

## **Bharvad Bhikha Valu And Ors. vs The State Of Gujarat on 3 March, 1971**

**Equivalent citations: AIR1971SC1064, 1971CRILJ927, AIR 1971 SUPREME COURT 1064, (1971) 2 SC CRI R 330**

**Author: A.N. Ray**

**Bench: C.A. Vaidialingam, A.N. Ray**

### **JUDGMENT**

A.N. Ray, J.

1. This is an appeal by special leave from the judgment dated 5 April, 1968 of the High Court of Gujarat setting aside the order of acquittal passed by the Sessions Judge, Ahmedabad on 21 September, 1965 on a charge for an offence under Section 302 read with Section 34 of the Indian Penal Code and convicting the appellants and sentencing each of them to imprisonment for life.

2. The three appellants Bhika Valu, Dhuna Magha and Valu Vela were the accused in this case. They belonged to the Barwad community of Gundi village of Dholka Taluka, Ahmedabad Rural District. In this village there were two factions one of the Koli Patels and the other of Bharvads. Five or six years prior to the date of occurrence, namely 20 February, 1965, 5 or 6 Bharvads of Gundi village were murdered. Amongst those murdered were Vajakaran Vaha, Ranchhod Valu, Ganda Kama, Deva Kama and Vela Kama. The appellant Bhika Valu is the nephew of Vajakaran Vaha and is brother of Ranchhod Valu both of whom were among the murdered Bharvads. The appellant Dhuna Magha is an agnate of the three murdered Bharvads Ganda Kama, Deva Kama and Vela Kama. The appellant Valu Vela is the son of murdered Bharvad Vela Kama. In respect of the said offences of murders of those Bharvads, a charge-sheet was brought against 23 Koli Patels of the village and out of them, four persons were convicted and sentenced to various terms of imprisonment. Palji Teja, the deceased in the present appeal and Pitambar Bhura and Rupsing Raja, two prosecution witnesses in this case were among the 23 Koli Patels implicated in those offences of murders. Since the murder of Bharvads relations between Koli Patels and Bharvads were not friendly. The present offence was alleged to have been committed in consequence of the strained relations between the Koli Patels and the Bharvads.

3. The prosecution case was this. On 20 February, 1965 Falji Teja and his son Khengar went to the Bhurkhi Railway Station which was about two furlongs from the place of the occurrence. Falji and Khengar went to meet the train, which would arrive at about 3 p. m. to engage agricultural labourers if they could be obtained. Falji and Khengar met the train but could not find any agricultural

labourer. Then they started on the return journey to Gundi Village. When they passed over a culvert near the Panchayat Office at Gundi accused No. 1 ran up from behind and gave a blow with an axe to Falji on the left leg from behind. Falji fell down. Accused Nos. 2 and 3 ran up to the spot. Accused No. 2 was armed with a spear and accused No. 3 with a Dharia. All the three accused started giving blows to Falji. As a result of the injuries Falji died on the spot. Three accused ran away. Falji Teja had a double barrelled gun with him and that gun fell from his hand when he was assaulted. Accused No. 1 carried away the gun which Falji Teja had carried with him.

4. Khengar who was a young boy of about 14 got frightened and ran away. He informed his mother Bai Samu about the assault on his father and told her who the assailants were. At the time of the assault Pitambar Bhura a Koli Patel was proceeding from his house in Gundi to Bhurkhi Railway Station and he saw the entire incident from a place. Another prosecution witness Rupsing Raja also a Koli Patel was behind Pitambar Bhura and was on his way to the field. He also saw the incident of assault on Falji After the assault Rupsing Raja went back to the village and informed Mera Mathur whose wife Bai Raju was working as an agricultural labourer with Falji. Thereafter Bai Samu went to the place of incident. Rupsing Raja and Mera Mathur also went to the spot by that time. At the place where the dead body of Falji Teja was lying, Pitambar Bhura and Rupsing Raja confirmed the information which Bai Samu had received from Khengar as to the three accused being the assailants of Falji.

