

Harijan Jivrajbhai Badhabhai vs State Of Gujarat on 11 May, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2376, AIR 2016 SC (CRIMINAL) 882, (2016) 3 CRILR(RAJ) 836, 2016 CRILR(SC MAH GUJ) 836, 2016 (12) SCC 281, (2016) 64 OCR 514, (2016) 3 RECCRIR 325, (2016) 2 ALD(CRL) 7, (2016) 163 ALLINDCAS 215 (SC), (2016) 3 CURCRIR 217, (2016) 5 SCALE 181, (2016) 3 DLT(CRL) 439, (2016) 95 ALLCRIC 487, 2016 CRILR(SC&MP) 836, (2017) 1 CRIMES 214, 2016 (4) KCCR SN 495 (SC)

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Bench: Fakkir Mohamed Ibrahim Kalifulla, Uday Umesh Lalit

Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1694 of 2009

Harijan Jivrajbhai Badhabhai

....Appellant

Versus

State of Gujarat

... Respondent

J U D G M E N T

Uday Umesh Lalit, J.

This appeal by special leave at the instance original Accused No.2, seeks to challenge the judgment and order dated 16.02.2009 passed by the High Court of Gujarat at Ahmedabad dismissing Criminal Appeal No.1035 of 2002 preferred by the appellant challenging his conviction and sentence in Sessions Case No.62 of 1998, Rajkot, for offence punishable under Section 302 of the Indian Penal Code (for short IPC).

2. The incident giving rise to the present matter occurred on 16.09.1997 around 11:30 a.m. in the Courtroom of 6th Joint Civil Judge (Senior Division) and Judicial Magistrate First class, Bhavnagar.

According to the prosecution one Dalpat was required to attend the 6th Court as an accused and was standing with his co-accused PW 29 Mahendra in the corridor next to the Courtroom waiting for their case to be called out. On the very day original accused No.1 Keshu Badha also had a case listed in that Court for framing of charges. While Dalpat was waiting in the corridor, Accused No.1 Keshu Badha and Accused No.2 Jivraj Badha ie. the appellant came running with sharp cutting weapons in their hands. Apprehending danger to his life, Dalpat rushed into the Courtroom but both the accused chased him into the Courtroom. PW 25 C.R. Thakkar was the Presiding Officer of the Court while PW 30 Bhanji was Court Duty Constable sitting at the entrance of the Courtroom. The other members of Court staff present in the Courtroom were PW 23 Harshaben, Court Clerk, PW 24 Ajitbhai Court Clerk, PW 31 Arvindbhai, Junior Clerk.

3. As Dalpat ran into the Courtroom with both the accused chasing him with sharp cutting weapons, there was commotion and people started running helter skelter. PW 25 C.R. Thakkar jumped from the dias and along with the other Court staff ran out. Both the accused gave sharp cutting injuries to Dalpat who collapsed near the dias. According to the prosecution this incident was witnessed by PW 30 Bhanji-Court Duty Constable, PW 29 Mahendra co-accused of said Dalpat and PW 28 P.S.I Kanubhai Patel who was present in the adjoining Court of the Additional Sessions Judge in connection with a case wherein he was one of the witnesses. Having heard the commotion in the adjoining Court, PW 28 PSI Kanubhai, rushed to Courtroom No.6 and found that Dalpat was being assaulted by both the accused. In order to capture the assaulting accused, PW 28 Kanubhai with the help of PW 30 Bhanji closed the door of the Court from outside and also closed the shutter of the lobby and then went to inform local police. He asked Head Constable Barot to make a call and while returning back to Courtroom No.6 came to know that two persons with a big knife had run away from the back side of the Courtroom. He tried to chase them but could not arrest them.

4. PW 39 Police Inspector L.K. Chudawat who was present in Bhavnagar P.S. received a message about the scuffle in Courtroom No.6 and he rushed along with other staff. When he reached, he found crowd having gathered in front of the Court and found shutter of the Courtroom closed. After the shutter was opened, he found Dalpat lying dead near the dias with sharp cutting injuries. The assailants however had made good their escape by removing a grill. He conducted inquest panchnama at about 12:00 noon in respect of dead body and arranged for sending the dead body to the hospital for post-mortem which was conducted between 1:00 pm to 2:00 pm. Since the incident had taken place inside the Courtroom, PW 39 P.I. Chudawat felt it necessary to inquire from the Presiding Officer but PW 25 C.R. Thakkar refused to lodge the complaint. He thereafter inquired from PW 30 Bhanji about the details regarding the occurrence. In the First Information Report which was lodged at about 3 p.m. on the basis of statement of PW 30 Bhanji, initially three persons were named as accused. Apart from A1 Keshu Badha and A2 Jivraj Badha one Vikram Jesingh was also named. PW 39 P.I. Chudawat recovered two sheaths of knife, one knife with twisted blade outside the window of the Courtroom and collected blood samples from the place of incident as mentioned in Panchnama.

