

IN THE CITY SESSIONS COURT AT AHMEDABAD
SESSIONS CASE NO.187 OF 2016.

Complainant:

The State of Gujarat.

V/s

Accused:

Vikkysing Alias Chandraprakashsing S/o.
Dharmanathsing.

Aged – aged.,

Residing at : Taljabhai Rabari Ni Chali,
Besides Golden Bungalow,
Nana Chiloda,
Naroda,
Ahmedabad.

Appearances:

Ms.MR Bhatt : Learned Public Prosecutor for the
State.

Mr.H.N.Patil : Learned Advocate for the Accused

DATE: 25/05/2018

JUDGMENT

1. The Sessions Case has been committed to this Court by the Learned Additional Chief Metropolitan Magistrate, Court No.18, Ahmedabad, by a letter dated 15/07/2016, Letter Outward No.900/2016 and registered by City Civil And Sessions Court on dated 22/07/2016. It is concerned with C.R.No. I-47/2016, dated 30/04/2016, registered with Naroda Police Station, Ahmedabad, Charge-Sheet No.87/2016, dated 17/06/2016, for offences punishable

under Section 302 of Indian Penal Code. The Charge was framed against the accused on 18/04/2017, by Prior Coordinate Court No.4, City Sessions Court. The Accused pleaded not guilty and was accordingly tried. The Prosecution has in all examined ten witnesses and led fourteen documentary records that constitute to be artillery of the Prosecution. Further Statement under Section 313 of the Criminal Procedure Code of the Accused had been taken on 18/05/2018. Subsequently, the case was argued, both by Prosecution and Defense and posted for Judgment.

Case Summary:

2. Relationships come with some names. We may call them father-son, spouses, friends and so on. Yet, they come with different qualities and destinies. This is a case where the father is dead and his son faces accusation of causing that death.
3. In the backdrop the two are residing in a Chawl (a lower income group location). The Prosecution story, as it unfolds alleges that strife between this father and son

followed by a fracas. The animosity escalated. The accused son punched his deceased father on his head. In turn, his father ran into the wall and then his head hit the corner of iron cot. When the neighboring Landlord inquired, the son camouflaged the matter holding it as an internal strife. He then told his neighbors that his father was asleep. Curious landlord Taljabhai once again approached next day morning to wake up the old man, he did not rise. Ambulance was called. He was taken to the Hospital, after few days declared dead.

4. The brother of the Accused turned into complainant. Sometimes the blood is thicker than water, many times not. When it came to the trial, it appears that all the witnesses including the Complainant, brother of Accused have turned hostile. All the memories of trailing events appear to have effaced from their minds. They speak of nothing. This was perhaps recognized by the Prosecutor appearing for State, who after examination of the Investigating Officer closed his evidence by filing a Pursis at Exhibit 39, declaring that the witnesses were not supporting the case of Prosecution. This happens to be

the story of this case at an outset. With a limited periphery of operation and reach of this humanly created Court, this trial governed by the ephemeral laws of the mortal beings must find itself culminated into an acquittal. With so much of prelude, a brief reference to the testimonies and the case of Prosecution, the arguments of defense and the Court's Opinion subsequently, follows as hereunder.

Case of Prosecution:

5. As described before, Charge-sheet summaries a strife that happened on 23/04/2016, between the Accused and his father. Neighbor and Landlord Taljabhai discovers that father of Accused did not rise in the morning. He was shifted to Civil Hospital. He survived for six days and then passed away.
6. The following happens to be the testimony of the witnesses examined by the Prosecution.

Testamentary Evidence : PW1 (Panch Witness)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-1	Sunilsinh Vijayshankarsinh Rajput	7

Documentary Evidence referred to in Testimony of PW-1.

Sr.No.	Exhibit	Description of Document	Date
1.	8	Inquest Panchnama	30/04/2016

Testamentary Evidence: PW2 (Panch Witness)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-2	Anilsinh Vijayshankarsinh Rajput	9

Documentary Evidence referred to in Testimony of PW-2 -
NIL.

Testamentary Evidence: PW-3 (Panch Witness)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-3	Rahul Narsibhai Bhil	10

Documentary Evidence referred to in Testimony of PW-3.

