2026 INSC 469

NON- REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 212/2012

MITESH @ T.V. VAGHELA ….APPELLANT(S)

VERSUS

THE STATE OF GUJARAT ….RESPONDENT(S)

J U D G M E N T

ARAVIND KUMAR J.

1. The Appellant, a sole accused in a case of Murder is before this Court challenging the dismissal of his Criminal Appeal bearing Criminal Appeal No. 1129 of 2000 by High Court of Gujarat, at Ahmedabad[1], wherein his challenge to the Judgment of Conviction and Sentence dated 18.10.2000 passed by the Additional City Sessions Court No. 8,

[1] **Hereinafter referred to as the 'High Court'.**

Ahmedabad[2] in Sessions Case No. 158 of 1999, came to be dismissed. The conviction and sentence imposed upon the accused by the learned Sessions Court are as under:

Section	Sentence
Section 302 of the Indian Penal Code (for short, "IPC")	Imprisonment for life and a fine of Rs. 500/-; in default of payment of fine, to undergo further rigorous imprisonment for one month for the offence of murder.
Section 135 of the Bombay Police Act	Rigorous imprisonment for ten days and a fine of Rs. 250/-; in default of payment of fine, to undergo further imprisonment

2. The case of the prosecution, in brief, is that the complainant, Ishwarbhai Sankabhai Rabari, was residing with his family at Bukakhidas-ni Chawli, near Herbon School, Maninagar (East), Ahmedabad, and was employed as a driver with the A.M.T.S. (Ahmedabad Municipal Transport Service). The deceased, Somabhai Sankabhai Rabari, who was the brother of the complainant, was running a tea stall in the Khokara area near the lavatory at the four-way junction close to Boriwala's Chawli. It is the prosecution case that on

[2] **Hereinafter referred to as the 'Sessions Court' or 'Trial Court'.**

11.12.1998 at about 10:30 p.m., a quarrel had taken place between the deceased and the appellant on account of the appellant having thrown a half-burnt cigarette into the bucket used by the deceased for washing cups and saucers, which fact was narrated by the deceased to the complainant. On the following morning, i.e., on 12.12.1998, the complainant (PW-1) was informed by Shiva Madrasi and Shankar Dhobi, residents of Pattharwali Chawli, that the deceased was lying in an injured condition near his tea stall, having sustained multiple blows.

3. Upon reaching the spot, the deceased is stated to have informed PW-1 that it was the Appellant who had assaulted him on account of the earlier quarrel. The deceased was immediately taken to the hospital by PW-1 in an Auto and on the way he again reiterated that the Appellant had inflicted the injuries upon him. However, upon arrival at the hospital, the deceased was declared dead. Thereafter, PW-1 lodged the complaint with the police.

4. During the course of investigation, the Appellant came to be detained by the police and, pursuant to the information furnished by him, the weapon of offence, namely a sharp knife, is stated to have been discovered. On completion of the investigation, a charge sheet came to be filed. The Trial Court framed the charges and the prosecution examined 19

witnesses and marked documentary evidence and upon appreciation of the evidence on record Trial Court came to the conclusion that Appellant was guilty of the offences under Section 302 of IPC and Section 135 of the Bombay Police Act and convicted the Appellant and imposed sentences on him as noted above. Appellant filed an Appeal before the High Court which came to be dismissed vide impugned order. Hence this Appeal.

5. K. Sarada Devi, learned Counsel appearing for the Appellant submitted as follows:

5.1. The prosecution case is based mainly on the complainant's version and alleged oral dying declaration, but the independent witnesses who informed the complainant and were said to be present at the scene of crime were not examined, while medical and other evidence indicate that the deceased was unconscious and therefore incapable of making such a statement. Most panch and material witnesses turned hostile, and the so-called eyewitness admitted in the cross-examination that he had not actually seen the incident and his presence at the scene was doubtful, making his testimony unreliable and interested.

5.2. The conduct of the supporting rickshaw-driver witness was unnatural and doubtful, and there are material

contradictions in medical evidence regarding the number of injuries and the time when the deceased was brought to the hospital. The alleged recovery of the knife from a public place without blood stains and the inconsistencies in documentary and medical records further weaken the prosecution case and do not establish a complete and trustworthy chain of evidence.

