Thakarda Lalaji Gamaji vs The State Of Gujarat on 22 November, 1973

Equivalent citations: AIR1974SC1351, 1974CRILJ612, (1974)3SCC639, 1974(6)UJ78(SC)

Bench: M.H. Beg, Y.V. Chandrachud

JUDGMENT

Beg, J.

1. The appellant was convicted by the Sessions Judge of Mehsana of offences punishable under Sections 302 and 323, I.P.C. and sentenced to life imprisonment and three months rigorous imprisonment respectively, the sentences running concurrently. The High Court of Gujarat had confirmed the convictions and the sentences awarded. The appellant had obtained special leave to appeal to this Court.

2. The incident giving rise to the appellant's prosecution is said to have occurred on 20th of June 1968 outside the house of Mathurji, P.W. 2, where the deceased Chanduji and Mobtaji, P.W. 3 were said to be sitting at about 6.00 P.M. in the evening. Chanduji deceased is said to have gone there to obtain his share of the income of some mangoes sold by Mathurji, P.W. 2. The appellant had a grudge against Chanduji, because of his suspicion that Chanduji had illicit relations with his niece and had made her pregnant. There had been a quarrel between the two sides which had lead to criminal counter cases relating to the same incident.

3. When the appellant saw the deceased sitting with Mathurji on the evening of 20 6 1968, he is said to have rebuked Mathurji for harbouring his enemy. There was an exchange of abuses, which was said to have lead to an attack by the appellant on Mathurji, P.W. 2, and on Mobtaji, P.W. 3, who intervened. They are said to have received some blows with a stick. Thereafter, the appellant is said to have gone back to his house and returned with a dhariya or danti (scythe) and to have given two blows on Chanduji (deceased), one on the head and another on his arm. The deceased fell down and became unconscious. The appellant then left the scene of occurrence Mathurji and Mobtaji busied themselves with removing Chanduji deceased to a Government Dispensary at Pethapur, 5 miles away. After that they are said to have left for Ahmedabad on foot to inform Chanduji's father about the incident. They are said to have reached Ahmedabad, 18 miles away, on 21st June 1968. Chanduji, who was removed to Civil Hospital at Ahmedabad, died at 10.00 P.M. on 23-5-1968. He is shown to have sustained the following injuries:

> (1) A contused wound about 11/4" x 1/2" x 1/2" on the left temporal region of the scalp.

(2) A contused wound about 1/2" x 1/2" x 1/3" on the middle and outer side of the left forearm.

Mobtaji had the following injuries:

(1) A contusion over an area bout 1" x 1" on the internal side of the right elbow joint.

(2) A contusion over an area about 11/2" x 1/2" on the outer side of the left forearm on its upper third.

4. The appellant did not lead any evidence in defence. He, however, denied the prosecution allegations and admitted the filing of a report (Exh. 38) to the Sub-Inspector of Pethapur in which he complained that, when he was returning from his fields at about 6.30 P.M. on 20th of June, 1968, he was abused and then attacked with a knife by Mathurji, and by Mobtaji, P.W. 3, who had a stick. He stated that Chanduji (deceased) had no weapon. He alleged here that Mobtaji had tried to give a blow with a stick, which he warded off with his Danti, as result of which the handle of the Danti broke. Thus, he admitted that he had a danti. This report said that Mobta struck him on the right leg so that he fell down, and, thereafter, Mathurji had struck him with a knife on the right side of his body. He stated then that his brother Shambhuji and his nephew Hemaji came to his rescue. The reason for the quarrel given by him in this report was that Manek Bai, the daughter of Shambhu, had become pregnant and that Chanduji (deceased) was "involved" in this affair so that he had to leave the village but had come back. He also admitted that his brother Shambhu had lodged a complaint, presumably against Chanduji, for having made his daughter pregnant. The prosecution had proved this document, containing previous statements of the accused, which, incidentally, contained his counter-version of the same incident, to prove the motive and some admissions to support the prosecution case.

5. We have been taken through the evidence on record. We, however, see no reason 10 differ from the view of the High Court and the trial court that the defence version, contained in the report made by the appellant to the police on 20-6-1968, setting out his version of the incident, could not be true except to the extent that the appellant had also received injuries in the same occurrence. The prosecution witnesses did not admit inflicting lathi injuries on the appellant. But, Dr. R.M. Joshi, P.W. 1, had proved the following injuries on the body of the appellant:

(i) An incised wound 3" x 1/2". On probing it, the probe passes inward and downward about 21/4" deep on the right loin region of the back.

(ii) A contusion 1" x 1" on the back side of the right ankle.

(iii) A contusion 1" x 1" on the side of the left shoulder. The injuries are such that No. 1 could be caused by a sharp edged weapon like a knife and Nos. 2 and 3 by a hard blunt substance like a stick. I gave first aid and transferred him to Civil Hospital, Ahmedabad on the same day."

6. It is true that no F.I.R. was lodged by either Mathurji or Mobtaji setting cut the prosecution version. There is, however, sufficient explanation given by Mathurji, P.W. 3, for this omission. They had gone to Ahmedabad to inform the father of the deceased. Moreover, it also appears that Mathurji had some fear of being arrested as the appellant had already gone to the Police with his counter-version as to how he had sustained a serious knife injury. The appellant's version, however, made no mention whatsoever of the injuries caused by him to the deceased. The appellant, in his statement under Section 342, Cr.P.C., admitted that he had omitted to do so because of "nervousness". This means that the appellant was also afraid to reveal his own part in the incident. His report contains a wholly unnatural explanation of how he was attacked. This report itself shows that the appellant harboured a grudge against the deceased. Moreover, the appellant lead no evidence to support his counter-version. He did not set up a plea of self-defence at any stage. Both versions indicated a sudden quarrel, as a result of a chance meeting of the appellant with those he considered hostile to him, in the course of which exchange of abuses preceded an outbreak of physical violence.

