Gujarat High Court
State Of Gujarat vs Kathi Ramku Aligbhai on 3 February, 1984
Equivalent citations: 1986 CriLJ 239, (1984) 2 GLR 224
Author: S Talati
Bench: S Talati, J Desai
JUDGMENT S.L. Talati, J.

1. The State by this appeal challenges the acquittal order passed in favour of the respondent for an offence punishable under Section 302 I.P.C. rendered by the Additional Sessions Judge, Rajkot at Gondal in Sessions Case No. 31 of 1979 on 30-4-1980. The short facts which gave rise to this appeal may be stated as under:

One Vashram Meghji had gone to answer the call of nature in the morning on 18-9-1979. He was the resident of village Nani Parbadi which is near Rajkot. While he was returning after answering the call of nature he was attacked by the accused with a knife. There is a motive alleged and the motive alleged is that there was some dispute between the deceased and the accused. According to the prosecution this incident was witnessed by three persons viz. P.W. 2, Vallabhdas Exh. 10, P.W. 3, Lakha Exh. 11 and P.W. 12 Kalaben Exh. 32. According to the prosecution because of the attack by knife ultimately Vashram Meghji fell down somewhere on the road near the house of Bavanji Nanji. From that place he was removed to Dhoraji hospital where he was examined by Dr. Rayani who found him dead. From hospital message was sent which is recorded by P. S. O. at 7-30 A.M. and the message received was that the dead body of one Vashram Meghji was brought to the hospital who had expired because of injuries during struggle. That information is recorded by P.S.O. at Exh. 20. Immediately that information was conveyed to Police Sub-Inspector and the P.S.I. Dhananjay Rajnikant Exh. 37 proceeded to Dhoraji hospital and prepared the inquest panchnama on the dead body of Vashram Meghji and thereafter registered the offence at the Police Station at 9-30 A.M. He thereafter prepared a panchnama of the place of scene of offence and from that place he attached one tin, shoes, watch and blood-stained earth. The accused was arrested at 3-30 P.M. and thereafter recovery Panchnama was prepared and one knife was attached. The statements of witnesses were recorded on 19-9-1979 and 20-9-1979 and the clothes of the deceased and the blood-stained earth were sent to Forensic Laboratory for examination and report. Ultimately after completing the investigation charge-sheet was submitted against the accused-persons. In due course the case came to be committed to the Court of Session where the prosecution examined 12 witnesses. The accused denied the guilt and he did not lead any defence. The learned Additional Sessions Judge, Rajkot at Gondal for the reasons stated in the judgment acquitted the accused. That acquittal is now challenged by the State by filing this appeal.

2. Now the learned Additional Sessions Judge disbelieved these three eye-witnesses and the reasons are given by him in paras 8 and 9. The first reason given is that in the complaint.it was not stated by the complainant that he had seen a watch, tin and shoes on the road. Therefore, according to the learned Additional Sessions Judge it created a doubt as to whether the witness actually saw the shoes, tin and watch from his windows. The learned Additional Sessions Judge then observed that Vallabh had not seen from the window the watch, the shoes and the tin. Another contradiction which the learned Additional Sessions Judge found was that while the complainant stated that they

did not raise any cries Vallabh stated that they had raised the cries. The learned Additional Sessions Judge observed that when three eye-witnesses had seen the occurrence it was hardly necessary for them or any one of them to have asked Vashram as to what had happened and the learned Additional Sessions Judge then came to the conclusion that when they say that they asked Vashram regarding the incident it would mean that they had not seen the incident. The learned Additional Sessions Judge also remarked that there was a contradiction in regard to who asked Vashram and it was found that one person stated that he alone had asked while another stated that each one of them had asked by turn. From these contradictions the learned Additional Sessions Judge came to the conclusion that there were two probabilities and according to him one probability was that the three witnesses saw the incident and another was that they did not see the incident and, therefore, if according to the learned Additional Sessions Judge there were two probabilities which could be gathered from the evidence, the probability which is in favour of the accused must be chosen. This is how the learned Additional Sessions Judge discarded the evidence of the three eyewitnesses,

