

## **Aher Pitha Vajshi And Ors. vs State Of Gujarat on 31 March, 1983**

**Equivalent citations: AIR1983SC599, 1983CRILJ1049, (1983)2GLR1161, 1983(1)SCALE304, AIR 1983 SUPREME COURT 599, (1983) LS 29, (1983) 2 GUJ LR 1161, 1983 CRIAPPR(SC) 339, 1983 SCC(CRI) 607, (1983) 1 CRIMES 1067, 1983 CRILR(SC MAH GUJ) 231**

**Bench: V. Balakrishnan Eradi, M.P. Thakkar**

### **JUDGMENT**

Thakkar, J.

1. One Aher Pitha Vajshi and his five sons, belonging to Village Kenedi in Kalyanpur Taluk of Jamnagar District were tried by the learned Sessions Judge Jamnagar in Sessions Case No. 71 of 1973 in connection with the homicidal death of one Nabha Ram who was the victim of a criminal assault mounted on him at about 9 p.m. on August 24, 1973. The learned Sessions Judge accorded benefit of doubt and acquitted all the six persons accused of the crime. The State of Gujarat called into question the order of acquittal passed by the learned Sessions Judge by way of Criminal Appeal No. 384 of 1974. A Division Bench of the High Court of Gujarat at Ahmedabad by its Judgment dated 29/30th September, 1975 reversed the Judgment learned Sessions Judge partly by setting aside the order of acquittal insofar as Aher Pitha and his three sons (viz. Accused nos. 1 to 4) were concerned. The High Court was of the view that the appreciation of evidence made by the learned Session Judge was unreasonable and that in fact there was ample evidence to support a finding of guilt as against these persons. So far as, original accused No. 5 and 6 were concerned the High Court did not disturb the finding of acquittal rendered by the learned Sessions Judge. The High Court in this view of the matter convicted original accused nos. 1 to 4 for an offence under Section 302 read with Section 34 of the Indian Penal Code and sentenced each of them to undergo imprisonment for life. The four convicts have approached this Court by way of present appeal by special leave. The appeal raises no question of law. In substance the two only factual questions which arise are: (1) Whether the High Court was right in taking the view that insofar as the appellants are concerned the appreciation of evidence of the prosecution witnesses was unreasonable and (2) Whether the High Court was justified in concluding that there was sufficient material on record to bring home the guilt to the appellants.

2. The incident occurred in Village Kenedi. The appellants as also deceased Nabha Ram belong to the same village. The murderous assault on Nabha Ram took place at 9 p.m. on August 24, 1973. The prosecution case is that Nabha Ram was dragged inside the Deli of appellant No. 1, Aher Pitha Vajshi by all the four appellants and by original accused nos. 5 and 6 whose acquittal has been

confirmed by the High Court. After he was dragged inside the Deli the appellants assaulted him and inflicted on him as many as injuries, 5 of which were incised wounds. The said five injuries have been described by 20 P.W. 2 Dr. Mehta in the following terms:

(1) Incised wound over the face, near the angle of the eye size 1-1/2" x 1/2" x 1". Fracture of axillary bone seen. (2) Incised wound over the forehead, just above the eye brow size 2 x 1/2" x bone deep. Fracture line felt over the frontal bone just 25 near the orbital fossa. (3) Incised wound over the parietal eminence left size 2-1/2" x 1/4" x 2" beneath the scalp.

(4) Incised wound over the occipital region 1" above the superior nuchal like size 1-1/2" x 1/2" bone deep. (5) Incised wound over the junction of two parietal bones 1/2" away from the junction of parietal and occipital bone size 2" x 1/4" bone deep.

Fracture line is felt along with the injury.

3. According to the deposition of Dr. Mehta four internal injuries described as under were also found when he performed post-mortem on the dead body of the deceased.

(1) Fracture over the frontal bone just near the middle of the orbital fossa and extended upto the junction of front parieto junction left size 2-1/2" x in length corresponding to injury No. 2. (2) Fracture of the junction of 2 parietal bones 1/2" above the junction of occipital and and parietal bone corresponding to injury No. 5. (3) x x x (4) Tear on the mem brace over the frontal lobe size 1". There was slight laceration of brain matter in frontal lobe left size 1/4"

(In his opinion (1) injuries Nos. 2 and 4 both were individually sufficient in the ordinary course of nature to cause death and (2) collectively all the injuries were sufficient to cause death of a person).

4. The prosecution evidence shows that blood stains were found from the interior portion of the Deli of the appellants and there were blood stains also on a cart which was lying in the court-yard. There were blood stains on the outside of the doors of the appellants' Deli. And blood stains were of human origin. This evidence lands strength to the evidence of the prosecution witnesses who have deposed that the incident took place in the aforesaid manner inside the Deli of the appellant and that the victim, Nabha Ram was thrown out on the road in front of the Deli of the appellants after he was assaulted inside the court-yard. The prosecution case mainly rests on the evidence of P.W. 4 Ram Jiva (the father of the victim of assault) and three other witnesses viz. P.W. 3 Bhimsi Kala, P.W. 6 Mulu Dhanna and P.W. 11 Dhana Bhimsi (who had only seen a part of the incident) P.W. 6 and: P.W. 11 had seen Nabha Ram being dragged inside the Deli of the appellants by the appellants and the Deli being closed. According to them they had fled from the scene of the incident at that point of time. So far as P.W. 3 is concerned he had arrived at the scene soon after Nabha Ram was dragged inside the Deli. He had heard the shouts, being raised by Nabha Ram who was being assaulted inside the Deli. He had also witnessed Nabha Ram being thrown out of the Deli after he

was assaulted. And he had indentified the appellants as the persons who were concerned with the throwing out of Nabha Ram on the road from the Deli.