7. It is true that the Mathurji and Mobtaji, who also do not admit the injuries other than the knife injury cause to the appellant, were unwilling to disclose the whole truth. But, their version, accepted by the Sessions Judge and the High Court, accords far more with probabilities And, the prosecution version explains all the injuries satisfactorily after making allowances for the two contusions of the accused wrongly concealed by prosecution witnesses who had evidently inflicted these from behind the appellant to save Chanduji from further injury.

8. There is however, one aspect of the case on which the High Court seems to have indulged in some guess-work to arrive at the conclusion that the appellant must have struck Chanduji with the sharp edge of the Dharia Or Danti, and, therefore, must be held to be guilty of the offence of murder. The High Court had preferred the evidence of Dr. R.H. Trivedi, P.W. 4, to the evidence of Dr. R.M. Joshi, P.W. 1, in holding that the first injury on the head of Chanduji, which damaged his brain and caused his death, must have been inflicted with the sharp edge of the Dharia. Dr. R.M. Joshi had described it as a "contused wound". The High Court had opined that the use of the term "contused wound" by Dr. Joshi was technically incorrect. It thought that Dr. R.M. Joshi had not properly examined the injuries. Dr. Trivedi, P.W. 4, who conducted the post mortem examination, had stated as follows :-

> On internal examination I found the following injuries :-
>
> (i) haematoma under the scalp
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> (ii) Fracture of left parietal bone of the skull on postero-medical aspect, 11/2"(?) lehgth.
>
> (iii) There is a cut in the brain on the left hemi-cortex going deep upto 2-1/2" (?). There is haemorrhage and clot in the left lateral ventricle.

8. Dr. Trivedi was shown the Dharia recovered from the field of the appellant and said that these injuries could be caused by it. The High Court overlooked that Dr. Trivedi had also stated that the

injuries could be caused with a hard blunt weapon. The fact was that Dr. Trivedi could not be definite whether any injury was caused by the sharp edge of a weapon like Dharia or Danti, because the head injury had been sutured when he examined it during the post-mortem.... Dr. Trivedi also admitted that the broken piece of a bone may cause a cut in the brain. But, he opined that the cut in the brain noticed by him could not be so caused because he had detected no piece of bone separated from the skull of Chanduji. We do not think that, even if there was some conflict between the evidence of the two doctors, the High Court could definitely hold that the sharp-edged part of the Dharia was used to inflict the injury on the head of the deceased, so that the offence committed by the appellant could only be one of murder punishable under Section 302, I.P.C. We think that the evidence on record leave this question in the region of doubt.

9. We think that the findings of the Sessions Judge as well as High Court, on the manner in which the incident took place, would bring the offence committed by the appellant within exception No. 4 to Section 300, I.P.C, if we eliminate a part of the prosecution story which appears to us to be most improbable. This was that the appellant went back to his own house and fetched the Dharia to inflict the injury on the head of the deceased. Apart from the fact that it is very doubtful whether the injury was inflicted with the sharp edge of the Dharia, we think that it is most unlikely that the appellant would have thought of coming back to the scene of occurrence after having gone to his own house when there were three men hostile to him, who were not quite unarmed, as injuries on his own body show. We think that it is far more likely that the occurrence took place "without premeditation in a sudden fight in the heat of passion without taking undue advantage or acting in a cruel manner". The whole pattern of the case and facts admitted by both sides lead us to believe that this was the more natural and correct inference to reach in this case.

10. We have no hesitation in rejecting the contention put forward on behalf of the appellant that he must have acted in exercise of the right of private defence. Apart from the fact that he took up no such plea at any stage, we find that his own admission, contained in his report to the police (Exh. 38), to which we have already referred, itself discloses that Chanduji deceased was unarmed. No such act of Chanduji deceased against the appellant is proved or suggested which could justify the infliction of an injury on his head of the nature which is clearly shown to have been inflicted by the appellant. A right of private defence can, sometimes, be reasonably inferred from facts and circumstances revealed in a case even if not specifically set up. But, in the instant case, the existence of such a right against the deceased Chanduji is actually repelled by the appellant's report to the police when he admitted that Chanduji deceased was unarmed.

11. We also find that the trial court and the High Court did not err in holding that the appellant was injured when Mathurji and Mobtaji exercised a right of private defence after he had inflicted the serious injuries on Chanduji. It was said to be necessary to prevent him from doing more harm. It is most unlikely that, after such an injury to him, which must have been inflicted at the end of the incident, he could have attacked anyone. At the most, the appellant would be entitled to the benefit of exception 4 of Section 300, I.P.C.

12. Consequently, we set aside the conviction and sentence of the appellant under Section 302, I.P.C. We convict the appellant under Section 304, Part I, I.P.C. and sentence him to 7 years rigorous

imprisonment. We maintain his conviction and sentence under Section 323, I.P.C. The two sentences will run concurrently. The appellant shall serve out the remaining period of his sentence.