5.3. In view of the absence of credible eyewitnesses and most of the other witnesses having turned hostile and as there is doubtful dying declaration, and the other witnesses being interested witnesses, and there are serious contradictions and procedural lapses, the conviction is argued to be unsustainable and the accused entitled to the benefit of doubt.

5.4. The learned counsel appearing for the Appellant also prays that the Appellant having undergone substantial part of the sentence imposed on him, prays for remission of the rest of the sentence.

6. On the other hand, Ms. Swati Ghildiyal, Counsel appearing for the State has supported the impugned order and the conviction and sentence imposed on the Appellant.

7. Heard the learned counsel appearing for the parties and perused the material available on record. Having considered

the matter, the point that would arise for our consideration is as follows:

I. Whether the High Court erred in dismissing the Appeal filed by the Appellant?

8. The Trial Court, upon an appreciation of the evidence of the witnesses, treated PW-4, PW-5, PW-10 and PW-12 as eye-witnesses to the occurrence. Insofar as PW-4 and PW-5 are concerned, though they were declared hostile and were cross-examined by the learned Additional Public Prosecutor, the Trial Court observed that their hostility was confined to the aspect of having actually seen the appellant assault the deceased. Nevertheless, their testimony consistently established that the deceased was found lying in a pool of blood at the scene of offence. PW-10, in his examination-in-chief, fully supported the prosecution case; however, he resiled from his earlier version during cross-examination and was treated as hostile. The Trial Court held that despite such hostility, his presence at the place of occurrence was admitted, he having seen the deceased in an injured condition, and his version regarding the location of the incident remained consistent with the evidence of PW-4 and PW-5. On that basis, the Trial Court concluded that although PW-4, PW-5 and PW-10 did not fully support the

prosecution on the aspect of the actual assault, their evidence unequivocally proved that the deceased was present at the place of occurrence and had sustained a brutal assault resulting in profuse bleeding.

9. Both the Trial Court as well as the High Court have placed heavy reliance upon the testimonies of PW-1, the complainant and brother of the deceased, and PW-12, namely Mukeshbhai Kuberbhai. Upon a detailed appreciation of their evidence, the Courts below concurrently held that their depositions inspire full confidence and are liable to be accepted in their entirety. The said conclusion was primarily founded on the ground that testimony of PW-12 remained unshaken in the course of cross-examination and no material contradiction or omission could be elicited so as to impeach his credibility. Similarly, the evidence of PW-1 also withstood the test of cross-examination and nothing substantial was brought on record to discredit his version. PW-1 has deposed that the deceased disclosed to him about the assault committed by the appellant on two occasions, firstly when he reached the place of occurrence and thereafter while he was taking the injured to the hospital in an auto-rickshaw, wherein he repeated the same several times. After evaluating the ocular evidence, the Trial Court proceeded to examine the panch

witnesses, most of whom turned hostile. The Court thereafter considered the medical evidence including the material evidence and on a cumulative appreciation of the entire material on record, recorded a finding that guilt of the accused stood proved and he had committed the offence with which he was charged.

10. In our considered opinion, the present appeal deserves to be dismissed *in limine,* for the reason that prosecution has succeeded in proving its case beyond reasonable doubt. Though Trial Court as well as High Court have undertaken a comprehensive analysis of the entire evidence on record, we deem it appropriate to independently re-appreciate the material in order to satisfy ourselves with regard to the correctness of the concurrent findings. We therefore proceed to examine the testimonies of the material witnesses to determine whether the guilt of the appellant in respect of the crime alleged stands established beyond reasonable doubt.

11. In order to determine whether the accused has committed the offence alleged against him, certain foundational elements are required to be established by the prosecution. These essential elements are the motive for the commission of the crime, the requisite *mens rea*, and the *actus reus*. For the purpose of ascertaining whether these ingredients stand proved, it would be appropriate to examine each of them in

the light of the evidence on record and to correlate the same with the testimonies of the relevant witnesses.