3. The learned Advocate Shri Vyas who appeared on behalf of the defence supported the judgment rendered by the learned Additional Sessions Judge and further stated that the witnesses tried to change the place of scene of offence and he tried to suggest that though the witnesses stated that Vashram was attacked near the house of Amba Vira, the blood was found at some distance from that place to the northern side and that, therefore, if the incident occurred at the place where the blood was found it was impossible for the witnesses to have seen the incident. The learned Advocate Shri Vyas submitted that the conduct of the eye-witnesses who are relatives was not consistent in the sense that-they did not raise any cries when they saw the incident and that they did not question Vashram. Thereafter, the evidence of Kala was criticised on the ground that he had no reason to read on the first floor of Lakha when Vallabh who was to sleep at that place was not at all interested in reading because he was not a student. He criticised his evidence that if he wanted to read he could have read at his house where also there is electric light or at the house of some other student who was studying with him but he had no reason to go to the first floor of Lakha and read at that place. Another thing suggested to us was that in the First Information Report which was recorded by P.S.D. the name of the accused was not stated. That was the information conveyed to P.S.O. by the Medical Officer which was recorded in the police station diary. Our attention was drawn to the panchnama of the scene of offence where it was shown to us that no blood was found near the place of Amba Vira and, therefore, the incident did not occur at that place and that the prosecution witnesses were trying to change the place of the scene of occurrence. It was also submitted that the panch who is examined to prove the panchnama of the place of scene of offence is the person belonging to the caste of the eye witnesses and another panch who was tailor and who belonged to a different caste was not examined though present in Court and, therefore, the panch witness in regard to the panchnama of the scene of offence should not be believed. With these submissions the learned Advocate Shri Vyas submitted that in an appeal against acquittal no interference was called for when the learned Additional Sessions Judge on appreciation of evidence of the eyewitnesses rejected the testimony and more so because he had an opportunity to see them in the witness box. Having considered the views expressed in the judgment and also the arguments advanced by the learned Advocate Shri Vyas for the defence it is not possible for us to appreciate the evidence in the manner in which it is either done by the learned Additional Sessions Judge or suggested by the learned Advocate Shri Vyas. It appears to us that glaring things are overlooked. We are conscious of

the principles laid down by the Privy Council in the case of Sheo Swarup v. King Emperor, reported in AIR 1934 PC 227 (2) : 1935 (36) Cri LJ 786 and these principles are reiterated by the Supreme Court thereafter, in various rulings and that remains the law till this date.

4. We have already discussed the evidence of the three eye-witnesses and also referred to the few contradictions which are brought out in cross-examination which were omissions and were for the first time stated in the Court during cross-examination. Few discrepancies which are brought on record are also mentioned and discussed at the time of the discussion of the evidence of each and every eye-witness. It is required to be remembered that the incident occurred on 18-9-1979. The witnesses gave evidence in the month of April, 1980. One of them was a college student and two others were villagers. The real crux of the problem is as to how to appreciate the evidence of the witnesses when they pose to be eyewitnesses to the occurrence. The first question would be whether, their presence would be natural at the place where they suggest that they were present? Next immediate question would be whether if they were present at that particular place whether on hearing cries "save., save" would they look and run? The answer in this particular case would be in affirmative because Vashram was the near relative. As soon as he raised cries his cries would be heard and identified to be that of Vashram. Naturally therefore, the persons would immediately try to see and come out if possible. They did the same thing and witnessed the incident. Vashram was running for life, the accused was following him, several blows were inflicted on different parts of the body. Naturally to a running person they would be inflicted during the course where he was following him. Ultimately the fellow fell down. It may be stated here that at the place where Vashram fell down the witnesses would not have seen him at that particular place if they remained in their houses from where they witnessed the beginning of the incident but what they have precisely done was that, they came out, one from western direction and two from eastern direction and they also naturally ran after the fall of Vashram. The accused naturally would have only to escape. Therefore, he did run and all the three saw him running away. These three persons were the persons who immediately reached the spot. One was the son of the deceased. They in due course and in the most natural way removed Vashram to his own house which was nearby. Thereafter, efforts were made to remove him to the hospital and for that purpose a Taxi was called from Dhoraji and he was taken to..Dhoraji. All that was possible was done. The man was declared dead at Dhoraji. Immediately when Police went to the hospital the complaint was given meaning thereby that the statement of the complainant was recorded. We say so because Police station diary which was prepared on telephonic message was the information in first point of time which disclosed the cognizable offence and that, therefore, whatever was recorded from the mouth of the complainant could not be treated as F.I.R. and, therefore, rightly not exhibited. The fact remains that so soon as opportunity came before the complainant to narrate the incident in detail to the Police it was done. The incident which was narrated in Court could not be contradicted by the first statement which was recorded at the hospital. The law on the point is that the appreciation of evidence in a criminal trial is required to be done on the broad probabilities of a case. The evidence of the witnesses cannot be thrown away because of few discrepancies here or there or some omissions. If the story is probable in the sense that it is coming in natural flow and it finds support from the surrounding circumstances it cannot be suggested that the story must be photographically accurate and should stand to the test of word to word and in measurement inch to inch. As we have observed above first blow though was given near the house of Amba Vira on the south-north road it does not stand to

reason that the blood must be found at that particular place where the first blow was given. The man was running for life. If he ran few feet and the blood fell on the ground after soaking on the clothes it would be on the contrary a natural circumstance. The lying of tin and rhe shoes clearly indicate the place where the first blow must have been given. We would like to refer to certain rulings on the appreciation of evidence which are required to be borne in mind. The first case is the case of Shivraj Singh v. State of Vindhya Pradesh, reported in AIR 1955 Vindh Pra 36 : 1954 Cri LJ 1303. The High Court observed as under:

