's case is of no help to him in the instant case inasmuch as all requisite details are mentioned in Panchanama Exhibit P-32. Mere omission to mention the number of the FIR and the name of the complainant in Exh.P-37 has not persuaded us to hold that the FIR was ante-timed in view of the peculiar facts and circumstances of the case as noticed by the trial court, the High Court and by us hereinabove.

14. It has also been argued on behalf of the appellants that for withholding of opinion of finger print expert, adverse inference be drawn against the prosecution. It has come in evidence (Exh.32) that finger print expert was present on spot who had taken the prints from the pieces of broken glass and some other articles lying in the farm of the deceased. It is also not disputed that the report of the finger print expert has not been produced in the case. The withholding of the report of the finger-print expert, if any, would definitely cast a doubt on the prosecution version and presumption of such report being against the prosecution has to be drawn. However, in the facts of the case we find that despite taking doubted finger prints from the spot, the investigating officer had not taken finger prints of any of the accused. The investigating officer has stated in the court that on 25.2.1993 total 31 items were sent for examination. In Exh.64 there is a note at Item No.9 of having sent broken pieces of glass at No.11 having found chance print and Item No.12 of having found another chance print. The pieces of glass sent show that there was "B" group blood which was the blood group of the deceased. In the absence of finger prints of the accused persons no finger print expert could have given any opinion regarding the chance prints found on glasses and other articles. It appears that as no finger prints for comparison were taken or sent, there is no possibility of any report of the expert being in existence in that regard, which was allegedly suppressed warranting the drawing of a presumption against the prosecution. It might have been a lapse on the part of the investigating agency for not taking the finger prints of the accused persons but merely because the finger print expert had taken some prints from the glasses would not justify in holding that there existed a comparative finger print expert report which was allegedly suppressed or withheld by the prosecution.

15. Learned counsel then drew our attention to the fact that blood stains were found on a number of places in the house of the deceased which suggested that occurrence had not taken place outside the house as alleged by the prosecution and that as the deceased was indulging in gambling there was a probability of some other people having committed the offence. In this regard our attention was drawn to an advertisement (Exh.P31) which, according to the defence, probabilised that the deceased was indulging in Satta betting for riots by ante-social elements, with reference to riots of Ayodhya. He is stated to be living in the area where people belonging to muslim community lived. His indulgence in satta relating to riots with respect to Ayodhya is suspected to have infuriated the muslim community who might have committed the crime in his house and the prosecution wrongly involved the appellants in the crime merely on suspicion allegedly on account of the dispute existing with respect to the love affair between Montu and Namrata and some complaint earlier filed against the accused. Such a plea cannot be accepted because the advertisement and the public notice (Exh.P.31) has not been duly proved. There is no evidence on the record to show that the deceased had ever indulged in satta business. PW1 in his statement has admitted that a news was published in the newspaper that deceased used to bet as to whether and when the riot incident would break and in turn notice was published allegedly on his behalf that such allegations were false and if anyone proved the same, he would be paid Rs.10 lakhs. All such evidence referred to by the defence with respect to the alleged indulgence of the deceased in betting is based upon hearsay and not legally admissible in evidence. Therefore, no inference on that basis can be drawn against the prosecution. Otherwise also both the trial court and the High

Court have found cogent explanation and reasons for the presence of the blood at various places in the house of the deceased. In the absence of any evidence to the contrary there is no occasion for this Court to interfere with the finding of fact arrived at on proper appreciation of evidence.

16. After going through the whole of the evidence, the other record produced in the case and the judgments of the trial court and the High Court we find no reason to interfere in the concurrent findings of fact arrived at against the accused holding them guilty for which they have been convicted and sentenced.

17. There is no merit in this appeal which is accordingly dismissed.

[1]*1994 (5) SCC 189*