Supreme Court of India
State Of Gujarat vs Naginbhai Dhulabhai Patel And ... on 6 May, 1983
Equivalent citations: AIR 1983 SC 839, 1983 CriLJ 1112, 1983 (2) Crimes 332 SC, (1983) 2 GLR 1189, 1983 (1) SCALE 569, (1983) 3 SCC 316
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Bench: A Varadarajan, M Thakkar, S M Ali
JUDGMENT Fazal Ali, J.

1. This appeal by special leave is directed against a judgment of the Gujarat High Court by which the respondents had been acquitted of the charges framed against them and the conviction and sentences imposed on them were set aside.

2. The trial court of the Additional Sessions Judge, Broach had convicted only A 1, 2, 3, 5, 7, 8, 9, and 13 (for facility, 'A indicates 'accused') and acquitted the other five accused who were placed for trial before the learned Judge. Apart from the convictions for individual offences, the aforesaid accused were convicted under Section 302 read with Section 149 of the Indian Penal Code (IPC) and sentenced to imprisonment for life plus a fine of Rs. 500/- and in default of the payment of fine, rigorous imprisonment for six months. At this stage, it is not necessary to give any detail of the other convictions because after hearing counsel for the parties and going through the judgments of the courts below we are satisfied that so far as the charge under Section 302/149 IPC is concerned it has been proved beyond reasonable doubt and the High Court was clearly wrong in reversing the acquittal of the aforesaid accused under these sections.

3. This is a case in which two horrendous and ghastly murders were caused and several persons injured on almost insignificant and trivial issues. The facts of the prosecution case have been fully detailed in the judgments of the courts below and it is not necessary for us to restate the same all over again. Nevertheless, we may give a brief summary of the background and immediate motive which resulted in this unfortunate occurrence.

4. The pivotal dispute centerd around Darbar Musabhai Haji Umerji (for short, hereinafter referred to as 'Musabhai') who was elected un-contested as the Sarpanch of the village a few months before the occurrence. The prosecution case was that A-1 was also a rival candidate for the office of the Sarpanch but he was forced by the villagers to withdraw from the election in order that Musabhai may be elected uncontested. Perhaps A-1 must have felt seriously humiliated for having been compelled to withdraw from the election and this stigma of hostility had its roots in the bad blood between A-1 and his party and Musabhai. There was some evidence of the role played by some of the kolas headed by M. Kursan as a result of which Musabhai was given quite a few threats and the episode assumed a serious proportion when on 1.10.1973, i.e., 2 days before the occurrence, Musabhai lodged a report before the police at Vagra and the police tried to move the court to take proceedings against the kolis under Section 107, CrPC, 1973 apprehending breach of peace. In his report before the police (Ex-62) Musabhai had clearly expressed his apprehension that, he along with his deputy sarpanch might be killed. As a result of the complaint, Magan Kursan was arrested under Section 151 Cr. P.C. and the complaint was sent to the taluqa Magistrate. The present occurrence is the upshot of the afore-said incidents and has to be judged against the immediate

background of the main occurrence. To cut the matter short, on the 3rd of October 1973, a mob of about 13 persons armed with dharia, guns and gandasas approached the house of Musabhai who fortunately was not there and in prosecution of the common object the mob assaulted Ahmed AH Vagas (hereafter referred to as 'Ahmed') and murdered him near his house. The deceased Ahmed received as many as 26 incised injuries. During the course of the occurrence, Bai Fatma also received injuries which proved fatal and she also died at' the spot and three more persons, viz., (PWs. 7, 8 and 10 received serious injuries. PW 2 also received a minor injury having no external marks. The evidence against the respondents consisted of the injured eye-witnesses (PWs 2,7,8 and 10) which was corroborated by the evidence of PWs 3, 9, 11 and 12. Shorn of embellishments here and there or a few discrepancies of minor nature the evidence of the aforesaid witnesses, which has been placed before us in extenso, appears to be consistent and bears a ring of truth. The reasons given by the High Court for disbelieving the eyewitnesses particularly those who had been injured are, in our opinion, unintelligible and unsupportable. We, therefore, proceed to examine the evidence of the injured witnesses 2, 7, 8 and 10 because their evidence is of very great importance and cannot be easily brushed aside as has been done by the High Court.

