



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 76 of 2020

Taher Vajiyuddin Rangwala & Anr.

...Appellant (s)

Versus

The State of Gujarat

...Respondent (s)

J U D G M E N T

K. VINOD CHANDRAN, J.

The appellants are the accused who were alleged to have murdered their friend; found drowned in a river. The prosecution case was that the deceased was taken from his house in the early morning, of 17.07.2006, on the pretext of going to Ankleshwar to play volleyball. The deceased did not return by evening, and his family started searching for him. When A-2 was contacted by his wife, A-2 allegedly told her that he was in a picture house watching a movie. PW14 informed PW-12 about the clothes found on the banks of a river, which were identified by him as belonging to his

brother. Later, A-1 and A-2 who had taken the deceased in the morning, came to the house of the deceased voluntarily. They were questioned and later, inside a car, as stated by PW-12, the brother of the deceased, the accused confessed that they had gone swimming in the river and the deceased accidentally drowned. In panic, they fled from the spot and went for a movie. The villagers gathered at the riverbank and searched for the deceased, whose clothes and other belongings were found on the banks. The body was not recovered till nightfall and the rescue party disbursed. Later, on the next morning, the body was recovered and post-mortem was conducted, which showed the victim having died of 'Asphyxia due to drowning'. The accusation against the appellants herein; alleging a motive against both the accused, was raised by the First Information Statement on 03.11.2006, which was registered as an FIR, produced as Annexure A-6.

2. The prosecution went to trial with 20 witnesses. The circumstances put forth was motive, last seen together theory, presence of accused near the scene of occurrence,

homicidal death, the silence of the accused, conduct of the accused; specifically of lying to the sister of the deceased that they had dropped him at Sahra Darwaja, and admissions made in the bail application.

3. The Trial Court convicted both the accused under Sections 302, 34 and 201 read with Section 120B of the Indian Penal Code. Under Section 302, life imprisonment was imposed with a fine of Rs.5,000/- and default sentence of rigorous imprisonment (RI) for one year. Under Section 120B and Section 201 substantive sentences of RI of five years and two years were imposed with fine of Rs.2,000/- and Rs.1,000/-, with a default sentence of RI of 2 months each, on both counts. The High Court confirmed the conviction of the Trial Court in appeal.

4. We have heard Mr. Iqbal Syed, learned Senior Counsel for the appellants and Ms. Swati Ghildiyal, learned Counsel for the respondent-State.

5. Mr. Iqbal Syed argued that the appellants were, at worst, guilty of a misadventure which turned fatal to their friend and quite complex for themselves, leading to the

conviction for murder of their friend. There was absolutely no evidence to even prove a homicidal death and the plausible story of the defense, was that an accidental drowning occurred. The accused were, if at all, guilty only of having fled the scene in panic. The motive alleged is fabricated and in the wake of the delay in the registration of FIR, has to be disbelieved. There is no single circumstance but the last seen theory, which even the accused accepted. The Doctor, PW-1, who was examined, clearly indicated that the injuries on the body could be caused while jumping into the water and even if the body was dragged in the flow of the river.

6. Smt. Swati Ghildiyal, however, vigorously argued for sustaining the conviction and sentence. There was enough material to find the circumstances projected by the prosecution; fully established. The injuries caused clearly indicate that the accused was struck by a soda bottle, the fragments of which were found at the scene of occurrence. The testimony of the shop owner who spoke of four soda bottles having been purchased and taken, with return of

only three bottles clinches the culpability of the accused. The accused were found inebriated and wet, on returning the soda bottles. The act of returning the soda bottles clearly indicates premeditation. There were blood stains found on the fragments of the soda bottle found at the site.

7. At the outset, we have to notice that the victim was found missing on 17.07.2006 and the body was recovered in the early hours of 18.07.2006. The incident become known when the locals detected wet clothes on the banks of the river, which was informed to the police, who in turn informed PW-12, the brother. The brother identified the clothes and belongings of the victim from the banks of the river, and a search was carried out, resulting in the recovery of the body on the next day.

