which they are convicted and sentenced. The accused are in jail and accordingly, they are directed to be set free forthwith if not required in any other offence. Registry to return the R&P to the trial Court forthwith. In view of main appeal is allowed, no orders are required to be passed in Criminal Misc. Application No. 14445 of 2016 and the same is disposed of accordingly.

Result:- Appeals allowed.

ABC 2016 (II) 438 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(G.B. Shah, J.)
Criminal Appeal No. 107 of 2002
Decided on 22 September, 2016

THAKOR NAGJIBHAI CHANDUJI ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 326—Identification of the accused —vital contradictions regarding — no TI Parade—Arrest of the accused — manner of — no evidence regarding — Scene of offence— contradiction —Held, alleged eye-witness was not the eye-witness—prosecution has failed to prove its case against the present appellant - accused beyond reasonable doubt— Acquittal. (Para 5.2, 5.4 &5.5)***

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Name of the accused — discloser to eye witness — by some other person — No Test Identification Parade conducted — Fatal to prosecution. (Para 5.1 & 5.2)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact— Previous acquaintance —accused was not known to injured — Accused was produced by the police before the injured — No Test Identification Parade conducted — Fatal to prosecution. (Para 5.2)

Facts:- *As per the prosecution case accused allegedly came by his bicycle to injured witness and asked him to reset the chain of his bicycle for which the injured tried but failed and hence, the accused got excited and assaulted him by the knife on the upper side of the stomach and thereby, caused severe injuries to him.*

A complaint came to be lodged. The trial Court convicted the accused u/s 326, IPC, giving rise to present appeal. The hon'ble High Court observed discrepancies regarding identification of the accused and ordered acquittal.

Held:- Referring to the deposition of PW-1 Radheshyam Ramsinh, the complainant at exh. 12, it appears that injured - Udalsingh was his uncle and he was residing with him; his uncle - Udalsingh was doing the business of selling panipuri and used to keep his lorry near Shilpa garage. In his examination-in-chief, he has further deposed that he had received a telephone call from the civil hospital, Mahesana at about 9:00 p.m. and learnt that his uncle Udalsingh had sustained injuries by knife and hence, he rushed to the hospital; Udalsingh then was shifted to the hospital of Dr. Sosa for further treatment. He has also deposed that then he got registered the case. In his examination-in-chief, he has also deposed that name of Nagjibhai Chanduji, the present appellant had been given by one Jamnalal Khatik, who was doing the business of eggs. Nagji Chanduji had given knife blow and the cause for quarrel was about resetting the chain of the bicycle. In his cross-examination, this witness has admitted that in the complaint, over and above the name of Nagji Chanduji also names of Bakaji and Tinaji had been disclosed by him as recorded in the complaint and the both said names had also been conveyed by Jamnalal Khatik. In the cross-examination, he has also admitted that till he stayed in the hospital, he was not aware of the fact as to who had injured Udalsingh. Moreover, he had admitted that the doctor had advised his uncle to shift to the civil hospital at Ahmedabad. He has further admitted that when the doctor had given said instructions to shift Udalsingh to Ahmedabad, Udalsingh was unconscious. In light of the above evidence, if the deposition of PW-12 Jamnalal Bherulal at exh. 43 is referred, he has deposed in the examination-in-chief that, 'when Udalsingh was going to home with his lorry, at that time, on Mahesana highway, opposite Kokila trading, one Nagji Chanduji had tussle with Udalsingh. At that time many people were running here and there and hence, he also went there and found that Nagji was giving knife blows to Udalsingh'. He has also deposed that the name of the person who had caused the injuries to Udalsingh was made known to him by Radheshyam. . (Para 5.1)

If the above depositions are considered minutely, there appears vital contradictions in the same on the substantial point. Moreover, it has come on record that no TI Parade was carried out by the investigating agency and how the accused had been arrested that

up-to-date facts have not been forthcoming on record and it has only come on record that after arrest, the appellant - accused was produced before injured - Udalsingh by the police, who had identified the accused. However, it has also come on record that the accused was not known to the injured. (Para 5.2)

Moreover, considering the evidence of the injured and PW-12 Jamnalal Bherulal, exh. 43, there appears contradictions as the scene of offence. From the above discussed evidence, it can easily be said that that this Jamnalal was not the eye-witness to the incident in question and the learned trial Judge, without appreciating the above-referred vital contradiction, has jumped to the conclusion that Jamnalal is the eye-witness who had seen the appellant committing the crime and this is nothing but an apparent error on the face of the record. (Para 5.4)

Counsel:- ***For Appellant(s):*** *Mr Yogendra Thakore For Mr Archit Jani, Advocate.*

For Respondent(s): *Mr. K.L. Pandya, APP.*

JUDGMENT

G.B. SHAH, J.: - 1. Present appeal assails the judgment and order dated 15/01/2002, passed by the learned Sessions Judge, Mahesana in Sessions Case No. 106 of 2001, whereby, the appellant herein - original accused came to be convicted for the offence punishable under Section 326 of the Indian Penal Code, 1860 (for brevity, 'the IPC') and sentenced to undergo rigorous imprisonment (RI) for five years and a fine of Rs.1,000/- and in default of payment of fine, to undergo further RI for three months. He was given benefit of set off for the period he had already undergone.