5. Before discussing the evidence of these witnesses in detail we might mention that the sketch map shows that the deceased and the lady witnesses (PWs 7, 8 and 10) lived in separate houses very close to each other and were also near relations. The mere fact that the witnesses were relations or interested would not by itself be sufficient to discard their evidence straightaway unless it is proved that their evidence suffers from serious infirmities which raises considerable doubt in the mind of the court. However, unfortunately, the High Court has not appreciated the intrinsic merits of the evidence of these witnesses from this point of view and has relied only on a discrepancy here and there or on omissions in the statements made in court and those made before the police while rejecting the evidence of the said witnesses in toto.

6. As regards the evidence of PW 2, Mohammad Vali Bagas (hereinafter referred to as ('Mohmmad') the main reasons given by the High Court were as follows :

(1) that the occurrence took place near about noon time which was not the time for meals and the ladies were likely to be inside the houses.

This line of reasoning does not appear to be intelligible to us because noon-time is Ihe time when ladies or gents in the village do have their meals.

(2) that the deceased Ahmed was attending to the water works of the Panchayat and also to the flour mill of Musabhai, and that he was an employee and friend of Musabhai. Even if this was so, that would be no reason to disbelieve this witness.

(3) PW-2 says that a blow was aimed at him by A-5 but as he moved away a little he did not receive any external injury but did feel the impact of hurt. The High Court took a very serious view of this discrepancy by pointing out that according to the medical evidence, no external injury was found on the shoulder of the witness. With due respect, the High Court seems to have misread the medical evidence on a most vital fact which shows the somewhat casual approach made by the High Court.

The witness clearly says in his statement that when the tabbal blow was aimed at him he tried to move away a little and that explains the absence of any external mark of injury on his shoulder. The doctor, PW 3, has clearly stated that on the day of the occurrence Mohmmad was examined by him and though he did not find any external mark of injury, the witness was complaining of pain over his right shoulder while pressing it. It was, therefore, not fair on the part of the High Court to say that the witness received no injury and that his version was absolutely false. In fact, the doctor (PW 3) had clearly mentioned this fact in the medical certificate.

(4) The High Court seems to have been greatly impressed by the fact that there appears to have been some amount of deliberation and consultation before lodging the FIR, which seems to have been lodged at about 4.30 p.m. and the PSI had arrived at the spot sometime before. It is not disputed that PW 2 was the first informant and he had lodged the report. It appears that before lodging the report, the PSI had asked some other witnesses who were present generally about the occurrence and from this the High Court seems to have jumped to the conclusion that the FIR was a made up document recorded at the instance of PW 2 after due deliberation. We find absolutely no warrant for this kind of inference. PW 2 had given names of other witnesses in the FIR, including the names of injured Huri and Jebun. He did not see PW 11, Sakina and PW 12, Aminaben. As the occurrence spread over a distance of about 50-60 yards there is nothing improbable if the witness may not have noticed the presence of Sakina and Amina and that alone would not be sufficient to discard his evidence.

(5) Side by side another reason given by the High Court was that as witness came to know the actual role played by Babubhai at 6.00 p.m. how could he mention his name in the FIR which was lodged at 4.30 p.m. It is manifest that the villagers do not have any idea of time and it was not possible for them to state the time with absolute precision and a margin of an hour or so must be allowed for the loss of their memory particularly in an horrendous incident like the present one where two persons were brutally murdered. By and large the FIR lodged by him is consistent throughout and does not suffer from any infirmity.

(6) Lastly, the High Court was of the opinion that there was no mention of any previous enmity between the family of the deceased and Magan Kursan. As the immediate cause for the occurrence was holding of the election of sarpanch, the witness may not have found it necessary to go back to earlier animosity which he and his party may have against Magan Kursan. At any rate, this was merely an omission of a fact in issue which cannot be regarded as manifest defect in the evidence of this witness.

7. We regret to observe that the approach made by the High Court was purely wooden, artificial and based on pure speculation and we are not at all impressed by the process of reasoning adopted by the High Court.