8. The first aspect to be examined is as to whether the death was homicidal. The post-mortem report is produced as Annexure A-2 and after the report of the chemical examination of viscera, there was a further report on 12.10.2006, produced as Annexure A-3. Both these reports clearly indicate the cause of death as 'Cardio-Respiratory

arrest due to Asphyxia due to drowning'. The post-mortem report also indicates that there were 3 injuries on the body: a contused lacerated wound on the frontal bone above the left eyebrow, abrasion between the left eye and left ear and an abrasion on the right mid clavicular region, reddish in colour. The wounds were not grievous and as the Doctor opined in cross-examination, the three injuries could be caused either when taking a bath in the river or when dragged in the flow of the water; on the body coming into contact with a hard substance like a stone with a sharp edge.

9. The suggestion in chief-examination that if a person is hit with a soda bottle which is made of glass and is in a broken condition, then the contused injury could have been sustained, was also accepted by the Doctor. However, no such broken soda bottle was confronted to the Doctor, nor do we find any seizure of such fragments of glass or a broken soda bottle from the scene of occurrence, as was argued by the learned Counsel for the respondent-State. We also see from the forensic report, produced as Annexure

A-4, that no such broken soda bottle with blood stains was sent for forensic examination.

10. A reading of the post-mortem report, juxtaposed with the testimony of the Doctor who conducted the post-mortem, PW-1, cannot lead to a finding that the death was homicidal. There is nothing to indicate that the victim was hit on the head, rendered unconscious and then drowned deliberately in the river, as the prosecution propounded before the Trial Court. The post-mortem report leans in favour of the defense version of an accidental drowning.

11. The High Court, in confirming the conviction, has referred in detail to the relevant witnesses, which we would also examine. In this context, we have to specifically notice that the High Court has not found it fit to consider the testimony of the Investigating Officer, which makes the said testimony inconsequential.

12. As we noticed, there was gross delay in raising the allegations against the accused, who had admittedly accompanied the victim to the river for a bath and probably consumed alcohol. Even after the confession of the accused

and recovery of the body, no allegations were levelled against the accused, till the date on which the FIS was recorded. As we saw, it was about 4 months later that an FIR was registered, which again was on the basis of the motive alleged.

13. Insofar as the motive is concerned; the deceased is said to have had a relationship with A-1's sister; continued even after her marriage, which enraged A-1. A-2 is said to have had a quarrel a few days back with the deceased regarding a cricket match. But the motive alleged, by the brother did not obviously deter the family of the deceased from sending him with the accused, when he was taken away from his home in the early hours of 17.07.2006; the purpose of which was also asserted to participate in a volleyball game at Ankleshwar. The very conduct of the family members of the deceased, as coming out from the testimonies of PW-12 and PW-13, the brother and sister, indicates rather friendly relationship between the deceased and the accused.

14. PW-12, though, spoke of the accused having taken his brother from their house, admitted that he had heard it from his mother when he woke up on the said day. PW-13, witnessed her brother going off with the two accused in a motorcycle. On the deceased having not returned to his house till evening, both PW-12 and PW-13 enquired with A-2, who told them that their brother was dropped at Sahra Darwaja at 02:30 pm. Then, both the accused came voluntarily to the house of the deceased and a little later confessed to having gone to the river to take a bath when the deceased accidentally drowned. PW-12, obviously did not harbour any suspicion against the accused at that point. This further puts the motive under a cloud, as a deliberate afterthought.

15. We can definitely believe the testimony of PW-12 and PW-13 that the accused had taken the deceased from their house since the accused also admitted to it, and their specific defense is that they had proceeded to the river for a bath where the deceased accidentally drowned.

16. Insofar as the premeditated murder is concerned, PW-18 and PW-19 were examined. PW-18 was the owner of the shop from which four soda bottles were purchased by the accused. PW-18 had spoken of three persons who came to the shop to purchase the soda bottles, for which he took a security deposit from them. Two of the persons came back and handed over only three soda bottles and after deducting the price of one bottle, the balance security deposit was handed over. PW-18 also said that both the accused were inebriated and were drenched, when they came to his shop.

