

## **Habib Usman vs State Of Gujarat on 29 September, 1978**

**Equivalent citations: AIR1979SC1181, 1979CRILJ708, (1979)3SCC358, AIR 1979 SUPREME COURT 1181, (1979) 2 SCJ 445, 1979 SCC(CRI) 671, (1979) 3 MAHLR 256, 1979 (3) SCC 358**

**Author: O. Chinnappa Reddy**

**Bench: O. Chinnappa Reddy, V.D. Tulzapurkar**

### **JUDGMENT**

O. Chinnappa Reddy, J.

1. Habib Usman, sole appellant, was acquitted by the learned Sessions Judge, Ahmedabad (Rural) of an offence under Section 302, Indian Penal Code. On appeal by the State of Gujarat the order of acquittal was set aside by the High Court and he was convicted under Section 302, Indian Penal Code and sentenced to suffer imprisonment for life. He has filed this appeal.

2. The case against the accused was as follows:

3. There was a trivial quarrel between the accused and Hajishah, P.W. 8 over a soap box near the Koteswar tube well, where both of them had gone for a bath. The deceased Amminuddin Miyasaheb intervened and this angered the accused. who went away uttering a threat at the deceased. On the day of occurrence, at about 8 A.M. the deceased had gone to Viramgam Railway Station to catch a train to go to Ahmedabad, as was his habit every day. Having put his bag in the compartment, he was standing on the platform when the accused attacked him with a knife. The blow was delivered on the left side of the chest. The deceased sat down clutching his chest with both hands and crying 'save me, save me', P.W. 3, Yusufbhai who had gone to the Railway Station to see his sister-in-law off, witnessed the occurrence, went near the deceased, made him get up, took him up to the gate, put him in a carriage and went with him to the hospital. The occurrence was also witnessed by P.Ws. 4, 5 and 6 among others,

4. P.W. 15, Dagadu, a constable attached to the Railway Police Station happened to be coming along the platform along with another Constable Kamarsingh when they saw a man coming with his hands on his chest, crying 'save me, save me'. The injured person said 'I am stabbed by one person on my chest on the platform and he has run away'. The injured pointed towards the main gate indicating that the assailant had run that way. Dagadu ran towards the main gate in order to apprehend the assailant but he was unable to find him. So he returned. By that time the injured person had been taken to the hospital. Dagdu and Kamarsingh went to the Police Station to inform the Sub-Inspector about the stabbing. An entry was made in the station diary mentioning the information given by

Dagadu.

5. At the hospital, in the meanwhile, P.W. 2, the Medical Officer examined the injured and sent an intimation to the Police Station. The Sub-Inspector of Police proceeded forthwith to the hospital and recorded the dying declaration of the injured person in the presence of the Medical Officer. Within half an hour after the statement was recorded the injured expired at 9.15 a.m. As already noticed the stabbing took place at about 8 a.m. After completing the investigation the Police filed a chargesheet against the accused for an offence under Section 302 Indian Penal Code,

6. In support of its case the prosecution relied upon the direct evidence of P.Ws. 3, 4, 5 and 6 and the dying declaration recorded by the Sub-Inspector at the Hospital. The plea of the accused was one of denial. The learned Sessions Judge rejected the evidence of the eye witnesses primarily on the ground that they did not refer to the presence of Dagadu and Dagadu did not mention that any other persons were present near the deceased, when he heard him crying 'save me, save me'. The learned Sessions Judge thought that if Yusufbhai was present at the time of the occurrence and had taken the deceased towards the main gate, he would have certainly met Dagadu and Kamarsingh when they came near the deceased on hearing his cries 'save me, save me'. The failure of Dagadu to mention the presence of Yusufbhai and the statement of Dagadu that he saw a man running towards the main gate with his hands on the chest disproved, according to the learned Sessions Judge, the presence of Yusufbhai as well as his story that immediately on being stabbed the deceased sat down and Yusufbhai made him get up and took him towards the main gate. The learned Sessions Judge discarded the evidence of the other eye witnesses on the ground that they spoke to the presence of Yusufbhai and did not speak to the presence of Dagadu and Kamarsingh. The dying declaration was rejected by the learned Sessions Judge on the ground that the friends and relatives of the deceased were admittedly with the deceased just before he made the dying declaration and there was therefore, an opportunity for the deceased to be tutored to implicate the accused. The learned Sessions Judge also relied on the circumstance that according to Dagadu the deceased did not mention the name of the assailant but merely said that one person had stabbed him. He also relied on the circumstance that the driver of the carriage also stated that the deceased did not mention the name of the assailant. The learned Sessions Judge, therefore, acquitted the accused.