8. PW 7, Bai Huri Vali Bagas is the mother of the deceased and the High Court appears to have been impressed by her evidence because she was also injured on the right side which undoubtedly shows that she was present at the spot. The High Court, however, seems to doubt her evidence on the following grounds :

that being a woman of 75 years of age and having a weak eyesight she claims to have gone out after the incident had started and followed her son Ahmed and was also followed by the wife of Ahmed. She saw accused Nos. 1, 2 and 3 and other persons whom she did not know. She then stated that A-1, who was armed with a dharia and having a gun hanging on his shoulder, gave the first blow on the head of Ahmed with the dharia. She further says that A-2, 3 and 11 were armed with dharis and in all they were 13 persons amongst whom A-2 and 11 also gave dharia blows to Ahmed The High Court commented that after having first stated that A-1, 2, 3 and 11 were there and that she did not know others, how could she add A-4 and 5? She then stated that A-3 had given a dharia blow on her head and after her son Ahmed had fallen down, all the accused started giving blows to him and A-1 was exhorting other people to kill Ahmed. The High Court was of the opinion that the story of exhortation appears to have been introduced for the first time in her evidence. This appears to us to be a very minor contradiction because on the central points the witness is fully corroborated by the medical evidence of the doctor, PW-3, who had found injuries on her head and as many as 26 injuries on the deceased Ahmed which shows that her evidence is true, otherwise Ahmed could not have sustained as many as 26 injuries if he was assaulted only by a few persons. We think that this ground on which the High Court was persuaded to discard her evidence is wholly irrelevant and amounts to misreading of the evidence of this witness.

9. Another instance of a very flippant approach made by the High Court is that it seems to have been influenced in rejecting her evidence on a very trivial ground, that is to say, while in court she had said that the crowd consisted of 10, 12 or 15 persons but before the police her statement was that the crowd consisted of 10 to 13 persons. This is hardly a contradiction worth taking any note of and shows the perverse approach made by the High Court.

10. The High Court further went on to say that while she insisted that the accused persons were only the pattidars of the deceased Ahmed, but before the police she had stated that persons of bhil community were also present in the crowd. The High Court itself observes that the witness had a weak eyesight and hence in our opinion it was not her eagerness to falsely implicate the accused but in adding some more persons like the bhils in the crowd the infirmity was due to lapse of memory though she was frank and honest enough not to identify any of them in the court. The High Court further observes that even if she was a resident of the village she was notable to identify others amongst the crowd which goes to show that her evidence was not worthy of credence. This is indeed a strange process of reasoning. The High Court does not seem to have given any allowance for the old age of this witness as a result of which she might have missed certain things, nor could she be normally expected to recognise every person of the village. She had definitely named A-4 and 5 whose presence is proved by other witnesses and thus there was no warrant for the High Court to have drawn an inference from the aforesaid fact that she was out to falsely implicate innocent persons.

11. These are the reasons given by the High Court for distrusting this witness. We find ourselves unable to agree with this line of reasoning which, if accepted, cannot end in conviction of a single person in a faction ridden village. Therefore, the grounds on which the High Court has disbelieved the evidence of PW-7 are not sustainable in law. After going through her evidence, we find that having regard to her old age she had given a very straight-forward and correct version of the

occurrence in general and her testimony bears a ring of truth.

12. PW-8, Bai Huri Haji Umerji is the step-mother of Musabhai and she fully corroborates the testimony of PW 7. She had also sustained an incised wound as deposed to by Dr. H.K. Janzuwadia, PW 3, and the High Court has observed that in view of her injuries there could be no doubt that she was present at the time of the incident. As in the case of PW 7, so in the case of this witness also, the High Court started with a series of speculations and placed great reliance on trivial discrepancies.