17. PW-19 was managing a Pan Parlor from where the accused had purchased snacks before they went for soda to PW-18. PW-18 and PW-19 were asked to identify the accused in court, which they did. Obviously, PW-18 and PW-19 are not acquainted with the accused, in which event the identification in court, when the two accused were in the dock, cannot at all be reckoned. The prosecution does not have a case that a test identification parade was carried out after the arrest of the accused, especially since the specific

allegation of murder is levelled after four months, with the story of a motive raised by the brother of the deceased.

18. PW-12, deposed that PW-14, told him that there were two persons who came in a motorcycle and fled from the scene of occurrence. PW-12 also testified that the scene of occurrence was a place frequented by shepherds and two or three persons were present in the scene, who spoke of the accused having called them over for a drink, which they declined. No such witness was examined before court.

19. PW-8, a labourer and an occasional fisherman, was examined by the prosecution as another person who saw all the three persons at the river. PW-8 testified that he had seen three persons who were not from his village and he had smoked a cigarette with them. But, he declined the offer of liquor. It is also stated that after having drinks, the three jumped into the water to take a bath. He has stated that there was neck deep water at the place where they jumped into the water. PW-8 then went on his way, and it must be later that the mishap occurred.

20. Again, the testimony of PW-8 does not inculcate the accused of the murder alleged, though, they were seen together. As stated by PW-12 and as discernible from the testimony of PW-8, the riverbank where the accused and the deceased were found drinking, was not a lonely spot and it was frequented by people. It is very unlikely that the accused would have chosen such a spot for the premeditated murder of their friend, especially in broad daylight. The testimony of PW-18 and PW-19 also does not incriminate the accused, and they could, at best, be alleged to have consumed alcohol and not returned a soda bottle.

21. The motive, as we observed, was an afterthought. The last seen theory and the presence of the accused near the scene of occurrence is admitted by the accused and their defense is that the deceased accidentally drowned. As for homicidal death, there was nothing coming out from the post-mortem report and the testimony of the Doctor, PW-1, in proof of homicide. On the contrary the medical evidence tilts the scales towards an accidental drowning. The silence of the accused and their having not informed the family

members of the deceased, cannot be an incriminating circumstance since that was a probable conduct, even if there was an accident of drowning. In fact, the specific testimony of PW-12 was that, though not initially, but later, the accused confessed to have fled in panic, on seeing the deceased drowning. The conduct of the accused having lied to PW-15 about having dropped her brother at 02:30 pm in a specific location, again does not incriminate the accused, given the defense.

22. Admission in the bail application, as relied on by the High Court, is a very difficult premise to accept. In this context, we also have to notice the High Court's presumption that no person who saw his friend drowning would go to a movie or would take the trouble of bringing back empty soda bottles to the shop from where they purchased it. If such a presumption is accepted then it can be presumed that even after a premeditated murder, the accused would not conduct themselves in that manner. The human mind, as has often been held by this Court, is at the same time fickle, manipulative and imaginative and the

actions, the result of a deprived or a foolish mindset, especially in the face of adversities, which cannot be predicted. The subsequent conduct on which the High Court found possible the prosecution story of murder rather than of drowning, in this case we are unable to accept. It is the hypothesis of an accidental drowning that looms large from the evidence led at the trial; more plausible than a homicide.

23. None of the circumstances having been proved, we are inclined to find the probable and more possible version of the accused, that the deceased drowned accidentally. The accused are guilty of having fled from the spot and not having attempted to rescue the drowning person, by crying out for help. Their conduct of having gone for a movie after witnessing their friend drowning, though reprehensible, cannot be found to be an incriminating circumstance, to establish murder rather than drowning. The hypothesis of innocence is crystal clear, and circumstances indicate an accident and not a premeditated murder.

24. We find absolutely no reason to sustain the order of the Trial Court as confirmed by the High Court. We reverse both the orders and acquit the accused.

25. The accused shall be released forthwith, if not wanted in any other case, if they are still in custody. If they have been released on bail, the bail bonds shall stand cancelled.

26. The appeal is allowed with the above directions.

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

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
AUGUST 13, 2026.**