2. Brief facts of the prosecution case are that on 15/12/2000 at about 4:00 p.m. or thereabout, on Mahesana highway, opposite Shilpa garage, when injured Udalsingh was there at his lorry, the appellant - accused allegedly came by his bicycle and asked him to reset the chain of his bicycle for which the injured tried but failed and hence, the appellant - accused got excited and assaulted him by the knife possessed by him on the upper side of the stomach of the injured and thereby, caused severe injuries to him. The appellant - accused, thus, committed the offence alleged against him, for which a complaint came to be lodged.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable

by the Court of Sessions, it was committed to the Sessions Court. The trial Court framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence. In order to bring home the charge against the accused, the prosecution has examined as many as 13 witnesses and produced several documentary evidence.

2.2 At the end of the trial, Further Statement of the accused under Section 313 of Code of Criminal Procedure, 1973 (for brevity, 'the Code') was recorded in which he denied the evidence forthcoming on the record and stated that a false case has been filed against him. Thus, after recording above-referred Further Statement and hearing the arguments on behalf of prosecution and the defence, the learned Sessions Judge came to the aforesaid conclusion by the impugned judgment and order, giving rise to prefer the present appeal.

3. Heard learned advocate Mr. Yogendra Thakore for Mr. Archit Jani, the learned advocate for the appellant - original accused and Mr. K. L. Pandya, the learned Additional Public Prosecutor, for the respondent State.

3.1 The learned advocate for the appellant accused contended that the judgment and order of the trial Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has failed to prove the whole ingredients of the offence for which the accused is convicted and sentenced and thereby, the learned trial Judge has erred in coming to such a conclusion. He took this Court through the oral as well as the entire documentary evidence on record and submitted that the learned trial Judge has lost sight of one important aspect that no name of the accused had been given in the complaint and therefore, the identity of the accused was doubtful and on a mistaken identity, the learned trial Judge ought not to have come to such a conclusion. He further submitted that even the scene of offence is not certain and accordingly, the learned trial Judge has erred in appreciating such lacuna in the investigation.

3.2 The learned advocate for the appellant - accused further submitted that the learned trial Judge has erred in not appreciating the fact that the injured had not given the name of the accused to the

doctor and only stated that the panwala was knowing the name of the accused. He submitted that, when the injured was not able to give the name of the accused, it was the duty of the prosecution to have conducted the Test Identification Parade (TI Parade) to identify the accused, which was not conducted and this crucial aspect, the learned trial Judge has failed to take into consideration and accordingly, the impugned judgment and order is not tenable under the eye of law. Moreover, he submitted that there are contradictions in the evidence of the injured and PW-12 Jamnalal Bherulal at exh. 43, more particularly, as to the scene of offence. Moreover, this witness - Jamnalal was not the eye-witness to the incident in question. Moreover, there found no blood stains either on the place of incident or on the knife and the prosecution has failed to prove as to who had inflicted the injury on the victim and accordingly, the learned trial Judge has failed to appreciate the evidence on record in proper perspective. Moreover, the learned trial Judge has also failed to consider the fact that PW-7 Rajesh Gopaldas, exh. 27 had not seen the accused. He submitted that the prosecution has to prove the case beyond reasonable doubt, leaving no stone unturned which is not so in the case on hand and hence, the conviction imposed upon the appellant is not tenable in the eye of law.

3.2 Making above submissions, the learned advocate for the appellant accused requested to allow the present appeal as no ingredients of the said offence have been proved and the prosecution has failed to prove its case against the accused beyond reasonable doubt, setting aside the impugned judgment and order.

4. Per contra, Mr. Pandya, the learned Additional Public Prosecutor for the respondent - State, supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that the prosecution has successfully proved the case against the accused beyond reasonable doubt and the learned trial Judge, after taking into consideration all the aspects of the matter, has come to such a conclusion, which is just and proper and accordingly, it is requested that this Court should not interfere in appeal. He took the Court through the relevant oral as well as documentary evidence on record and the discussion made by the learned trial Judge in the impugned judgment and order and submitted that the prosecution has successfully proved its case against the appellant and the learned trial Judge has committed no error in convicting the accused after

duly evaluating and appreciating the evidence on record and considering the gravity of the offence, he requested that this Court may not interfere in the appeal and eventually, requested to dismiss the present appeal confirming the impugned judgment and order.

5. I have considered the above-referred rival submissions made by the learned advocates for the parties and also gone through the evidence on record and re-appreciated and re-evaluated the same on the touchstone of the latest decisions of the Hon'ble Apex Court.