In assessing the credibility of witnesses the test is twofold: The first generally about the veracity of the witnesses, viz., whether he has got such regard for truth, that generally speaking the Court can accept his statement, subject of course to correction for the vagaries of memory and observation and separable exaggerations and super-additions which do not go to the root of the matter.

The second test is in regard to a case where there are more accused persons and what is required is whether in regard to each accused the witness had an opportunity to make the correct observation and a motive to speak the truth. Now, therefore, the test is whether the witness has a general regard for the truth. The first test is required to be applied. The question is whether his evidence is such which could be accepted which is always subject of course to correction for the vagaries of memory and observation and separable exaggeration and super-additions which do not go to the root of the matter. Now that, therefore, it is not that the learned Additional Sessions Judge took one view and on re-appreciation of the evidence we are taking the other view in this matter. What is clear to us is that the view taken by the learned Additional Sessions Judge, Rajkot at Gondal is not at all a possible view. He has unnecessarily given importance to the discrepancies which were not only likely but if truth were to come in evidence such discrepancies would bound to be there. Unless they were bent upon telling a parrot-like story.

5. The second case which we would refer to is a case of Bhagwanbhai Dulabhai Jadhav v. State of Maharashtra, reported in 64 Bom LR 784 : 1963 (2) Cri LJ 694. It was a case under the Bombay Prohibition Act. It was the case of the prosecution that accused No. 1 in that case was driving a car and the car was ultimately opened with the help of the key which was found on the person of accused No. 5.43 sealed bottles of foreign liquor and a large number of packets of tobacco were found. Several other persons were also prosecuted for the offence punishable under Sections 65(a), 66(b), 81 and 83 of the Bombay Prohibition Act. The defence case was that there was a plot engineered by the enemies of the first accused and accused No. 5 denied that the key of the luggage compartment was found on his person. The trial Magistrate held that the prosecution evidence was insufficient to establish that the persons accused before him were acting in conspiracy or were abetting each other in transporting contraband articles in the car and acquitted them. Against the order of acquittal the State of Bombay appealed to the High Court of Bombay and the High Court observed that the trial Court treated the case as "a mathematical problem", and examined the evidence giving undue importance to minor discrepancies. In the view of the High Court the evidence established that in consequence of information received from police station Vapi, the motor car was stopped and searched. The Supreme Court observed that the High Court was undoubtedly dealing with an appeal against an order of acquittal, but the Code of Criminal Procedure placed no special limitation upon the powers of the High Court in dealing with an appeal

against an order of acquittal. The High Court is entrusted with power to review evidence and to arrive at its own conclusion on the evidence. There are certainly restrictions inherent in the exercise of the power, but those restrictions arise from the nature of the jurisdiction which the High Court exercises. In a criminal trial the burden always lies on the prosecution to establish the case against the accused and the accused is presumed to be innocent of the offence charged till the contrary is established. The burden lies upon the prosecution, ami the presumption of innocence applies with equal, if not greater, force in an appeal to the High Court against an order of acquittal. In applying the presumption of innocence the High Court is undoubtedly slow to disturb findings based on appreciation of oral evidence for the Court which has the opportunity of seeing the witnesses is always in a better position to evaluate their evidence than the Court which merely peruses the record. In the present case, the High Court, in our judgment, was right in holding that the trial Court ignored the broad features of the prosecution case, and restricted itself to a consideration of minor discrepancies. The Magistrate meticulously juxtaposed the evidence of different witnesses on disputed points and discarded the evidence in its entirety when discrepancies were found. That method was rightly criticised by the High Court as fallacious. The Supreme Court further observed as under:

The Magistrate had to consider whether there was any reliable evidence on the question which had to be established by the prosecution. Undoubtedly, in considering whether the evidence was reliable he would be justified in directing his attention to other evidence which contradicted or was inconsistent with the evidence relied upon by the prosecution. But to discard all evidence because there were discrepancies without any attempt at evaluation of the inherent quality of the evidence was unwarranted.

Ultimately the Supreme Court dismissed the appeal and confirmed the sentence passed by the High Court on accused Nos. 1 and 5.