12. ***Firstly,*** insofar as the aspect of motive and *mens rea* is concerned, the same stands established primarily through the testimony of PW-1, the complainant, whose evidence has remained unshaken in the course of cross-examination. PW-1 has categorically deposed that on the night preceding the incident, i.e., on 11.12.1998 at about 11:00 p.m., when he returned to the house where he resided with the deceased, he was informed by the deceased that an altercation had taken place between him and the appellant, on account of appellant having thrown a half-burnt cigarette into the bucket used by the deceased for washing cups and saucers. PW-1 further stated that during the said quarrel the appellant had extended a threat to the deceased to the effect that he would "*see him"*. This part of the testimony having not been impeached lends assurance to the prosecution case regarding the existence of a motive and the requisite intention on the part of the appellant. The evidence further indicates that within a few hours of the said quarrel, the appellant came to the shop of the deceased on the following morning and carried out the assault. The proximity of time between the quarrel and the occurrence, coupled with the prior threat, clearly establishes the motive as well as the

mens rea attributable to the appellant for the commission of the offence.

13. ***Secondly,*** insofar as the *actus reus*, namely the commission of the guilty act, is concerned, the prosecution has relied upon the testimonies of five witnesses, viz., PW-1, PW-4, PW-5, PW-10 and PW-12, which are required to be examined in that context. Though PW-1 is not an eye-witness to the actual occurrence, his evidence cannot be discarded while determining whether the offence in question was committed by the appellant, particularly in view of the surrounding circumstances deposed to by him. However, before undertaking a detailed analysis of the testimony of PW-1, we deem it appropriate to first consider the evidence of the remaining witnesses, who are stated to have witnessed the incident and whose depositions have a direct bearing on the proof of the overt act attributed to the appellant.

13.1. ***Firstly,*** PW-4 and PW-5 may conveniently be dealt with together, as their depositions are on similar lines. Both the said witnesses had, in their statements recorded during the course of investigation, asserted that they had seen the appellant committing the offence; however, in their substantive evidence before the Court they resiled from their earlier version, did not

support the prosecution case on the aspect of the actual assault, and were consequently declared hostile. Notwithstanding their hostility, a careful reading of their testimonies reveals that they have consistently deposed to the presence of the deceased at the place of occurrence and to the fact that he was found lying on the ground in a grievously injured condition, having sustained fatal blows and bleeding profusely. To that extent, their evidence lends credence to the prosecution case with regard to the situs of the incident and the condition of the deceased immediately after the occurrence. However, their depositions do not advance the prosecution case on the aspect of having witnessed the appellant inflicting the injuries. The Courts below have, therefore, rightly relied upon their testimonies to the limited extent indicated hereinabove.

13.2. ***Secondly,*** the testimony of PW-10 does not inspire confidence so as to be made the basis for recording any conclusive finding. In his examination-in-chief, the said witness had fully supported the prosecution case; however, in the course of cross-examination he completely resiled from his earlier version and was declared hostile. The witness thus made a complete volte-face and failed to support the prosecution on any

material particular. In view of such total retraction and the absence of any reliable portion of his evidence which could be safely relied upon, his testimony does not materially advance the case of the prosecution.

13.3. ***Thirdly,*** PW1: We now revert to the testimony of PW-1. As noticed hereinabove, PW-1 is not an eye-witness to the actual occurrence, nevertheless, his evidence assumes considerable significance inasmuch as he has deposed that upon reaching the place of incident the deceased disclosed to him that it was the appellant who had stabbed him with a knife. According to PW-1, the said disclosure was not made only once but was reiterated by the deceased several times while he was being taken to the hospital in an auto-rickshaw. This part of the testimony of PW-1 has remained wholly unshaken in the course of cross-examination and nothing material has been elicited to discredit his version with regard to the oral dying declarations. Both the Trial Court and the High Court have accepted the evidence of PW-1 in respect of the said dying declarations as trustworthy and reliable. The legal position with regard to dying declarations is no longer res integra. It is well settled by a catena of decisions of this Court that a truthful and voluntary dying

declaration, if found to be reliable, can by itself form the sole basis of conviction without the necessity of corroboration[3]. In the present case, however, the said dying declarations are not only found to be reliable but also stand corroborated by the surrounding circumstances, particularly the testimony of PW-12. The contention raised on behalf of the defence that in view of the multiple injuries sustained by the deceased he could not have been in a fit state of mind to make the said declarations has been considered and rejected by the High Court, with which view we are in complete agreement. The reasoning assigned by the High Court in that regard is as follows:

