



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.20 OF 2017

RANVIRSINH KAYAMSINH
BHADORIA & ANR.

APPELLANT(S)

VERSUS

STATE OF GUJARAT

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.2200 OF 2017

O R D E R

CRIMINAL APPEAL NO.20 OF 2017:

1. The appellants have been arraigned as accused No.1 and accused No.2. Charges had been framed against the appellants for the offences punishable under Sections 364, 302, 506 Part-II read with

Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC') and Section 135(1) of the Bombay Police Act, 1951 (for short, 'the Act, 1951'). The appellants were subsequently convicted only for the offences punishable under section 302 read with section 34 of the IPC.

2. The High Court by way of the impugned judgment was pleased to render an order of acquittal against accused Nos.3 to 5. Sunny, another accused died during the pendency of the trial. Accordingly, the appellants who were arraigned as accused No.1 and accused No.2 have been convicted by both the trial Court and High Court.
3. Learned counsel appearing for the appellants would submit that the evidence of PWS-2 and 4, which the High Court has relied upon while acquitting accused no.3 to 5, ought to have been followed for the appellants as well (accused No.1 and accused no.2). The witnesses to the inquest report have not been examined.

Insofar as the recovery under Section 27 of the Indian Evidence Act, 1872 is concerned, the witnesses have turned hostile. The doctor who was examined on behalf of the prosecution has clearly deposed that the deceased could have died from a fall, as he was heavily under the influence of alcohol. Though, the bloodstains found on the material object recovered have been tallied with the blood of the deceased, inasmuch as the recovery has not been proved in the manner known to law, no reliance can be placed upon the same. The High Court, in the impugned judgment, did not take into consideration the relevant material, particularly, the fact that the charge under Section 364 and those under the provisions of the Act, 1951 along with Section 506 Part-II of the IPC were found to have not been proved. Therefore, the present case is one where the evidence of PWs-2 and 4 with respect to their

presence at the place of occurrence cannot be relied upon.

4. Learned counsel for the appellants has also brought to the notice of this Court that strangely, the first information report that had been given has not even been registered at the first instance. Furthermore, there is no adequate explanation, especially in the teeth of the statement given by the Investigating Officer himself, specifically pertaining to the discrepancy with respect to the timing of the registration, as it appears that the FIR was not registered immediately after the complaint was given to the concerned Station Officer. Therefore, it is a fit case where the benefit of doubt extended to the other accused persons will have to be extended to the appellants as well.
5. Learned counsel for the appellants further submits that the appellants have undergone nearly 10 years of

incarceration and their conduct in the prison is found to be satisfactory.

6. The learned counsel appearing for the State submits that both the Courts have appreciated the evidence and rendered concurrent findings of conviction, at least insofar as the appellants are concerned. The benefit of doubt has been extended to the other accused persons after taking note of the contradiction in the statements made by PW-3, vis-à-vis PW-2 and 4. However, all the witnesses have deposed in unison against these appellants - a difference that has been clearly taken note of by the High Court in the impugned judgment. Though, the recovery is stated to have not been proved, particularly in view of the witnesses turning hostile, the fact remains that the Chemical Analysis Report of the bloodstains from the weapon that has been recovered matches with the blood of the deceased. The doctor's evidence

did not rule out the possibility of homicide. The motive has also been established by the prosecution as on an earlier occasion, a case has been registered against the deceased at the instance of the appellants' side for the offence punishable under Section 307 of the IPC.

7. The question for consideration before us is as to whether the benefit that has been extended to the co-accused will have to be extended to the appellants as well. We are concerned with a case where Section 34 of the IPC has been pressed into service. It is the case of the prosecution in a nutshell that all the accused gathered together, dragged the deceased and subsequently committed the offence. Though the principle *falsus in uno falsus in omnibus* has no application in our jurisdiction, one has to be careful while appreciating the evidence of a witness who was disbelieved insofar

as the other accused are concerned, who were standing on the same footing. In a nutshell, it is the case of the prosecution that all the co-accused have indiscriminately attacked the deceased and committed the offence. When a few of the accused have already been acquitted, it would not be safe to rely upon the statements tendered by the said witnesses, unless there is a specific overt act attributed to the other accused for having committed the said offence.

8. In the case at hand, one cannot rely upon the statement tendered under Section 27 of the Indian Evidence Act, 1872. Witnesses who had given testimony attesting to the recovery being made have turned hostile. To that extent, the FSL report also cannot be relied upon. That leaves us, only with the evidence of eye-witnesses which are to be considered. On a perusal of the impugned judgment, we find that the High Court did not consider

the evidence in its correct perspective as no worthwhile discussion has been made regarding the same. It merely states that while accused No.3 to accused No.5 are entitled for acquittal, the evidence adduced by PW-2 and 4 would be sufficient enough to convict the appellants. In an appeal against conviction, the High Court has to independently consider the evidence. On facts, we find that the acquittal rendered against accused No.3 to accused No.5 has attained finality. Hence, the appellants are also entitled to be granted the benefit of doubt.

9. While dealing with a criminal case, we are concerned with a degree of probability of the occurrence having taken place, as projected by the prosecution, beyond reasonable doubt. Considering the evidence available on record, we are inclined to hold that the same is not sufficient enough to convict the appellants, particularly, when the

recovery has not been proved, and on the basis of very same evidence, accused No.3 to accused No.5 have been acquitted for the charges, not only under Section 302 of the IPC but also under Section 34 of the IPC.

10. In view of the aforesaid discussion, we are inclined to extend the benefit of doubt to the appellants.

11. Accordingly, the impugned judgment stands set aside. The appellants are acquitted and shall be released forthwith, unless required in any other case.

12. The appeal is allowed accordingly.

13. Pending application(s), if any, shall stand disposed of.

CRIMINAL APPEAL NO.2200 OF 2017:

There is no representation on behalf of the appellant.

In view of the order passed in Crl.A.

No.20/2017 and considering the fact that one of the appeals being Criminal Appeal No. 2199 of 2017 has already been withdrawn, we are not inclined to allow this appeal

The appeal is dismissed accordingly.

Pending application(s), if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[RAJESH BINDAL]

NEW DELHI;
20th MARCH, 2025

ITEM NO.108 COURT NO.8 SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 20/2017

RANVIRSINH KAYAMSINH
BHADORIA & ANR.

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

IA No. 14431/2016 - EXEMPTION FROM FILING C/C OF
THE IMPUGNED JUDGMENT, IA No. 14726/2016 -
EXEMPTION FROM FILING O.T.

IA No. 14432/2016 - EXEMPTION FROM FILING O.T.

IA No. 14725/2016 - PERMISSION TO FILE ANNEXURES

WITH

CrI.A. No. 2200/2017 (II-B)

Date : 20-03-2025 These matters were called on
for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s) : Mr. Prabhat Kumar, Adv.
Mr. Amit Kumar, Adv.
Dr. Nirmal Chopra, AOR

Mr. F. I. Choudhury, AOR (NP)

For Respondent(s) : Mr. Kanu Agrawal, Adv.
Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.
Mr. Rishi Yadav, Adv.

UPON hearing the counsel the Court made
the following

O R D E R

Crl.A. No.20/2017:

The appeal is allowed in terms of the signed order.

The relevant portion of the order reads as under:-

'Accordingly, the impugned judgment stands set aside. The appellants are acquitted and shall be released forthwith, unless required in any other case.'

Pending application(s), if any, shall stand disposed of.

Crl.A. No.2200/2017:

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SWETA BALODI) (POONAM VAID)
ASTT. REGISTRAR-cum-PS ASSISTANT REGISTRAR
(Signed order is placed on the file)