6. In another case of Abdul Gani v. State of Madhya Pradesh, , in regard to the appreciation of evidence, the Supreme Court observed as under:

Though the prosecution witnesses have not told the whole truth and though it is not possible to get an absolutely true picture of the events from their evidence, where it is not possible to say that the prosecution case is a complete fabrication and where it appears that certain murders have resulted from a riot in which some at least of the several accused have taken part, the Court should make an effort to disengage the truth from the falsehood and to sift the grain from the chaff. It is an error to take an easy course of holding the evidence discrepant and the whole case untrue.

Of course, the story given by the eyewitnesses has to be carefully scrutinized and unless it can be said with reasonable certainty that a certain person took part in the riot, the benefit of doubt has to be given to him.

Now in this particular case the case was simple. There were many accused persons. There was no question as to which part each accused played. It was one murder and one accused. The weapon used was a knife. The visibility was there. The road on which Vashram was walking after answering

the call of nature is certain. He was going from south to north and was to proceed to east to go to his house. The accused on the street near the house of Amba Vira attacked him with a knife. The three eyewitnesses whose houses are in the vicinity were able to see. Lakha and Vallabh were the witnesses who were bound to be there. Kala stated that he was there with Vallabh because he was reading at that particular place. We have discussed that part of evidence. Merely because the blood is found to the north on the road which ultimately leads to the east where Vashram was lying, one cannot conclude that the first blow was not given on the road near the house of Amba Vira. Such a conclusion is not possible. On the contrary it appears more than clear that the first blow was given at that very place because the whole murderous assault began at that place and as a result the tin was found lying there and ultimately when one was running for life, his shoes were found. Further to the north blood stained earth was found. Ultimately he fell down. Within seconds all the three eye-witnesses reached the place. This could have never happened unless they had immediately come out hearing cries "save..save" and ran towards that place. If they Came out and immediately ran to the north and to the east as suggested by Lakha and others who had come out on the east and went near Bavanji's house were bound to see the accused-person running away. Now that, therefore, they have not only seen the accused giving blows at the time when they were in their houses but they saw the whole incident because they ran after them and ultimately they saw the accused running away and Vashram lying in a pool of blood. The evidence, therefore, was such which with reasonable certainty established that it was the accused who dealt the blows. This view is not one of the possible views but this is the only possible view. To-take any other view when the evidence is of such overwhelming nature, would be to take the most unreasonable view. It is an easy recourse to record acquittal by finding out few discrepancies here or there and then to say that it is a case where a reasonable doubt exists. The doubt must be reasonable. It must flow after an industry. It must never flow out of confusion or lethargy. If one does not look at the map properly and one gives too much importance to the discrepancies which are bound to occur in every criminal trial and one gets confused that confusion is neither a doubt nor could it be termed to be a reasonable doubt. We have, therefore, carefully scrutinised the evidence once again fully because ultimately it was a case of murder and the learned Additional Sessions Judge had recorded the finding of acquittal. Being conscious of the fact that we had to examine the case from the view whether the learned Additional Sessions Judge had taken a possible view or not, we, therefore, having carefully gone through the entire evidence on record what we feel is that an unreasonable view and the view which is not possible is taken by the learned Additional Sessions Judge. The witnesses are such on whom reliance was required to be placed. They were natural eye-witnesses to the occurrence and they had done everything which was possible to remove Vashram to the hospital and to give their versions to the Police at the earliest when they met the Police. The other circumstances lend support and we do not find anything by which we can come to the conclusion that any of them was a chance witness or that he had no opportunity to see or that the witness was not telling what was not true.

7. Before we part with this case we would like to state that care is not taken either by the learned Public Prosecutor or by the learned Additional Sessions Judge to bracket the inadmissible portions of evidence in the panchnamas. This is always required to be done. This results at times to read something which is not admissible. We had to take great pains to discard the statements which were recorded in the panehnamas which was hit by Section 162 of the Cr. P.C. and only read that part which was admissible. This of course we did. But it is to be remembered that this is required to be

done at the trial when the trial is conducted and it is the first duty of the learned Public Prosecutor to see that the portion inadmissible in the panchnama is bracketed and after it is bracketed that panchnama is required to be handed over to the Court for exhibiting the same if it is duly proved. If this duty is missed it is the duty of the learned Additional Sessions Judge who tries the case to see that the portion which is inadmissible is required to be bracketed so that at the time of reading the panchnama nothing which is not admissible crept in the judgment.

8. The result is that the accused is convicted for the offence punishable under Section 302, I.P.C. and sentenced to suffer imprisonment for life. The accused is given time to surrender within four weeks. After completion of four weeks warrant for arrest of the accused to be issued.