13. The witness states that A-1 was armed with a dharia and a gun and A-2 and 3 with a dharia each and there were other persons who had dharias with them. This part of the evidence is fully corroborated by the evidence of all other eyewitnesses as also by the presence of injuries on the deceased Ahmed and other witnesses. It is the consistent case of the prosecution that A-1, 2 and 3 started giving blows to the deceased Ahmed. The High Court further comments that according to her evidence she had gone to her house with Ismail Mudhalawala for the purpose of borrowing a spraying machine and when those two persons were on the first floor she heard the noise and went to the street from where she witnessed the incident. The High Court seems to suggest that if she was inside the house she could not have seen the occurrence. This argument takes us no where because being an injured witness there can be no doubt that she was present at the time of the occurrence and it may be that while the occurrence was going on which must have been a long drawn affair, having regard to the number of persons injured she came back to the place of the incident and saw the occurrence. The High Court, however, inferred that the presence of Ibrahim at the house of the witness appears to be a concoction at the instance of Musabhai. Even so, how does it falsify her testimony, we are unable to understand. We thus find no inconsistency in her statement but the High Court seems to have made much capital of the fact that the presence of Ibrahim at the house of the witness is a concoction which shows that the witness was so much interested that she went to the extent of cooking up evidence. The High Court relied on the fact that in her statement before the police she had stated that she came to the scene some time after the assailants had run away and at that time Ahmed was bleeding and lying there. Merely because she came to the spot a little later cannot falsify her evidence as an eyewitness because she may have seen a part of the occurrence from the first floor of her house which was almost adjacent to the place of the incident and reached the spot whilst the mob was engaged in the murderous assault.

14. Another thing made against this witness was that being a stepmother of Musabhai she should have recognised more persons than three out of the crowd. It cannot be presumed that merely because she was the step mother of Musabhai she would know all the persons living in the village. The High Court further commented that in her statement before the police she had not stated that A-1, 2 and 3 had given blows to the deceased Ahmed but in the court she made a different statement. It would appear that in her statement in the court she had categorically staled that the deceased Ahmed was assaulted by A-1, 2 and 3.

15. The mere fact that she did not make the statement before the police will not justify throwing her entire evidence overboard particularly when she is an injured witness whose presence is incapable of being doubted. Her statement was being recorded soon after she her-self was injured and two persons had been killeda nerve shattering experience for any one. The High Court is, therefore, not

justified in making a mountain out of omission.

16. The High Court further seems to have been greatly influenced by the fact that there were some contradictions between the evidence of PW 10, Bai Jebun and this witness. The contradiction is on a very minor point regarding the time when the statements of the two witnesses were recorded and is of no consequence. These are the only grounds on which the High Court has disbelieved this witness but we are unable to agree with the reasons given by the High Court for dismissing the evidence of this witness.

17. Bai Jebun, PW 10, is the last injured eyewitness who had also sustained a serious injury and therefore her presence at the spot cannot be doubted. Here also, the High Court instead of construing the evidence as it stood, tried to enter into a realm of surmises and conjectures by imagining that as she was injured by the butt of a gun she should have described the injury with greater detail, and pointed out that there is some conflict between the medical evidence and her testimony in court. According to her evidence she was assaulted by A-1 by the butt end of the gun and the injury inflicted was on her head and was an incised wound which, according to the High Court, could not have been caused by merely the butt end of a gun. This small inconsistency is not sufficient to put the witness out of court. When PW 10 received the injury on the head she may have been completely stunned and stupefied and may have mistaken a dharia for the butt end of a gun because it is not disputed that A-1 was armed with a gun. If under that stress and strain she thought that she might have been injured by the butt end of a gun that would not make her evidence wholly inconsistent with the medical evidence. This is not a case where the witness stated that she was assaulted by a particular accused and the doctor did not find any injury on the said witness. That would undoubtedly be a case of which serious note could be taken. This is not the case here and the learned Sessions Judge has given cogent reasons for holding that PW 10 was a truthful witness and therefore a slight inconsistency between the nature of the injury, as indicated above, is not sufficient to her evidence.

18. Another ground taken by the High Court was that although before the court she had identified all the 13 accused persons who formed an unlawful assembly and assaulted the deceased and the injured persons but in her statement before the police she had mentioned only A-1, 2, 3, 5 and 9 as the only persons whom she could identify. This may be due to lapse of memory. The High Court then tried to point out some minor discrepancies and exaggerations which do not shake the prosecution case. There is hardly any case which does not contain some element of embellishment in this country. Finally, the High Court also relied on the fact that her statement was recorded at Vagra dispensary from which an inference was drawn that the complaint (Ex. 21) could not have been written at about 4.00 or 4. 30 p.m. A difference of an hour or so regarding the time when the complaint was recorded would not in a case of this magnitudewhere two persons were done to death in a most brutal fashion and several injuredmatter much. These are the only reasons given by the High Court for disbelieving PW 10.

