

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 912 OF 1998**

The State/Union Territories of
Daman and Diu & DNH

... Appellant

V/s.

1. Ramji Limba
Aged about 50 years
Occ: Labour
R/o. Goudwadi, Vanakbara
 2. Rama Bhola
Aged about 30 years
Occ: Fishing
R/o. Chandwadi, Vanakbara
- ... Respondents

Mr. Hiten S. Venegaokar a/w. Mr. Saurabh Kshirsagar for the
Appellant.
Ms Manisha Devkar, Appointed Advocate for the Respondents.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

**RESERVED ON : 31.03.2021.
PRONOUNCED ON : 09.08.2021.**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal at the instance of State/Union Territories of Daman, Diu & DNH takes an exception to the judgment and order dated 9.11.1998 passed by the learned Additional Sessions Judge, Diu and Daman in Sessions Case No. 40 of 1987. By the impugned judgment and order, the respondents, who were accused Nos.1 and 2 before the trial court, have been acquitted of the offence punishable under section 302

read with 34 of the Indian Penal Code, 1860 (for short 'IPC').

2] It is the case of the prosecution that the deceased Bava Punja Solanki was residing with his wife Ranibai Bava (PW-3) and granddaughter Lalitaben Raja (PW-4) at village Vadiwadi, Vanakbara, Diu. The incident took place on 27.2.1987. It is alleged that on the day of incident at about 4.00 p.m., accused Nos.1 and 2 came to the house of the deceased and assaulted him by knife. The deceased was taken to Diu Hospital. However, he died on the same day.

3] On the basis of report lodged by PW-2 Raja Bava, the son of deceased, crime was registered against the present respondents/accused Nos.1 and 2 for the offence punishable under section 302 read with 34 of the IPC. On completion of investigation, the chargesheet was filed against them for the said offences.

4] The accused were charged and tried for the above said offences. As stated earlier, the trial court by the impugned judgement and order acquitted the accused.

5] We have heard Mr. Hiten S. Venegaokar, learned counsel for the appellant and Ms Manisha Devkar, learned appointed counsel for the respondents.

6] The learned counsel for the appellant submits that the trial court discarded the evidence of the eye-witnesses, i.e.,

PW-3 Ranibai, the wife of the deceased and PW-4 Lalitaben, the granddaughter of the deceased for no valid reasons. It is submitted that PW-3 and PW-4 are the most natural witnesses as they were residing with the deceased and thus, they ought not to have been disbelieved for minor inconsistency in their evidence. It is submitted that the impugned judgment and order thus, needs to be quashed and set aside and the respondents/accused need to be convicted.

7] On the other hand, learned counsel for the respondents supported the impugned judgment and order.

8] According to PW-3 Ranibai, the wife of deceased, on the day of incident, at about 4.00 to 5.00 p.m, the accused Nos.1 and 2 came to their house. At that time, her husband was taking rest. Accused No.1 went near him, took out a knife and then assaulted her husband by the said knife on his chest and stomach. Accused No.1 then dragged the deceased in front of the house. Thereafter, accused No.2 assaulted the deceased with knife on abdomen and arms. She tried to save her husband from assault, but accused No.1 pushed her back.

9] In the cross-examination conducted on behalf of the accused, PW-3 admitted that some people were calling her husband (deceased) witchcraft expert and because of that there was enmity of some persons with her husband. She has further admitted that while recording her statement, only her name was asked.

10] According to PW-4 Lalitaben Raja, on the date of incident at about 4.00 p.m., she and her grandmother were pruning the fish. At that time, accused Nos.1 and 2 came to their house. Accused No.1 took out the knife and started assaulting her grandfather. She started crying. Thereafter, accused Nos.1 and 2 went away. She saw that her grandfather was bleeding.

11] In the cross-examination conducted on behalf of the accused, PW-4 has admitted that her father was present at the time of recording of her statement by the police. She further admitted that her father arrived at the scene of the offence after police took her grandfather to hospital. She talked with her father and he asked her about the incident and who had assaulted the deceased.

12] PW-4 has not attributed any overt-act to accused No.2. According to PW-3, accused No.2 assaulted the deceased on his abdomen and arms by knife. However, from the cross-examination of PW-3, the said fact in the evidence of PW-3 appears to be omission.

13] According to PW-11 Ramji Narayan Makwana, who was then working as ASI at Vanakbara police outpost under Diu Police Station, after receipt of information in relation to the incident, he reached to the place of incident. The deceased was lying there in injured condition. He sent the deceased in a police van for medical treatment.

14] In the cross-examination conducted on behalf of the accused, PW-11 has admitted that many people had gathered at the place of incident. He made enquiry with the said persons about the names of the assailants and he was told that the deceased was assaulted by two unknown persons. It appears from the evidence of PW-11 that even he made inquiry with PW-3, the wife of the deceased and she did not disclose to him that accused Nos.1 and 2 assaulted to her husband.

15] According to PW-2 Raja Bava, the son of the deceased at about 5.20 p.m., he received information while he was at his work place that accused Nos.1 and 2 came to his house and assaulted his father with knives. He along with his friend Jitubhai went to Vanakbara Police outpost and informed the Police Constable Daud that the accused had assaulted his father. However, according to PW-11, when he reached to Vanakbara police outpost, Constable Daud was present there. Constable Daud disclosed to him about the incident. He further disclosed to him that PW-2 Raja Bava had come to outpost and told him that somebody had assaulted to his father.

16] PW-2 also cannot be believed, in view of the evidence of PW-4. According to PW-2 at the time of incident he was at his work place. After receiving information about the incident he went to Vanakbara police outpost to lodge the report and from there he came to place of incident. PW-4 has admitted

that when her father came to the place of incident, he asked her about the incident and who had assaulted the deceased. Thus the version of PW-2 that he received information that accused Nos.1 and 2 assaulted to his father and accordingly, he disclosed to Constable Daud cannot be accepted.

17] The witnesses have denied that the entire incident took place inside the house. The spot panchanama at Exhibit-38 shows that on left side of the house of the deceased, there is house of one Rama Bava and in front side, there is house of Bhagwan Laxman. However, no independent witnesses has been examined. On the contrary, according to PW-11, the persons who had gathered at the place of incident on enquiry disclosed to him that two unknown persons had assaulted the deceased.

18] PW-3 has admitted that the people used to call the deceased as witchcraft expert and because of that there was enmity of the some persons with the deceased. The possibility of involvement of some other persons in the alleged crime therefore cannot be ruled out. Considering overall facts and circumstances of the case, no interference is called for in the impugned judgment and order. In the result, the following order is passed.

ORDER

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.)

(SMT. SADHANA S. JADHAV, J.)