5. One Kavabhai Mansing happened to go to a well near the scene of offence. Kavabhai Mansing saw Bai Samu and found her weeping. Kavabhai Mansing went up to Bai Samu and saw Falji lying dead with injuries. Rupsing Raja, Mera Mathur, Pitambar Bhura were also present when Kavabhai Mansing went up to the scene of offence. Bai Samu told Kavabhai Mansing about the incident and asked him to go and send a telegram to the Keth Police Station. Kava Mansing went to the Bhurkhi railway station and contacted the Station Master and asked him to send information to Koth Police Station. The Station Master, Bhurkhi got in touch with the Koth Railway Station and recorded the message.

6. The Police Sub-Inspector from Koth Police Station proceeded to Gundi village. He held inquest on the dead body. He made a panchnama. When the three accused ran away accused No. 2 left behind him at the scene of the offence his spear. The blade of the Dharia which was used by accused No. 3 was broken and the broken portion of the blade was left behind at the scene of the offence. The Police Officer took charge of the spear and the broken portion of the blade of Dharia. The dead body was sent to Dhandhuka for postmortem examination. The statements of Pitambar Bhura and Rupsing Raja were recorded on 20/21 February, 1965 in the night and the following day the statements of other witnesses were recorded. The three accused presented themselves before the Police Inspector on 21 February, 1965. The Police Sub-Inspector discovered in the presence of Panchas a gun which accused No. 1 had concealed at the house of a tailor. The Police Inspector further discovered a Dharia which accused No. 3 had concealed at the hedge of the Vada land of one Bharvad Vama Vaja. The piece of blade of Dharia which was found at the scene of the offence matched the broken edge of the Dharia discovered. An axe was also discovered by accused No. 1 who led the police party and the panchas to the Vada land of Vama Vaja and from there took out an axe. The reports of the Chemical Analyser and Serologists indicated that there were stains of human

blood on the gun and on the handle of the Dharia and the other portion of Dharia. There were blood stains on the axe but the blood had so integrated that the origin could not be determined.

7. After investigation a charge-sheet was submitted against the three accused. They were charged under Section 302 read with Section 34 of the Indian Penal Code and accused No. 1 was charged under Section 379 of the Indian Penal Code. All the accused denied having committed an offence.

8. The Sessions Judge examined the case under three broad heads. The first was evidence of motive. The second was evidence of eye-witnesses Pitambar Bhura and Khengar Falji and Rupsing Raja. The third was circumstantial evidence in the shape of discovery of blood stained articles, viz., stolen gun, farsi with stain of blood on them on information received from accused No. 1 and discovery of Dharia with stains of human blood on information received from accused No. 3. As to the prosecution witnesses the Sessions Judge found that since the incident of murder of some Bharvads six years prior to the date of occurrence Falji and others including witnesses Pitambar Bhura and Rupsing Raja who were also accused along with Falji in the trial of the Bharvad murder case belonged to the faction of Koli Patels who bore enmity against the Bharvads. The accused, in the present case, were Bharvads and the witnesses and the deceased Falji were Koli Patels. The Sessions Judge therefore held that the prosecution witnesses were partisan and they belonged to a rival faction. Khengar being the son of Falji and a young boy of 14 was found by the Sessions Judge to be a witness whose evidence had to be very carefully scrutinised along with the evidence of Pitambar Bhura and Rupsing Raja. The Sessions Judge considering the evidence found that it could not be said with reasonable certainty that the witnesses were persons whose presence at that place would be natural in ordinary course of events. The consideration which weighed with the Sessions Judge was that if Khengar was present the accused would not have spared Khengar to remain an eye-witness. The Sessions Judge also on analysis of medical evidence found discrepancies between the medical evidence and the evidence of the witnesses to be a serious infirmity.

9. According to the Sessions Judge, the most serious infirmity in the prosecution case was that the First Information Report did not mention the name of accused No. 3 Valu Vela as one of the assailants. Kavabhai stated that Bai Samu wife of Falji had given the names of accused No. 1 and accused No. 2 and thereupon Kava bhai carried the information to the Station Master. The Sessions Judge concluded that the truthfulness of the evidence of these three eye-witnesses as a whole was not free from doubt and their evidence could not be accepted as sufficient for conviction in the absence of corroboration.

10. The Sessions Judge found that though the prosecution had established that there were strained relations between the accused and the deceased it could not be said that the incident of murder of Bharvads had not resulted in strained relations between Falji and any other Bharvad of the village but that possible motive for the murder could not be treated as corroboration of the evidence of the three eye-witnesses Pitambar, Khengar and Rupsing.

