

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1540 OF 2018
(Arising out of S.L.P.(Crl.) No. 8739 of 2018)

Kanubhai Bhagvanbhai Nayak Appellant(s)

VERSUS

State of Gujarat Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

- 1) Leave granted.
- 2) This appeal is filed against the final judgment and order dated 25.04.2016 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No.1512 of 2011 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and confirmed the order of conviction and sentence dated

30.09.2011 passed by the 9th Additional Sessions Judge, Vadodara in Sessions Case No.101 of 2010.

3) Few facts need mention hereinbelow for the disposal of the appeal.

4) By impugned order, the Division Bench of the High Court dismissed the criminal appeal filed by the appellant (accused) and confirmed his conviction and sentence awarded by the 9th Additional Sessions Judge, Vadodara in Sessions Case No. 101/2010 under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") which gave rise to filing of the present appeal by way of special leave by the appellant(accused) in this Court.

5) The question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the appeal filed by the accused and thereby was justified in confirming the conviction and the sentence awarded by the Additional Sessions Judge.

6) Heard Ms. Vibha Datta Makhija, learned senior counsel for the appellant and Ms. Puja Singh, learned counsel for the respondent.

7) Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal, set aside the impugned order and remand the case to the High Court for deciding the criminal appeal afresh on merits.

8) The need to remand the case has been occasioned because we find that the Division Bench has neither discussed any issue arising in the case nor appreciated the evidence and nor recorded its findings on any of the issues arising in the case and urged by the appellant.

9) Mere perusal of the impugned order would indicate that the Division Bench has first set out the post mortem report and on its perusal observed that

the injuries on the body of the deceased reveal that the death was homicidal leading to murder. The Division Bench then observed that the evidence led by “various witnesses” reveal that it was the accused who was present at the scene of the offence and carried the attack on deceased. The Division Bench then observed that since the Additional Sessions Judge had “minutely examined” all the evidence led by the prosecution and has given cogent and convincing reasons, the High Court is in complete agreement with the view taken by the Additional Sessions Judge. It is only with this narration of facts, the Division Bench dismissed the appeal.

10) In our opinion, keeping in view the powers of the Appellate Court under Section 386 (b) of the Code of Criminal Procedure, 1973, the Division Bench should have examined the evidence of each prosecution witnesses on issues arising in the case and the same

should have been examined in the light of the challenge made by the accused in appeal and then a finding should have been recorded either of affirmation or modification or reversal, as the case may be.

11) There is neither any reference to any evidence, nor its appreciation and nor there is any discussion much less finding in the impugned order.

12) The High Court, in our opinion, is empowered in its appellate jurisdiction to examine the issues of facts and law while examining the legality and the correctness of the impugned order. It is equally incumbent upon the Division Bench to deal with issues urged and then record its findings one way or the other keeping in view the law laid down by this Court which governs the issues.

13) We, therefore, find ourselves unable to concur with such disposal of the appeal and feel inclined to set aside the impugned order and remand the case to the Division Bench of the High Court with a request to decide the appeal afresh on merits in accordance with law.

14) Having formed an opinion to remand the case, we do not consider it proper to go into the merits of the case. We, therefore, leave all the issues open to be decided by the Division Bench on merits, in accordance with law uninfluenced by our observations.

15) In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order is set aside. We request the High Court to dispose of the appeal as expeditiously as possible preferably within six months.

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

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[INDU MALHOTRA]

New Delhi;
December 03, 2018