7. On appeal by the State of Gujarat, the High Court held that there was no acceptable reason for the rejection of the evidence of the eye witnesses or the dying declaration. The High Court went into the matter in great detail and after considering elaborately the reasons given by the learned Sessions Judge, it came to the conclusion that the accused was guilty of the offence of murder. Accordingly the accused was convicted and sentenced to suffer imprisonment for life.

8. In this appeal Shri R.K. Garg. Learned Counsel for the appellant argued that two views were possible on the evidence in the case and the learned Sessions Judge had taken one view which could not be described as unreasonable, and it was, therefore, not permissible for the High Court to interfere with the order of acquittal. He also argued that the reasons given by the learned Sessions Judge were not met by the High Court. Shri Garg relied primarily on the entry, made in the Station diary, of the information furnished by Dagadu and argued that the name of the assailant was not known initially and that the accused was implicated later. He argued that the entry in the Station

diary and the evidence of Dagadu and the carriage driver completely destroyed the value to be attached to the dying declaration and the evidence of the eye witnesses.

9. We have considered the arguments of Shri Garg in the light of the evidence and the views expressed by the Sessions Judge and the High Court. We are satisfied that the High Court was justified in interfering with the order of acquittal. As mentioned by us earlier the occurrence took place at about 8 a.m. The deceased died at about 9.15 a.m. The dying declaration was recorded half an hour before the death of the deceased, that is, at about 8.45 a.m. Great weight must naturally and necessarily be attached to the dying declaration, recorded so shortly after the occurrence. Merely because some friends and relatives happened to be with the deceased before his statement was recorded, the statement cannot be thrown out as tutored. In the first place it was indeed natural for the friends and relatives of the deceased to be with the deceased at that time. In the second place there is nothing to indicate either in the evidence of the Doctor or of the Sub-Inspector or of the brother of the deceased that anyone tutored the deceased. It was not suggested to P.W. 9 the brother of the deceased that anyone was interested in falsely implicating the accused or that anyone had tutored the deceased to implicate the accused. The Trial Judge sought to draw the inference that the deceased must have been tutored to implicate the accused from the circumstance that the name of the assailant was not mentioned in the entry in the station diary made on the information furnished by Dagadu P.W. 15. We may here extract the entry in the Station diary. It is as follows:

Extract of entry No. 5 dated 15-9-69 from the Station Diary of Viramgam Railway Police Station 8.20 hrs. Today we are informed by Police Constable Dagadu Kashiram, B.No. 77 and Armed Police Constable Kamarsingh Lakkharaj B.No. 40 that they were coming for duty towards Sama Suriya Police Line and when they had come to the Railway station one man was coming running to them raising cries 'save' and thereupon Dagadu Kashiram chased the assailment of the deceased. The injured person did not give his name but he said I am stabbed by one person on my chest on the platform and he has run away. Meanwhile other persons took away the injured person to the hospital in a carriage. On hearing about this information I handed over the charge to Head Constable Allauddin and went to the Hospital for further inquiries.

Sd/- Sub Inspector.