11. As to the discovery of blood stained articles, viz., stolen gun, farsi and Dharia and a piece of apparel called "Pachhedi" having a blood stain, the Sessions Judge held that considering that there were two factions it was highly desirable that persons other than Koli Patels were taken as Panchas

and examined as witnesses. The evidence of Panch witness Chaturbhai was found by the Sessions Judge tainted because the prosecution did not examine the other two Panchas one of whom was a Muslim and the other a Sindhi.

12. The High Court set aside the order of acquittal and convicted the appellants. The High Court accepted the evidence of Khengar son of Falji, Bai Samu widow of Falji and relied on the evidence of Khengar by reason of corroboration of various pieces of circumstantial evidence.

13. The High Court did not consider it safe to rely on the testimony of Pitambar because of the previous enmity between him and the Bharvads and on the additional ground that Pitambar was trying to improve upon his earlier version regarding the names of the assailants that were disclosed by Bai Samu. The High Court also found it not prudent to rely upon the testimony of Rupsing because he belonged to the rival faction which bore animosity against the Bharvads and at the time of the incident Rupsing was at a distance of more than 100 feet and therefore Rupsing might not have identified the three assailants of Falji.

14. As to Khengar's evidence the High Court said that he had seen his own father being seriously assaulted by use of dangerous weapons and his failure to appeal to Rupsing and Pitambar to come to the help of his father was not unnatural for a boy of his age at that critical time. The High Court therefore rightly said that Khengar who was a young boy of about 14 years of age must have been very much frightened and his action of rushing towards the village to his own house raising shouts all the time was quite natural in view of his age and his relationship with the victim and the nature of the assault.

15. The High Court rightly rejected the criticisms of Khengar's evidence, namely, that he said that no passenger had got down at Bhurki Railway Station whereas Rupsing Raja said that he saw some passengers coming from the opposite direction and the conflict between the medical evidence and Khengar's evidence that Falji had fallen down with his face downwards and the conflict between the medical evidence and Khengar's evidence as far as external injuries Nos. 1 and 2 were concerned. The doctor was not asked as to whether these two injuries Nos. 1 and 2 could not have been caused when Falji was lying with his face downward.

16. The other piece of evidence as to whether there was any passenger who had got down at Bhurki Railway Station was also found by the High Court not to be a ground for doubting Khengar's testimony because Rupsing was not asked any question as to whether the persons he met in the village coming from the opposite direction were passengers.

17. The High Court adopted the correct approach in finding that though there were no infirmities of Khengar's evidence as it stood but in view of the fact that he was a young boy it would be prudent to seek corroboration of Khengar's evidence.

18. The High Court correctly relied on the evidence of Bai Samu in corroboration of Khengar's testimony. Khengar told Bai Samu that his father was assaulted and on Bai Samu asking him who the assailants were Khengar told her that accused No. 2 Dhana Megha and accused No. 3 Valu Vela

and accused No. 1 Bhikha Valu had assaulted his father. Bai Samu in cross-examination maintained that Khengar had given her the names of the three accused as the assailants of her husband. Kavabhai was near the well which is situated at a short distance to the north of Panchayat Office and on the date of occurrence he saw Bai Samu on the road near the culvert. Kavabhai saw Bai Samu weeping and went to her. Kavabhai saw Falji Teja lying dead on the ground with blood injuries. According to Kavabhai Bai Samu told him that Bhika Valu and Dhana Megha had killed her husband. Kavabhai went to the Station Master, Bhurki. The Station Master Chakravarti did not know Gujarati. Kavabhai spoke to him in Gujarati. The Station Master said that he understood from what Kavabhai told him that Bhikha Valu was murdered by Dhana Megha. The High Court rightly said the Station Master Chakravarti was not familiar with the Gujarati language and because of that there was misunderstanding of what Kavabhai said and wrong names were mentioned. Bai Samu was in great distress and agony of her life. Therefore it would be reasonable to find that though under the circumstances Bai Samu might have given out the names of three individuals Kavabhai understood her to mention the names of accused No. 1 and accused No. 2.