5.1 Referring to the deposition of PW-1 Radheshyam Ramsinh, the complainant at exh. 12, it appears that injured - Udalsingh was his uncle and he was residing with him; his uncle - Udalsingh was doing the business of selling panipuri and used to keep his lorry near Shilpa garage. In his examination-in-chief, he has further deposed that he had received a telephone call from the civil hospital, Mahesana at about 9:00 p.m. and learnt that his uncle Udalsingh had sustained injuries by knife and hence, he rushed to the hospital; Udalsingh then was shifted to the hospital of Dr. Sosa for further treatment. He has also deposed that then he got registered the case. In his examination-in-chief, he has also deposed that name of Nagjibhai Chanduji, the present appellant had been given by one Jamnalal Khatik, who was doing the business of eggs. Nagji Chanduji had given knife blow and the cause for quarrel was about resetting the chain of the bicycle. In his cross-examination, this witness has admitted that in the complaint, over and above the name of Nagji Chanduji also names of Bakaji and Tinaji had been disclosed by him as recorded in the complaint and the both said names had also been conveyed by Jamnalal Khatik. In the cross-examination, he has also admitted that till he stayed in the hospital, he was not aware of the fact as to who had injured Udalsingh. Moreover, he had admitted that the doctor had advised his uncle to shift to the civil hospital at Ahmedabad. He has further admitted that when the doctor had given said instructions to shift Udalsingh to Ahmedabad, Udalsingh was unconscious. In light of the above evidence, if the deposition of PW-12 Jamnalal Bherulal at exh. 43 is referred, he has deposed in the examination-in-chief that, 'when Udalsingh was going to home with his lorry, at that time, on Mahesana highway, opposite Kokila trading, one Nagji Chanduji had tussle with Udalsingh. At that time many people were running here and there and hence, he also went there and found that Nagji was giving knife blows to Udalsingh'. He has also deposed that

the name of the person who had caused the injuries to Udalsingh was made known to him by Radheshyam.

5.2 If the above depositions are considered minutely, there appears vital contradictions in the same on the substantial point. Moreover, it has come on record that no TI Parade was carried out by the investigating agency and how the accused had been arrested that up-to-date facts have not been forthcoming on record and it has only come on record that after arrest, the appellant - accused was produced before injured - Udalsingh by the police, who had identified the accused. However, it has also come on record that the accused was not known to the injured.

5.3 Moreover, if the deposition of PW-7 Rajeshbhai Gopalbhai at exh. 27 is referred, he has deposed in his examination-in-chief that he had not seen the person as to who had inflicted the knife blows to the injured. This witness was running a pan-bidi galla nearby the place of incident. It is pertinent to note at this juncture that this witness has deposed in his examination-in-chief that over and above him, one Jamnalal had also rushed to the scene of incident but they had no talk.

5.4 Moreover, considering the evidence of the injured and PW-12 Jamnalal Bherulal, exh. 43, there appears contradictions as the scene of offence. From the above discussed evidence, it can easily be said that that this Jamnalal was not the eye-witness to the incident in question and the learned trial Judge, without appreciating the above-referred vital contradiction, has jumped to the conclusion that Jamnalal is the eye-witness who had seen the appellant committing the crime and this is nothing but an apparent error on the face of the record.

5.5 Thus, considering the aforesaid evidence on record, in the considered opinion of this Court, there are serious lacuna in the prosecution case and the prosecution has failed to prove its case against the present appellant - accused beyond reasonable doubt and in the circumstances, the conclusion arrived by the learned trial Judge appears to be without considering the aforesaid material aspects and considering all the aspects of the matter in entirety, I am of the view that the learned trial Judge has committed a grave error in convicting the appellant accused for the offence in question as the prosecution has failed to prove the same beyond reasonable doubt. Moreover, the learned Additional Public Prosecutor is not in a

position to take otherwise view of the matter by showing any substantive and cogent evidence. Accordingly, the present appeal deserves to be allowed and the impugned judgment and order is required to be set aside.

6. In view of the aforesaid discussion, present appeal succeeds and the impugned judgment and order dated 15/01/2002, passed by the learned Sessions Judge, Mahesana in Sessions Case No. 106 of 2001, is hereby set aside and the appellant - accused is acquitted of the charge for which he is convicted and sentenced by giving benefit of doubt. The appellant - accused is reported to be on bail and accordingly, he needs not to surrender to custody except he requires so in any other offence and his bail bond shall stand cancelled. Registry to return the R&P to the trial Court forthwith.

Result:- Appeal allowed.

ABC 2016 (II) 445 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(G.B. Shah, J.)
Criminal Appeal No. 101 of 2011
Decided on 23 September, 2016

PATEL DILIPBHAI SOMABHAI ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Electricity Act, 2003 — Section 135(1) — Delay in complaint — No explanation —fatal to prosecution — Acquittal. (Para 5.1)***

(B) Electricity Act, 2003 — Section 135(1) — No tempering found in meter — Admission by witness — neither the meter was checked with accumeter nor was got checked by laboratory — Register kept for keeping records of checks conducted— neither produced before the police nor in the Court— Seizure — No panch witness —No panchnama — No independent witness — No material to disclose the procedure adopted after removing the meter — Serviceability of meter — no report by meter-reader as to whether the meter was running or not —Conviction set aside — Indian Evidence Act, 1872 — Section 3 — Relevant fact. (Para 5.2 & 5.3)