Sr.No.	Exhibit	Description of Document	Date
1.	11	Spot Panchnama	30/04/2016

Testamentary Evidence: PW-4 (Panch Witness of Clothes and samples from body of deceased)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-4	Ajay Madhaji Bhil	12

Documentary Evidence referred to in Testimony of PW-4:

Sr.No.	Exhibit	Description of Document	Date
1.	13	Panchnama of Clothes of deceased and samples collected from the body of deceased.	30/04/2016
2.	14	Panch Slip	30/04/2016
3.	15	Panch Slip	30/04/2016

Note:Exhibit:16, document produced at Mark 4/6 i.e. Panchnama of Cloth of Accused has been exhibited on account of consent endorsement made by the Defense Counsel on documentary list at Exhibit:4. By an Order dated 16/03/2018, Mark 4/6 was given Exhibit:16. As such, this document has not been referred to in testimony of witness.

Testamentary Evidence: PW-5
(Brother of Accused / Complainant)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-5	Amarnathsinh Dharmanathsinh Rajput	18

Documentary Evidence referred to in Testimony of PW-5.

Sr.No.	Exhibit	Description of Document	Date
1.	19	Complaint	30/04/2016

Testamentary Evidence : PW-6
(Landlord's son – where accused / his father lived)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-6	Kanubhai Taljabhai Desai	20

Documentary Evidence referred to in Testimony of PW-6 -
NIL.

Testamentary Evidence : PW-7 (Neighbor)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-7	Rajesh Suryanaran Shukla	21

Documentary Evidence referred to in Testimony of PW-7 -
NIL.

Testamentary Evidence : PW-8 (Neighbour)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-8	Rajubhai Gaurishankar Madesiya	23

Documentary Evidence referred to in Testimony of PW-8 -
NIL.

Testamentary Evidence : PW-9 (Doctor witness)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-9	Dr.Bhavin Shyamlal Shah	24

Documentary Evidence referred to in Testimony of PW-9:

Sr.No.	Exhibit	Description of Document	Date
1.	25	Police Yadi addressed to Civil Hospital.	30/04/2016
2.	26	Postmortem Report	30/04/2016

Testamentary Evidence : PW-10 (Investigating Officer)

Sr.No.	PW No.	Name of Prosecution Witness	Examined at Exhibit
1.	PW-10	Rajpalsinh Bhagirathsinh Rana	28

Documentary Evidence referred to in Testimony of PW-10.

Sr.No.	Exhibit	Description of Document	Date
1.	29	Report under Section 157 of Criminal Procedure Code.	30/04/2016
2.	30	FSL Report	30/04/2016
3.	31	Letter written by Police Inspector, Naroda Police Station to FSL.	30/04/2016
4.	32	Letter written by Police Inspector, Naroda Police Station to Executive Magistrate.	30/04/2016
5.	33	Muddamal Dispatch Note written by Police Inspector, Naroda Police Station.	16/05/2016
6.	34 to 37	Letters written by FSL to Naroda Police Station.	May to August 2016

Crux of testimony of PW1 and PW2:

7. Prosecution Witness No.1, Sunilsinh Vijayshankarsinh Rajput happens to be the friend of Amarnath Singh Rajput, brother of Accused. In his testimony, he has identified his signature on the Inquest Panchnama. He says that brother of Accused called him when

Postmortem was being conducted on the person of the deceased. He states that except for signing Panchnama, he knows nothing. He was declared hostile.

8. Prosecution Witness No.2, Anilsinh Vijayshankar Rajput appears to be pair panch of Inquest Panchnama and a brother of PW1. He too has turned hostile.

Crux of testimony of PW3:

9. Prosecution Witness No.3 – Rahul Narsinhbhai Bhil deposes as Panch Witness of Spot Panchnama. He identifies his sign on the Spot Panchnama. He states that no Panchnama had been drawn in his presence. His sign was taken on readymade Panchnama. He does not remember when and where his signs were taken. Prosecution Witness No.3 was declared hostile.

Crux of testimony of PW4:

10. Prosecution Witness No.4 – Ajay Madhaji Bhil happens to be a Panch Witness of Panchnama of Clothes recovered from the body of deceased as well as Blood

Sample Bottles. He identifies his sign on the Panchnama and the Panch Slips from Muddamal article no.1 and 2. Except for identifying his signatures, Prosecution Witness No.4 has also turned hostile. He has stated that none of the Muddamal articles no.1 to 3 were collected by Police in his presence.

11.Exhibit 16 also happens to be the Panchnama of the Clothes of the Accused. The Panchnama had been exhibited and admitted to evidence upon consent of the Defence Counsel. Panchnama specifies that no noteworthy identification marks were found on the clothes recovered from the person of the Accused.