All that the entry in the Station diary shows is that Dagadu and Kamarsingh saw the injured running towards them raising cries 'save me, save me', and that Dagadu thereupon tried to chase the assailant. At that time the injured person did not give his name but merely said 'I am stabbed by one person on my chest on the platform'. It is clear that all that Dagadu heard was the involuntary exclamation of the deceased to the effect that he had been stabbed by one person on the platform and that he should be saved. The entry in the Station diary does not show that Dagadu enquired from the deceased as to who his assailant was and that the deceased failed to disclose the name of the assailant. In our view it would be wholly unjustifiable to put the involuntary exclamation of the deceased on the same par as a dying declaration and to reject the

dying declaration recorded by the Sub Inspector later in the presence of the Medical Officer on the ground that the deceased did not name his assailant while crying out 'save me, one person has stabbed me'. We are of the view that the reasons given by the learned Sessions Judge for discarding the dying declaration were unsatisfactory and therefore, the High Court was justified in accepting the dying declaration and acting upon it. The learned Sessions Judge had also referred to the evidence of D.W. 1, the driver of the carriage in which the deceased was taken to the hospital. D.W. 1 said in his evidence that when he questioned the deceased as to who had stabbed him, he said that one man had given him a knife blow and that he should be taken to the hospital immediately. From this casual question of the driver of the carriage and the answer of a person who had been seriously injured and who was anxious to be taken to the hospital, it is too much to infer that the deceased did not know the name of the assailant and therefore, was unable to mention the name to D.W. 1. The High Court was, therefore, right in not attaching any importance to the evidence of D.W. 1.

10. Coming to the evidence of the eye witnesses it has to be noticed straightway that the name of Yusufbhai P.W. 3 was mentioned in the dying declaration itself as the person who had taken him to the hospital. The reason given by the learned Sessions Judge for rejecting the evidence of P.W. 3 was that P.W. 3's evidence could not be true if the evidence of Dagadu was true because Dagadu did not mention that the deceased was being taken towards the main gate by P.W. 3 but stated, on the other hand, that the deceased was running towards them when he and Kamarsingh first saw him. We do not think that the learned Sessions Judge was justified in rejecting the evidence of P.W. 3 on that account. Dagadu and Kamarsingh saw the deceased coming towards the gate holding his chest with his hands and crying out 'save me, one person has stabbed me' Immediately Dagadu ran towards the main gate In the hope of catching the assailant. He must have had but a fleeting glimpse of the deceased before he ran to chase the assailant. It is possible that he did not notice, in those fleeting moments, whether the deceased was walking by himself or whether some one was supporting him and taking him towards the main gate, Dagadu himself did not witness the actual stabbings. The evidence of P.W. 3 that he witnessed the occurrence could not be rejected merely because Dagadu did not notice whether anyone was supporting the deceased after he was stabbed when he was proceeding towards the main gate. Similarly, it is possible that P.W. 3 on his part did not notice Dagadu and Kamarsingh. We do not see how the evidence of P.W. 3 that he witnessed the stabbing is liable to be rejected merely because, after the stabbing, P.W. 3 and Dagadu did not notice each other. What has been said about P.W. 3 applies equally to the evidence of P. Ws, 4, 5 and 6. Their evidence was not liable to be rejected merely because they vouched for the presence of P.W. 3 and because they did not notice Dagadu and Dagadu did not notice them. It is not as if Dagadu stopped the deceased and spoke to him. Dagadu merely heard the deceased cry out and saw him pointing towards the main gate. When he heard the deceased cry out and saw him pointing towards the main gate he ran towards the main gate in the hope of catching the assailant. Dagadu did not claim that he spoke to the deceased or that the deceased spoke to him. We are of the view that the learned Sessions Judge gave insubstantial reasons to reject the evidence of P.Ws. 3, 4, 5 and 6. The High Court considered the evidence of each witness separately and dealt with the reasons given by the learned Sessions Judge to reject their evidence. We have ourselves gone through the evidence of the eye witnesses. We were unable to discover any reason to discard their evidence. Not a single

suggestion was made and nothing was elicited to shake their credit in any way. We are satisfied that the learned Sessions Judge had taken an unreasonable view of the evidence and that the High Court was justified in upsetting the conclusions of the learned Sessions Judge. There was no good reason for rejecting the dying declaration nor were there reasonable grounds for rejecting the evidence of eye witnesses. The High Court was right in interfering with the order of acquittal, The appeal is therefore, dismissed.