> *"7.3. The contention of the defence, therefore, is that the deceased could not have made oral dying declaration before P.W.1. The above evidence, if considered as a whole, would go to show that P.W.1 reached the spot immediately upon hearing about the incident. He immediately found the deceased in a critical condition and, as a brother, he spontaneously inquired as to what had happened. It was argued that because left ventricle was punctured, the deceased would have become unconscious immediately due to shock. However, no suggestion was put to any doctor on this aspect as to how long could the injured have remained conscious after suffering the injury. PW1 being the brother would react in a very natural way of asking as to what had happened and he*

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[3] P.V. Rdhakrishna v. State of Karnataka, (2003) 6 SCC 443. State of Uttar Pradesh. v. Ram Sagar Yadav and Others, (1985) 1 SCC 552.

immediately lodges the F.I.R., wherein he specifically mentions about the oral dying declaration having been made by the deceased. Simply because the deceased had become unconscious when he reached the doctor, it cannot be presumed that he was unconscious even when P.W.1 reached the spot and asked him about the incident immediately after the incident. Journey period may have taken the toll. It is also not possible to doubt the veracity of P.W.1 on account of deposition of P.W.5-Kishanrao Bhagwandas Koshti, whose deposition, if read, would only go to show that he does not know if there was any dialogue between the deceased and P.W.1. The only ground now, therefore, remains is that in the history given to the doctor, name of the assailant is not given. This by itself would not render the entry or the other pieces of evidence doubtful. The medical history is recorded by the doctor mainly for the purpose of knowing as to how the incident has occurred and which type of weapon is involved, etc. and not the question as to who is involved or has caused the injury or hurt. Non-mentioning of name of the assailant in the medical papers, therefore, would pale into insignificance."

In view of the foregoing discussion, we find no reason to take a view different from that concurrently recorded by the Trial Court and the High Court with regard to the veracity and reliability of the testimony of PW-1. The evidence of PW-1 inspires confidence and has rightly been accepted by the Courts below. His testimony, when read in its entirety and in conjunction with the other material on record, establishes the essential ingredients

necessary to bring home the charge and proves the commission of the offence in question.

13.4. ***Fourthly,*** PW12: The testimony of PW-12, in our considered view, is complete and wholly reliable. In his examination-in-chief, the witness, who is a rickshaw driver residing at Saka Rabari's Chali, has deposed that he was acquainted with the deceased Somabhai and also identified the accused, Mitesh @ Tiniyo, in the Court. He has further stated that on 12.12.1998 at about 7:00–7:30 a.m., while travelling in a rickshaw towards Maninagar Railway Station for the purpose of dropping his relatives, he noticed a quarrel taking place at the four-way near Boringwali Chali between the deceased and the accused. According to this witness, during the course of the said quarrel the accused inflicted a knife blow on Somabhai and thereafter fled from the spot with the weapon in his hand. He has also identified the muddamal knife before the Trial Court as the very weapon used in the commission of the offence. The witness further deposed that the injured Somabhai was subsequently taken to the hospital by his brother. The evidence of this witness, which has remained unshaken in material

particulars, clearly establishes the overt act attributed to the accused.

13.4.1. In his cross-examination, the witness was subjected to a detailed and searching scrutiny with regard to his route to the railway station, the timing of the train, his occupation and the fact of not possessing a driving licence, the exact position of the rickshaw and the location of the place of occurrence on the opposite side of the road, as well as his conduct of himself not taking the injured to the hospital despite being acquainted with him. He was further confronted with the alleged delay and omissions in his statement recorded by the police and with his limited knowledge concerning the nearby shops and the persons present at the scene. Certain improvements and inconsistencies were also sought to be elicited as to whether he had alighted from the rickshaw, whether Ishwarbhai had taken the injured in his presence, and the point of time when he came to know about the death of the deceased. Suggestions were put to him that he had not witnessed the incident and that he was deposing falsely on account of community

influence or his acquaintance with the deceased. The witness, however, denied all such suggestions and consistently maintained that he had in fact seen the accused inflict the knife blow on the deceased.