19. The High Court referred to the three Panchnamas Exhibits 20, 21 and 23 as pieces of circumstantial evidence. Exhibit 20 is the deposition of the Panch witness Nanubhai who spoke of injuries on the different portions of the dead body, a piece of Dharia blade to be found lying at a short distance from the dead body and a cap and a piece of cloth used as a head gear found lying there. The spear was also found lying at some distance from the dead body. The Panchnama Exhibit 21 was recorded in connection with the scene of offence. Panch witness Nanubhai spoke of the piece of apparel Pachhedi of the nature of a short dhoti worn by accused No. 3 and taken charge by the police on 21 February, 1965. Accused No. 3 put on the pachhedi. It appeared to have a blood-stain and the police took charge of it under Panchnama Exhibit 23. Exhibit 21 also spoke of the piece of blade of Dharia found lying at a distance of one pace to the south of the dead body and the spear was found lying at a distance of about 7 paces to the west of the dead body. The Panchnama Ex. 23 mentioned that there was one blood spot on the right side on the "thigh portion" of that Pachhedi and accused No. 3 was allowed to change the pachhedi by wearing another pachhedi which he had with him and the spot of blood which was noticed on the pachhedi of accused No. 3 was encircled under the signature of Panch witnesses.

20. The High Court referred to the evidence of Dr. Lala who performed the postmortem examination on the body of Falji Teja. Dr. Lala's evidence was that all the injuries could have been caused by sharp cutting instrument and the death of Falji Teja was due to shock and haemorrhage as a result of the fracture of the skull. Dr. Lala spoke of six injuries on Falji Teja. Injury No. 4 a cut on the back of left upper arm lower one third skin deep could have been caused by a spear. Injury No. 3 a semi-circular incised wound cutting through the bone and exposing the brain starting from the right frontal area 1 1/2 above lateral edge of right eyebrow and going backwards across the right parietal left occipetal and then forward over left temporal area and terminating at about 2 above left ear, could have been caused by a Dharia blow and it could not have been caused by an axe. Injuries Nos. 5 and 6 viz., an oblique incised wound on the back of left thigh and an incised wound on the back of middle half of the left leg could have been caused by an axe and not by a spear. Injury No. 1 an incised wound near the outer angle of left eye and injury No. 2 an oblique incised wound over left cheek in the area of left ear could have been caused by a Dharia and a farsi and not by a spear. That

was the evidence of Dr. Lala.

21. The High Court dealt with the arguments advanced on the medical evidence that injuries Nos. 1 and 2 on the outer angle of left eye and over the left ear were so located that they could not have been caused when he was lying with his face downward. No questions were put to Dr. Lala about this aspect of the case and the High Court rightly said that it was not possible to accept the submission on behalf of the accused that those two external injuries could not have been caused when the deceased was lying with his face towards the ground.

22. The High Court correctly found corroboration from the injuries on the dead body and the three different weapons, viz., the axe, the spear and the Dharia and the wearing apparel pachhedi. The medical evidence was that the different injuries could have been inflicted by Dharia, axe and spear. External injury No. 4 could have been inflicted by a spear or by an axe. Khengar's evidence was there was a spear injury but he had not specified the part of the body where the spear had landed. Khengar might have noticed only the action of accused No. 2 in thrusting the spear but did not notice how and in what manner the spear landed on the person of Falji. Therefore, there could not have been discrepancy between Khengar's and the medical evidence. A spear was found lying at the scene. A broken blade of a Dharia was also lying near the dead body. The Police Sub-Inspector recorded inquest and took charge of that broken piece of Dharia blade. Stains of human blood were found on the Dharia blade. The stains of blood on the spear had so integrated that its origin could not be determined. Therefore, looking at the place from which the spear was found and the circumstances under which the spear was taken charge of by the police, it is clear that the spear must have been stained with Falji's blood and must have been left behind by the person or persons who assaulted Falji.