5. On the same date at about 5:30 p.m. further statement of PW 30 Bhanji was recorded in which he stated that Vikram Jesingh was named by way of mistake and accordingly the name of said Jesingh was deleted from the proceedings. Five days later both Accused Nos.1 and 2 were arrested and a

knife was recovered pursuant to the statement of A1 Keshu Badha while a Dharia was recovered pursuant to the statement made by A2 Jivraj Badha.

6. During the course of investigation the police recorded statements of various witnesses. PW 29 Mahendra, co-accused of deceased Dalpat was subjected to Test Identification Parade in which he identified A1 Keshu Badha but could not identify A2 Jivraj Badha. After completing investigation charge-sheet was filed against A1 Keshu Badha, A2 Jivraj Badha and A3 Meethiben, their mother.

7. The prosecution examined 39 witnesses. PW 1 Dr. J.R. Srivastava who had conducted post mortem on the body of Dalpat stated that he had found following 21 injuries on the body of said Dalpat:-

“Injury No.1 On the left side left ear on the lower part sharp cut injury and cutting the cartilages, and upto the skin.

Injury No.2 On the left side on the neck 4 inch x 2 inch upto the shoulder line cut injury and on the left side jugular vein and on the left kerotin artery and trachea were absolutely cut and heavy bleeding, injury.

Injury No.3 On the right side of the neck from the shoulder line to internal side 3 inch x 13 inch on the right of sterno musco muscles cut injury. This injury was upto trachea.

Injury No.4 One pierced injury and on the left side on the chest 3 inch x 2 inch x 1 inch and between second and third rib, the muscles on the ribs was cut.

Injury No.5 Pierced injury, first injury pierced injury from there to the internal side 3 inch x 1/3 inch x 1 inch between second and third rib and the third rib was cut.

Injury No.6 Third pierced injury between the second and third rib slanting and in the inter coastal space of third rib. Third rib was cut and injury 4 inch x 0ll inch x 3 inch and the injury was inter coaster muscles, artery was cut. This injury was on the right side from the brain on the left side on the upper atrium inside the heart 1 inch x 1/4 inch injury was through and through wound. From the wound there was no bleeding, but about 20 cc blood was collected inside the chamber, and in the space there was 250 cc blood.

Injury No.7 Fourth pierced injury towards the outside towards the third wound outside and towards the lower side from the front to back 2 inch x 0ll inch cut injury, inter coastal muscles were cut, and the fourth rib was also half cut.

Injury No.8 Fifth pierced injury slanting on the 3 inch x 0ll inch bone deep.

Injury No.9 Sixth pierced injury slightly towards the backside 3 inch x 0ll inch skin deep.

Injury No.10 Seventh pierced injury on the upper side towards the outside, muscles inter coastal organ was towards the outside and cut injury 4 inch x 1 1/2 inch towards the left and upto the lungs, the margin was clean cut, and of size 1 1/2 inch x 1 1/2 inch. There was slow bleeding. In the pleural 100 cc blood was collected.

Injury No.11 Eighth pierced injury, on the left side of the chest 3 inch x 1 1/2 inch skin deep.

Injury No.12 Ninth pierced injury on the upper side between the eight number pierced injury, of size 2 1/2 inch x 1 1/2 inch bone deep.

Injury No.13 Tenth pierced injury on the chest on the right side pierced lower than the third number injury size 3 inch x 1 1/2 inch bone deep and muscles inter coaster was cut.

Injury No.14 Eleventh pierced injury 2 1/2 inch x 1 1/2 inch bone deep from the front to the back.

Injury No.15 Twelfth pierced injury 3 inch x 1 1/2 inch bone deep between the fifth and sixth rib. And, the bones were also cut. This injury was on the right side of the chest.