Crux of testimony of PW5:

12.Prosecution Witness No.5 – Amarnathsinh Dharmanathsinh Rajput is the Complainant and brother of the Accused. According to him, when incidence occurred he was living at Sant Asharam Society, Navalnagar, Ahmedabad. He was working as a Welder in Premier Engineering Company at G.I.D.C., Ahmedabad. He is elder brother of Accused Vikkysing. When the incidence

occurred, Vikkysing, the accused was living with his father Dharmanathsinh in Taljabhai Ni Chali, besides Golden Bungalows, Nana Chiloda, Ahmedabad. His father was doing labor work of welding. He had been often visiting his father. On 24/04/2016, he was on his job. He had then received a call from the Landlord of Chawl namely Taljabhai, who had intimated him that his father i.e. Dharmanathsinh had collapsed and taken to Hospital. After receiving call, he went to Civil Hospital. His father had been admitted in Trauma Ward and lay unconscious. He asked no questions regarding occurrence of incidence. He tried to know no facts. The elder son of deceased states that his father was never assaulted by anyone. The Police had simply inquired about his name and address. Except for this, he has never lodged any complaint. PW5 identifies his sign on the Complaint. He was declared hostile. In his cross-examination, he accepted the suggestion that his father had not fallen down in his presence. He came to know about the incidence only when Landlord of his father viz. Taljabhai informed him on phone. That his brother Vikkysing, the accused was already present in the Hospital and nursing his father. He

accepts that his father was hospitalized from 24/04/2016 up to 30/04/2016. So much goes for the testimony of Prosecution Witness No.5.

Crux of testimony of PW6 to PW8:

13.Prosecution Witness No.6 – Kanubhai Taljabhai Desai happens to be the son of the Landlord in whose place the deceased and Accused were living as tenants. He has stated that both the deceased and his son had rented room in his Chawl. He identifies the Accused. On the fateful day, he states that people had gathered. The deceased had fallen down in the room. Ambulance was called. He had given the statement to the Police. He accepts that he had told the Police that deceased Dharmanathsinh fell down in his room, got hit by corner of Iron Cot. He has stated that he never gave any statement to Police stating that the incidence had happened on account of belligerency between the father and son. Subsequently, this witness turned hostile and was so declared. In his cross-examination, he has stated that the deceased had not fallen down in his presence. The incidence did not happen when he was present. That

he knew nothing about the incidence.

14.Prosecution Witness No.7 – Rajesh Suryanarayan Shukla is a neighbor, who also has turned hostile before the Court. He says that he had seen people gathered and deceased Dharmanathsinh lying in his room with injury on his head. Except this, he denies of any knowledge about the incidence or of any statement given by him to the Police. Same happens to be the case with another neighbor namely PW8 – Rajubhai Gaurishankar Madesiya, who has also turned hostile just as previous neighbor.

Crux of testimony of PW9:

15.Prosecution Witness No.9 – Dr.Bhavin Shyamlal Shah happens to be a doctor witness, who did Postmortem on the person of deceased. He has described various injuries being abrasions and hemorrhage to the deceased. According to him, the cause of death was the head injury because of which the heart and lungs stopped working. He identified the Police Yadi and also his sign on the Postmortem Report. He stated that injuries described in Column No.17 of the Postmortem Report can happen on

account of scuffle and being dragged. The abrasions and internal head injuries could occur on account of blunt and heavy substance. If any person is hit by such an object, the doctor witness states that such an injury may happen. He describes the death as an unnatural death. Subsequent to examination of the doctor, the Defense sought an adjournment on 26/04/2018. Once again the matter was posted for cross-examination on 03/05/2018 when the defense did not cross-examine the witness, the right of cross-examination of the doctor witness by the Defence was closed.

Crux of testimony of PW10:

16. Prosecution Witness No.10 – Rajpalsinh Bhagirathsinh Rana happens to be the Investigating Officer. He has stated that the Complainant – Amarnathsinh Rajput had personally given him a Complaint. He describes the events that were written by him. Sign of the Complainant was taken. Prosecution Witness No.10 identified his sign on Report under Section 157 that was admitted to evidence at Exhibit 29. PW10 later described all those actions which he had taken for pursuing the investigation and the

manner in which Inquest Panchnama, Spot Panchnama and other Panchnamas had been carried out. During his testimony, he has identified all those documentary records that form sequence of investigation. He has also identified various documentary record concerned with FSL that were also exhibited and referred hereinbefore. For all the hostile witnesses detailed above, he has specifically stated that those were the very people who came and gave statement to him during the course of investigation. During the cross-examination, Investigating Officer accepted that incidence had happened on 23/04/2016 and the Complaint had been lodged on 30/04/2016. He accepted that no reasons had been attributed to explain the delay in lodging of Complaint. He explains that the Investigating Officer further had approached Civil Hospital. Then the Complainant was not available. Attempt was made to call him on his Mobile phone that turned in vain. On account of this, when Civil Hospital intimated about the death of Dharmanathsinh Rajput, he approached this Hospital and then headed to investigate. He also accepted the suggestion during cross-examination that no statement of the doctor treating Dharmanathsinh