13.4.2. Testimony of PW12 is a complete testimony in itself. The testimony of PW-12 is, in our view, cogent, complete and of a sterling quality. In his examination-in-chief, the said witness, who is a rickshaw driver residing at Saka Rabari's Chali, deposed that he was acquainted with the deceased Somabhai and that he identified the accused, Mitesh @ Tiniyo, before the Court. He has stated that on 12.12.1998 at about 7:00–7:30 a.m., while travelling as a passenger in a rickshaw towards Maninagar Railway Station for the purpose of dropping his relatives, he had witnessed a quarrel at the four-way near Boringwali Chali between the deceased and the accused. According to him, during the course of the said quarrel the accused inflicted a knife blow on Somabhai and thereafter fled from the spot with the weapon in his hand. The witness has also identified the muddamal knife as the very weapon used in the commission of the offence and further stated that the

injured Somabhai was taken to the hospital by his brother. The evidence of this witness has remained consistent and unshaken on material particulars and clearly establishes the overt act attributed to the accused.

13.4.3. From the aforesaid analysis of the evidence of PW-12, it is evident that his testimony is in complete consonance with the version of PW-1 and materially corroborates the same. The witness has given a clear, cogent and consistent account of the occurrence and has withstood the test of cross-examination without any material contradiction or infirmity being brought on record so as to discredit his presence or his version. We find his evidence to be natural and reliable, and the same conclusively establishes the overt act attributed to the appellant in the commission of the offence.

13.5. In view of the foregoing discussion, the evidence of PW-1 and PW-12, when read conjointly and in the light of the surrounding circumstances, establishes all the essential ingredients of the offence and prove the case of the prosecution beyond reasonable doubt.

14. Insofar, as the evidence of the remaining witnesses, namely the panch witnesses, the medical witnesses and the official

witnesses, are concerned, we are of the considered opinion that the findings recorded by the Trial Court, as affirmed by the High Court, are justified and would not call for interference. The Courts below have undertaken a detailed and proper appreciation of their testimonies and we find the same to be adequate and in accordance with law. In the circumstances, a reiteration of the entire discussion on that aspect would only burden the present judgment unnecessarily. Upon an independent perusal of the evidence of these witnesses, we are satisfied that their testimonies do not, in any manner, advance the case of the appellant or create any dent in the prosecution case.

15. The learned counsel for the appellant has contended that since a large number of witnesses, including the panch witnesses and some of the alleged eye-witnesses, have turned hostile, the appellant is entitled to the benefit of doubt. We are unable to accept the said submission. It is a settled principle of criminal jurisprudence that it is the quality and not the quantity of evidence which is determinative. Even the testimony of a solitary witness, if found to be wholly reliable and of sterling quality, is sufficient to base a conviction. In this context, we would note the judgment of this Court in ***Namdeo v. State of***

Maharashtra[4] with benefit wherein it has been elaborately explained the evidentiary value of a credible solitary witness and has held that conviction can be founded upon such evidence. It is in this backdrop that we deem it appropriate to reproduce the relevant observations from the said decision, which read as under:

> "16. Having heard the learned counsel for the parties, in our opinion, no interference is called for in exercise of power under Article 136 of the Constitution. It is no doubt true that there is only one eye witness who is also a close relative of the deceased, viz. his son. But it is well-settled that it is quality of evidence and not quantity of evidence which is material. Quantity of evidence was never considered to be a test for deciding a criminal trial and the emphasis of Courts is always on quality of evidence.
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> 27. Recently, in Bhimappa Chandappa v. State of Karnataka, (2006) 11 SCC 323, this Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.
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> 28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the Legislature (Section 134, Evidence Act, 1872) nor the judiciary mandates that

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[4] (2007) 14 SCC 150.

> there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye witness, therefore, has no force and must be negatived."

In the case at hand, though most of the panch witnesses and eye witnesses have turned hostile, PW1 and PW12 – have completely established the case of the prosecution beyond reasonable doubt.

16. In view of the foregoing discussion, we are of the considered opinion that the Trial Court was fully justified in recording the order of conviction and sentence against the appellant, as the prosecution had proved its case beyond reasonable doubt. The impugned judgment, as affirmed by the High Court, does not suffer from any infirmity warranting interference by this Court. The appeal, being devoid of merit, is accordingly dismissed.

17. However, having regard to the fact that the appellant has undergone a substantial period of sentence, liberty is granted to him to move an appropriate application for

remission in accordance with the extant policy applicable to him. In the event such an application is preferred, we observe that the same shall be considered and disposed of expeditiously in accordance with law.

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

.....J.
[ARAVIND KUMAR]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
MAY 11th, 2026.