

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.327 OF 2020
(Arising out of SLP (Criminal) No.11656 of 2019)

PRAKRAMSINH KHUMANSINH ZALA

Appellant

VERSUS

STATE OF GUJARAT & ANR.

Respondents

O R D E R

Leave granted.

This appeal arises out of the judgment and order dated 24.10.2019 passed by the High Court of Gujarat at Ahmedabad in R/Criminal Miscellaneous Application No.17936 of 2019 granting bail to accused Rajmahendrasinh, respondent no.2 herein.

The crime was registered pursuant to First Information Report No.30 of 2018 dated 19.03.2018 lodged by the appellant herein with Police Station Morbi, District Morbi for the offences punishable under Sections 143, 147, 148, 307, 304 read with Section 34 IPC; Section 25(1-B) A, 27(2) of the Arms Act; and Section 135 of the G.P. Act. The material allegations in the First Information Report were as under:

"... thereafter Rajmahendrasinh caught hold of my cousin brother from the back side of his neck and stated that, what were you abusing for me at my agricultural land. By saying so he placed the front part of the pistol pointing on the body of my cousin brother and told that this will take only this much time. At that time my cousin brother Sahdevsinh told him that you will kill me. By saying so Rajmahendrasinh had opened a fired from the pistol that he had equipped on the side of the body of Sahdevsinh. At that time my above stated cousin brother Sahdevsinh had

fallen down and all these persons started firing from the weapons that they had equipped. ...”

The post-mortem conducted in respect of the victim indicated following injuries in Column 17:

“... Firearm entry wound in the form of punctured lacerated wound, 0.5 cm in diameter and circular in shape is present over right front of chest, 12cm below suprasternal notch, 5cm right to midline and 138 cm above right heel. Margins of the firearm entry wound are inverted. Abrasion collar of width varying from 0.2 to 0.4 cm is present surrounding to the entry wound, with maximum width at right upper corner of the wound. No any burning, blackening and tattooing is present surrounding to the wound. On internal examination, wound is piercing muscles of right anterior 3rd intercostal space, anterior wall of right pleura, inner part of middle lobe of right lung through and through, right wall of pericardium, upper part of right atrium of heart through and through, posterior wall of pericardium, muscles of left posterior 5th intercostal space and making exit wound over left back of chest. Firearm exit wound in the form of punctured lacerated wound, 0.9 cm in diameter and circular in shape is present over left back of chest, 23 cm below spine of C7 vertebra, 1 cm left to midline and 132 cm above left heel. Margins of the firearm exit wound are everted Wound track is filled with reddish fluid blood, mixed with clots. No any foreign body (Bullet) is present inside the body. Direction of wound track is downwards, backwards and right to left.”

The respondent no.2 had initially preferred applications for bail on five occasions which were rejected or were withdrawn by the learned counsel appearing for him.

It appears that five co-accused who were separately named in the First Information Report were released on bail at various junctures under different orders passed by the Courts below. One of those orders granting bail was affirmed by this Court while dismissing Special Leave Petition arising therefrom.

By its order dated 24.10.2019, which is presently under appeal, the High Court considered eight aspects in para 7. Aspects (III) and (IV) considered by the High Court were as under:

"III. The co-accused with identical roles have been enlarged on regular bail. It is pertinent to point out that in all, six accused have been charge-sheeted and five firearms are discovered under panchnama.

It is the case of the prosecution that there was indiscriminate firing and from scene of offence, several empty cartridges have been found of various firearms.

IV. The version of eye-witnesses of firing from point blank range on the lower back of the deceased does not get corroboration from the scientific evidence as the entry wound and exit wound without doubt is from front chest side to back down side respectively. Moreover, absence of blackening and tattooing around entry wound rules out firing at point blank range."

The basic allegations in the First Information Report attributed principal role to the respondent no.2 while the other accused were alleged to have been involved in indiscriminate firing. There is only one injury suffered by the deceased as is evident from the post-mortem, which injury *prima facie* corroborates the version given by the informant. In a situation such as that, where the other co-accused, who were not attributed any principal role, are released on bail, there would be no parity between the principal accused and the others.

It must be noted here that the respondent no.2 had put in one and half years of custody before he was released on bail and we have been given to understand that the charges in the matter have already been framed by the Trial Court on 30.11.2019 for the offence punishable under Section 302 read with Sections 147, 148 and 149 IPC.

Considering the entirety of the matter, in our view, no case for bail was made out and the High Court was in error in accepting the application for bail preferred by the respondent no.2. We, therefore, allow this appeal, set-aside the order passed by the High Court and dismiss the application for bail preferred by the respondent no.2.

Consequently, the respondent no.2 shall surrender before the trial Court within two weeks failing which the bail-bonds furnished for his release shall stand forfeited and the respondent no.2 shall be arrested by the concerned police station.

Let a copy of this order be communicated to the concerned Police Station and the jurisdictional Chief Judicial Magistrate for compliance.

Since the charges have been framed, we direct the Trial Court to conclude the proceedings as early as possible and preferably within nine months from the date of receipt of this order.

We shall not be taken to have expressed any opinion on the merits of the matter and the same shall be gone into independently at every stage in the Trial Court, nor shall this order be taken to be precluding the concerned Court from considering appropriate application for bail moved for the release of respondent no.2 at a future date, if any special or fresh circumstances or grounds are made out.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

NEW DELHI;
FEBRUARY 20, 2020

ITEM NO.35

COURT NO.6

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

Petition for Special Leave to Appeal (Cr1.) No.11656/2019
(Arising out of impugned final judgment and order dated 24-10-2019
in CRLMA No.17936/2019 passed by the High Court Of Gujarat At
Ahmedabad)

PRAKRAMSINH KHUMANSINH ZALA

Petitioner(s)

VERSUS

STATE OF GUJARAT & ANR.

Respondent(s)

(FOR ADMISSION and I.R.; IA No.187544/2019 - FOR EXEMPTION FROM
FILING C/C OF THE IMPUGNED JUDGMENT; IA No.187542/2019 - FOR
EXEMPTION FROM FILING O.T.; and, IA No.187538/2019 - FOR PERMISSION
TO FILE PETITION)

Date : 20-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Ms. Khushboo Vinodray Malkan, AOR

For Respondent(s) Mr. Aniruddha P. Mayee, AOR
Mr. A. Rajarajan, Adv.
Mr. Sanjeev Kr. Choudhary, Adv.

Mr. P.S. Narasimha, Sr. Adv.
Mr. Shubhranshu Padhi, AOR
Mr. Ashish Yadav, Adv.
Mr. Rakshit Jain, Adv.
Mr. Vishal Bansal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed, in terms of the Signed Order.

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

(MUKESH NASA)
COURT MASTER

(R.S. NARAYANAN)
BRANCH OFFICER

(Signed Order is placed on the File)