5. P.W. 4 Ram Jiva, the father of Nabha Ram, had witnessed the entire incident. The evidence of P.W. 4 has been disbelieved by the learned Sessions Judge in the context of trivial discrepancies and on the basis of conjectures. So also the evidence of P.W. 3 Bhimsi Kala who had arrived at the scene just after Nabha was dragged inside the Deli and had heard the shouts of Nabha when he was being assaulted inside, and had indentified the appellants as the persons who had thrown out Nabha him after the assault, was also disbelieved in the context of trivial discrepancies and on the basis of conjectures. Similarly the evidence of P.W. 6 Mulu Dhana and P.W. 11 Dhana Bhimsi who had witnessed a part of the incident till the point of time when Nabha was being assaulted on the same ground, was disbelieved on flimsy grounds. The High Court has examined the entire evidence closely and thoroughly and has answered satisfactorily every point of criticism. In our opinion the High Court was perfectly justified in taking the view that the assessment made by the learned Sessions Judge was altogether unreasonable. And in concluding that the evidence of the persecution witnesses was satisfactory and enough to warrant a finding that the appellants were the assailants who had assaulted Nabha Ram. Learned Counsel for the appellants laid great stress on the circumstance that it was a dark night and the assault took place at about 9 p.m. evidence of P.W. 4, P.W. 6, P.W. 11 and P.W. 3 whose evidence has been accepted is unanimous on the point that P.W. 4 Ram Jiva, father of the victim, had a torch in his hand and the assailants could be indentified when he flashed the torch light at the relevant time. There is no good or valid reason to disbelieve the evidence of the witness on this point. What is more the presence of blood stains on the cart which was lying in the court-yard and presence of the blood stains outside the Deli fully corroborate the version that the incident occurred in the manner narrated by the prosecution witnesses. Ram Jiva being the father of the victim was not interested in implicating persons other than the real culprits. His evidence has been unhesitatingly and for good reasons been accepted by the High Court. And we see no reason to take a different view. We are fully satisfied that the assessment made by the learned Sessions Judge was so unreasonable that the High Court was justified in making its own assessment. What is more the evidence of P.W. 3 Bhimsi Kala is of considerable importance. He has his house in the neighbourhood. There son is no reason to disbelieve his evidence that he had arrived at the point of time when the Deli was closed after Nabha was dragged inside. And that he had heard Nabha shouting for help. He has also identified the appellants as the persons who had thrown out Nabha in an injured condition after the doors of the Deli were opened. The evidence of P.W. 6 Mulu Dhana and P.W. 11 Dhana Bhimsi has been mainly criticised on the ground that they were just chance witnesses. It is however difficult to conceive as to why any of them should falsely implicate the appellants. Their evidence has been throughly and carefully scrutinized by the High Court and found worthy of acceptance. We see no reason to do otherwise. Counsel for the appellants has contended that the prosecution witnesses had invented the version that he was dragged inside the Deli and assaulted in side. This argument does not pass the test of probablities. There were blood stains inside the Deli of the appellants and also on the cart which was lying in the court-yard as revealed evidence. The Panchnama further shows that attempts were also made to clean the floor and remove the blood stains. The fact that blood stains were found inside the Deli leads to the inference that the assault must have been made inside the Deli. Since blood stains were found both inside and outside the Deli the version that he was assaulted inside and thereafter thrown out side the Deli is

probabalized, for, the assailants would not have wanted the dead body to remain inside the Deli. On going through the judgments of the Sessions Court as well as High Court and the evidence on record we are of the view that the High Court was perfectly justified in characterising the assessment made by the larded Sessions Judge as unreasonable and in appreciating the evidence on its own, inasmuch as the Sessions Judge had attached undue importance to minor discrepancies and had made a suspicious approach to the evidence of the witnesses by resorting to conjectures.

6. Learned counsel for the appellants has contended that all the four appellants may not have shared the common intention. We are unable to countenance this submission. The evidence shows that all the four appellants were acting in concert in dragging Nabha Ram inside the Deli. The evidence clearly established that all the four persons were concerned in the act of throwing the victim on the road in front of the Deli after the assault. Of course no prosecution witness could have witnessed what transpired inside the Deli because the doors of the Deli were closed after Nabha Ram was dragged inside. Appellants were acting in concert and were associated with each other in initially dragging Nabha inside the Deli as also in throwing out Nabha on the road in front of their Deli after he was assaulted inside the Deli. This circumstance which has been established by satisfactory evidence coupled with the circumstance that as many as 20 injuries of the nature described earlier were inflicted on the deceased, leaves no room for doubt that all the appellants had shared the coniiine intention to cause the death of Nabha Ram.

7. Under the circumstances we are of the opinion that the High Court was perfectly justified in setting aside the acquittal insofar as the appellants were concerned and in recording a finding of guilt, under Section 302 of the Indian Penal Code read with Section 34 I.P.C. as against them. There is no substance in the appeal. It fails and is dismissed. The appellants are on bail. They shall surrender to custody in order to undergo the remaining part of the sentence imposed on them. Upon their so surrendering their bail bonds shall stand cancelled.