Injury No.16 Thirteenth pierced injury on the chest on the left side in the line of sixth number size 3 inch x 1 1/2 inch x 1 1/2 inch towards the inside injury cutting the muscles and inter coastal.

Note: He was also informed that upto the above bone the injury upto the muscles, and the other injury on the bones, have not gone upto the bones. And, this fact is also applicable to the injury No.1 and 2.

Injury No.17 One cut injury on the left side on the side of the muscle of the left hand between the first and second finger of size 4 inch x 1 1/2 inch, and the injury was towards the outside.

Injury No.18 The second cut injury on the back of the left hand on the second and third fingers on the lower side of size 3 inch x 1 1/2 inch skin deep.

Injury No.19 Third cut injury between the third and fourth metacarpal size 3 inch x 1 1/2 inch skin deep.

Injury No.20 Fourth cut injury on the left hand elbow towards the inside skin, muscles, tendons were cut and bleeding and the size of injury 4 inch x 2 inch bone deep.

Injury No.21 Cut injury on the left Patella bone deep oblique of size 4 inch x 1 1/2 inch. Skin, muscles were cut.” During his examination in Court the witness was shown the weapons in question and his testimony was as under:-

“I am being shown the scythe of Muddamal article no. 26. Injuries sustained on the neck, hand and legs can be caused with it. I am being shown the toothed knife of Muddamal article no. 25. Injuries sustained on chest and neck can be caused with it. I

am being shown the knife of Muddamal article no. 7. The injuries sustained on ear, neck and chest can be caused with that knife. I am being shown the bent knife of Muddamal article no. 15. The injuries that are sustained on neck, chest and ear, can be caused with that knife.”

8. One Khimjibhai was examined as PW 38 who stated that his uncle Atubhai had contested election in the year 1986 and A1 Keshu Badaha was his opponent. Since Keshu Badha lost the election, he was harboring enmity and after about a month and a half a group of eight persons which included Keshu Badha and Jivraj Badha had fatally assaulted his elder brother Muljibhai, in respect of which case these accused were initially convicted and sentenced but were later acquitted in appeal. PW 30 Bhanji stated that he and the accused belonged to the same community, that he had studied in the same school and that the accused used to do the job of cobbler outside the school. PW 28 Kanubhai stated that he had spent 10 years in police service at Bhavnagar, that he knew both A1 Keshu Badha and A2 Jivraj Badha who had some cases pending against them and that they used to come to the police station in connection with such cases.

PW 25 C.R. Thakkar Presiding Officer of the Court and other Court staff namely PW 23 Harshaben, PW 24 Ajitbhai and PW 31 Arvindbhai stated that in the commotion that happened on the day they had not sufficiently seen the assailants.

9. Relying on the testimony of eye witness account unfolded through PW 28 Kanubhai, PW 29 Mahendra and PW 30 Bhanjibhai and the other material on record, the Trial Court found that the case of prosecution as against A1 Keshu Badha and A2 Jivraj Badha was fully proved. It however acquitted A3 Meethiben of all the charges leveled against her. By his judgment and order dated 19.10.2002, the Additional Sessions Judge, Rajkot in Sessions Case No. 62 of 1998 convicted both A1 Keshu badha and A2 Jivraj Badha of the offence punishable under Section 302 IPC and sentenced them to undergo rigorous imprisonment for life and to pay fine of Rs.10000/- each, in default whereof to undergo further rigorous imprisonment for two years. The convicting accused being aggrieved, filed Crl. Appeal No.1035 of 2002 in the High Court of Gujarat at Ahmedabad. Accused No. 1 Keshu Badha died during the pendency of the appeal and the appeal at his instance stood abated. After considering the material on record and rival submissions the High Court by its judgment and order dated 16.02.2009, which is presently under appeal, affirmed the conviction and sentence of A2 Jivraj Badha, appellant herein and dismissed his appeal.