23. The injuries on the dead body were consistent with the three different weapons and the three different types of weapons rendered it not unreasonable for the High Court to come to the conclusion that there were three assailants each of whom was having a different weapon and each of whom caused injuries to the deceased Falji. Khengar's testimony is corroborated by the testimony of Bai Samu that the three accused assaulted the deceased and caused injuries to the deceased by means of axe, spear and Dharia. The pachhedi which was taken charge from accused No. 3 immediately after he was arrested had stains of human blood. The High Court examined the pachhedi and found that there was only one cutting taken out from the pachhedi and that too was from the portion around which there was a circle in ink and the signature of panch witness Nanbhai was also there. No other cutting was taken out from the pachhedi. There was only one tear on the pachhedi. This cut mark was taken out from the portion encircled in ink when the Panchanama was made. The stain of human blood on the pachhedi worn by accused No. 3 was a strong reliable piece of evidence.

24. The discovery of a gun and an axe by accused No. 1 and a Dharia by accused No. 3 is of great importance for the purpose of corroboration. Panch witness Chaturbhai was a panch to three different Panchnamas in connection with the discovery of different weapons. Hasan Alibhai, and Dayaram Kamaldas were copanchas with him and accused No. 1 was in police custody at that time. Accused No. 1 said that he would show the place where he had kept the gun and accused No. 1 led

the police and the panchas to a place on the station road to the tailor's house which was under construction. Accused No. 1 showed the gun which was lying at that house. The gun was attached. Panchanama was made and the gun was taken charge of by the police. The gun was shown to be the gun belonging to Falji. The licence showed the number of the gun. The licence was given to Falji. The number and other description tallied. The number of the gun was noted in the panchanama.

25. Accused No. 3 led the police party and the panchas to a place near a small temple of a deity. Accused No. 3 took out a Dharia from the hedge of thorns. The Dharia was attached. A panchanama was made. The Dharia which was attached had. its blade broken. There were blood like stains on it. Article 13 was the Dharia produced in Court. The blade which was found from the scene of offence near the dead body and the dharia which was attached matched. The High Court saw the two pieces matched completely at the broken edge and there was no doubt in coming to the correct conclusion that the broken piece of blade was broken from this particular dharia and the remaining portion which was recovered according to the prosecution from the hedge was the other matching part of it.

26. The third panchanama made on 22 February, 1965 stated that accused No. 1 said that he would find out the farsi in a hedge. Accused No. 1 also stated that he had kept the farsi in a hedge and then the panchnama was recorded at the Panchayat Office. Chaturbhai also said in evidence that the distance between the spot from where the dharia was taken out and the place from where farsi was taken out by accused No. 1 might be about 10 feet. The hedge from which the broken dharia and the axe were recovered was about a distance of 20 feet from the station road and the house of the tailor from which the gun of Falji Teja was recovered was on the station road. The High Court rightly said that the criticism on behalf of the accused that Chaturbhai was a Koli Patel and therefore had interest of the community was no ground to hold that Chaturbhai's evidence should not be accepted. Panch witness Nanubhai Virsing was also a Koli Patel and no allegation was made against Nanubhai. The High Court found that nothing was shown to hold that Chaturbhai was an interested witness or to be a professional panch or amenable to the pressure of the police. Panch witness Hasanali was won over by the accused. That is why Hasanali who was cited as a witness was not examined along with Mera Mathur. Other witnesses were also dropped. Dayaram another panch witness was not examined. It was not obligatory to call Dayaram because it could not be said that Chaturbhai was an interested witness.

27. The High Court rightly said that there was no reason to disbelieve the three panchnamas and once that evidence was accepted it clearly followed that the prosecution established that a gun with stains of human blood on it and belonging to Falji Teja was recovered from a spot from where accused No. 1 had kept the gun and the broken blade of the Dharia with stains of human blood on it was recovered from the hedge of the Vada of Vama Vaja the place where accused No. 3 had kept it and the axe was found from another spot in the hedge of Vama Vaja. Discovery of the Dharia and the farsi and the gun corroborated the testimony of Khengar and the further fact that the names of the accused were disclosed by Bai Samu to Kava Mansing. Bai Samu had in her turn been told the names of the three accused as assailants by Khengar. This supports Khengar's version before the Court. Khengar's evidence received corroboration by the discovery of the gun, the axe and the spear.

28. The High Court rightly found that the prosecution case against the three accused had been established beyond reasonable doubt from the evidence of Khengar and from the corroboration which Khengar's evidence received.

29. For these reasons the appeal fails and is dismissed.