19. For the reasons given above, we are satisfied that the grounds taken and the process of reasoning adopted by the High Court for disbelieving the injured eyewitnesses are manifestly wrong and perilously border on perversity.

20. Apart from the evidence of PWs 2, 7, 8, and 10 the evidence of PWs 11 and 12 is also there who are also ladies and have proved the prosecution case in toto. PW 11, Sakina has identified all the 13 accused persons in court and if there is any contradiction in the police statement that is only with respect to the arms which each accused had and the particular place where they assaulted. Similarly, PW 12, Aminaben also identifies all the 13 accused and shorn of minor discrepancies or omissions of the nature indicated above there does not appear to be any material to disbelieve her evidence.

21. The witnesses have clearly stated that they bore no animus, against the accused and therefore the High Court was not at all correct in assuming that the accused had been falsely implicated due to enmity. Even if there was some enmity that was between Musabhai and some others.

22. The Sessions Judge has very rightly pointed out that so far as A-1, 2, 3, 5, 7, 8, 9 and 13 are concerned, only 3 out of the 8 eyewitnesses have proved not to have named them before the police. On the other hand, the remaining eyewitnesses have clearly given their names in the court and also before the police and no question was put to them that they did not name any of the accused before the police. The learned Sessions Judge rightly concluded that from the evidence of the eyewitnesses accused Nos. 1, 2, 3, 5, 7, 8,9 and 13 were undoubtedly active members of the mob which caused the death of two persons, viz., Ahmed and Bai Fatma. At any rate, giving the maximum allowance for all the infirmities, if any, contained in the evidence of some of the eyewitnesses the fact that A-1, 2, 3, 5, 7, 8, 9 and 13 were members of the unlawful assembly and were animated by the common object to murder the two deceased and injure others cannot be disputed. The manner in which the witnesses proceeded to the house of the deceased, which was almost adjacent to the house of the lady witnesses PWs. 7, 8 and 10 as also PW 2 (brother of the deceased Ahmed) shows that the said accused were armed with deadly weapons which were actually used by all the accused in consequence whereof PWs 7, 8 and 10 were injured and two persons were killed. From these proved facts the irresistible inference that can be drawn is that whatever may happen to the charges with respect to individual assaults, the charge under Section 302/149 IPC is unassailable. Similarly, there is overwhelming evidence to prove that the two deceased were assaulted by A-1, 2, 3. However, to be on the safe side, we would not like to restore the convictions of the accused for individual assaults and it is sufficient if we set aside the judgment of acquittal passed by High Court with respect to the charge under Section 302/149 IPC, which has been clearly proved, In fact, the High Court did not at all even touch or deal with the question of there being an unlawful assembly with a particular common object. It merely discussed the evidence of the eyewitnesses and on trivial grounds rejected the same without at all taking into consideration the fact that even if the individual assaults were not proved how could the respondents escape conviction under Section 302/149 IPC.

23. The High Court introduces an element of communal colour in the attack by the accused when in fact there does not appear to be any such communal bias from the evidence of witnesses.

24. It is true that this Court is slow to disturb an order of acquittal passed by a High Court reversing the judgment of the Sessions Judge. However, in this case the High Court has reversed the finding of the Sessions Judge without properly displacing cogent reasons given by him and the High Court did not consider the vital points in the case. In the instant case the judgment of the High Court perilously borders on perversity and in not considering the question of common object, the Judges

have undoubtedly committed a serious error of law which is sufficient to vitiate their judgment.

25. Thus, taking into consideration the totality of circumstances and for the reasons given above, we allow this appeal, set aside the judgment of the High Court in so far as it relates to the acquittal of the respondents of the charge under Section 302/149 IPC but maintain the acquittal of the accused under other charges. Accordingly, we convict the respondents under Section 302/149 IPC and sentence them, to imprisonment for life which was the sentence given by the trial court.