10. In this appeal by Special Leave Mr. D.N. Ray, learned Advocate appearing for A2 Jivraj Badha submitted as under:-

a. The First Information Report was registered at 1.00 p.m. while even before such registration the inquest was undertaken at about 12 noon and the post mortem was also conducted between 1.00 p.m. and 2.00 p.m. Further, in the FIR three persons were named but later the name of the third person was dropped from the proceedings. In his submission, the First Information Report was nothing but retro

fitting done by the prosecution and was thus not believable at all.

b. PW 29 Mahendra had failed to identify A2 Jivraj Badha. In his submission, PW 28 Kanubhai had arrived after the shutter was already closed as PW 39 P.I. Chudawat did not refer to his presence. The presence of PW 28 Kanubhai was extremely doubtful.

c. As regards PW 30 Bhanji, the assertion that he knew both the accused as they were cobblers who used to sit outside the school, is not worthy of any reliance. It is difficult to accept how PW 30 Bhanji could identify both the accused and name them with addresses after so many years.

d. The case of the prosecution as regards A3 Meethiben was that she had secreted the weapons inside the Courtroom which would again be running counter to the case that both the accused had come through the corridor with sharp cutting weapons in their hands.

11. Ms. Jesal Wahi, learned Advocate appearing for the State submitted that the genesis of the incident including the presence of A1 Keshu Badha was not in doubt at all. The presence of PW 28 Kanubhai was natural as he had come to appear as a witness in the adjoining court. Similarly presence of PW 29 Mahendra who was co-accused along with deceased Dalpat was also natural. PW 30 Bhanji was Court Duty constable and would naturally be at the entrance of the Courtroom. Though PW 29 Mahendra stated about the incident, he had failed to identify A2 Jivraj Badha. But other two witnesses namely PW 28 Kanubhai and PW 30 Bhanji had clearly identified both the accused. She further submitted that the eye witness account was cogent, consistent and was rightly accepted by the High Court and the Trial Court.

12. We have considered the rival submissions and have gone through the testimony of the eye witnesses and other material on record. It is true that even before the registration of FIR the inquest was undertaken and the post-mortem was conducted. In this case, the assault was made right in the Courtroom which called for immediate action on part of the investigators to clear the Courtroom as early as possible. The Investigating Officer had initially requested the Presiding Officer to lodge a complaint. Upon his refusal, the Investigating Officer then had to make enquiries and record the complaint of PW 30 Bhanji. In the meantime, if inquest was undertaken and the body was sent for post-mortem, we do not see any infraction which should entail discarding of the entire case of prosecution. We also do not find anything wrong if the first informant soon after the recording of the assailant corrected himself, as a result of which name of the third assailant came to be dropped. So long as the version coming from the eye witnesses inspires confidence and is well corroborated by the material on record, any such infraction, in our view would not demolish the case of the prosecution in entirety.

13. The presence of PW 28 Kanubhai, a Police Officer who was required to give evidence in the adjoining Court, was quite natural. In case of any commotion as a result of any assault, a trained Police Officer would certainly be expected to reach the place in question, which PW 28 Kanubhai did with promptitude. The evidence thus inspires confidence about his presence at the time in question. After closing the shutters he had gone to make reporting to the local police. In the circumstances, if

PW 39 Chudawat did not refer to his presence, that by itself is not crucial at all. On the other hand both PW 29 Mahendra and PW 30 Bhanji clearly referred to his presence. We have gone through the evidence and find every detail mentioned therein to be corroborated. We therefore reject the submission that the presence of this witness was doubtful. Having seen the evidence of PW 28 Kanubhai and PW 30 Bhanji, we find that both these witnesses had clearly identified both the accused. These witnesses individually knew both the accused for different reasons which reasons are cogent and trustworthy. The fact that A1 Keshu Badha and A2 Jivraj Badha were involved in criminal activities has been brought on record through the testimony of PW 38 Khimjibhai. It would therefore be natural for a police officer who had spent 10 years in police service in the area to be aware of the identity of both the accused. Similarly, PW 30 Bhanji, who had studied in the same school would also naturally know and remember the identity of both the accused.

14. It is true that A3 Meethiben was said to have secreted the weapons in the Court room. But according to the prosecution there were four sharp cutting weapons involved in the matter. Even if both the accused were carrying sharp cutting weapons in their hands, the assertion that someone else had also secreted the weapons in the Courtroom, by itself is not inconsistent with the prosecution case.

15. In the circumstances, we find the assessment made by the Trial Court as well as the High Court in the present case to be completely correct and justified. We do not see any reason to upset the conclusions and findings recorded by the Trial Court and the High Court. Consequently, affirming the conviction and sentence of A2 Jivraj Badha the appellant herein, we dismiss this Criminal Appeal. He shall serve the sentence awarded to him.

..... J

(FAKKIR MOHAMED IBRAHIM KALIFULLA)

..... J

(UDAY UMESH LALIT)

New Delhi

May 11, 2016