Rajput had ever been taken. So much happens to be the crux of the testimony of witnesses.

Arguments of Prosecution:

17. Prosecution closed the evidence by filing a Pursis at Exhibit:39, *inter alia* which it happens to recognize the fact that the witnesses to the case including Panch Witnesses and even the son of deceased, who is said to have lodged the Complaint initially and triggered the investigation have not supported Prosecution. Yet, it is contended that from the injuries referred to in the Postmortem Report and the testimony of the doctor, it reflects that there was an unnatural death of Dharmanathsinh. Since the neighbors saw Dharmanathsinh lying in his room with injury on his head, it must only feel logical that the Accused was involved in the offense; otherwise there would have been no reason for the investigation to arise. Though the neighbors have turned hostile, they at least support the case of prosecution to an extent where people had gathered around the room in which Dharmanathsinh was a tenant. This fact combined with the testimony of doctor and the

testimony of Investigating Officer has showed that all needles of doubt point at the Accused, who on account of strife between him and his father, pushed his father and led to his death. According to Prosecution, the charge is brought at home and the accused ought to be convicted for the offences charges.

Arguments of Defense:

18. Learned Defense Counsel states that the very fundamental principle of Criminal Jurisprudence says that the Accused has to be proved guilty beyond all doubts. In spite of not being guilty the accused has already suffered incarceration for quite some time. With the last of hostile witnesses backing out from the artillery of Prosecution, defense contends that the Prosecution's case has turned too fragile to attract any conviction. The Complainant, who has said to have triggered the Investigation, has turned hostile. The neighbors have turned hostile. The Landlord, who is said to have seen the accused from the first time, has not been examined. The son of the Landlord knows nothing about the incidence. As such, there are so many lapses in the chain of Prosecution so as

to warrant a clear case of acquittal.

Court's Opinion:

19. As hitherto pointed out, this Court only sees interplay of human relationship, the family ties, a bonding between father and son and the law of causation as a fundamental factor that stand to write destiny of every individual. The Courts are made by humans and therefore, governed by the procedural law coupled with the Law of Evidence and the Penal charging sections. They themselves are dependent on the evidence that comes before the Court. No amount of intrinsic sense is permitted to displace the procedures established by Law. There comes an outer periphery of the human law, its ability or rather disability to reach at an opinion to punish the guilty. In a case where the elder son of deceased turned hostile, why should the neighbors not follow the league? In a logical sequel to the scant evidence led by the Prosecution, it needs no elaboration any further to state that the Prosecution's artillery is weak. Perhaps it is the love of brother for another, may be some clemency that may exist that leads him to turn hostile before this Court. Perhaps his brother spoke truth on oath. Or he

lied. There is nothing to ascertain the truth with so much accuracy that must lead this Court to an opinion to convict the Accused. There is no supernatural force so interested with mundane human affairs to blink a buzzer when lies are told on oath in the name of God. The Criminal Jurisprudence plays its own role. With scant evidence, the doctor's testimony can lead to no succor to the Prosecution case holding the Accused guilty. Following Order, as such consequently follows:

ORDER

- a. Accused – Vikkysing Alias Chandraprakashsing S/o. Dharmanathsing Rajput is hereby acquitted for offence under Section 302 IPC, registered vide I.CR No.47/2016, Charge-sheet no.87/2016 with Naroda Police Station, Ahmedabad.
- b. Muddamal articles, if any shall be confiscated on expiry of appeal period.
- c. Bail bonds given earlier to continue up to expiry of appeal period, if in existence. Otherwise personal bond of Rs.5000/- to be executed up to expiry of appeal period;

Pronounced in the open Court on this 25th day of May, 2018.

Date : 25/05/2018
Place : Ahmedabad

(SUCHITT DILIPBHAI DAVE)
Judge, Court No.18,
City Civil & Sessions Court,
Ahmedabad.
(Code No.: GJ01501)

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