Supreme Court of India
Merambhai Punjabhai Khachar & Ors vs State Of Gujarat on 18 April, 1996
Equivalent citations: JT 1996 (5), 472 1996 SCALE (3)574
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
MERAMBHAI PUNJABHAI KHACHAR & ORS.

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 18/04/1996

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
VENKATASWAMI K. (J)

CITATION:
JT 1996 (5) 472 1996 SCALE (3)574

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T HANSARIA, J.

In these appeals we are concerned with the legality of conviction of the 15 appellants by the Special Designated Judge, Ahmedabad under various sections of law including 302/149, 307/149, 326/149 and section 3 of Terrorist and Disruptive Activities (Prevention) Act (for short `TADA'). The sentence awarded for the offence under section 302/149 is imprisonment for life and for section 3 TADA offence also imprisonment for life; for the offence under section 307/149 imprisonment for 10 years and for section 326/149 offence imprisonment for five years. Fines of varying amounts have also been imposed for different offences.

2. The appeals being directed against the judgment of the Designated Court which lie only to this Court, we have applied our own mind to the material evidence on record which were brought to our notice by the learned counsel for the appellants and Shri Adhvaru who appeared for the State.

3. The principal argument in the case on behalf of the appellants was advanced by Shri Lalit, learned senior counsel appearing for appellants 1-4, 6 and 10-12. Appellants 5 and 7-9 are represented by Shri Medh and appellants 13-15 by senior advocate, Shri Mehta. These two learned counsel adopted the submissions advanced by Shri Lalit on the question of law. We, therefore, propose to first advert to the legal contentions raised by Shri Lalit.

4. The main point urged by Shri Lalit was that on the facts of the present case section 149 of the Code could not have been pressed into service by the prosecution to find the appellants' guilty of having caused the murger of deceased Rajabhai. The prosecution had, however, done so because its case is that the appellants, who belong to Darbar community, had gathered at the house of accused Apabhai on the night of 14.3.1991 with the avowed object of committing murder of complainant Fuljibhai and other Kolis of village Sarangpur. This had been done because a few days earlier an altercation had taken place with Fuljibhai who belongs to Koli community, when he was coming towards his home in a bullock-cart at about 6-7 p.m. Appellant Babubhai, who is a Darbar, happened to pass in a vehicle. It seems that some difficulty was faced in over-taking the bullock-cart. After the over-taking had taken place, the vehicle in which Babubhai was travelling was stopped in front of the bullock-cart. Babubhai got down and held Fuljibhai by his collar and stated "You, Koli people, have become unmanageable. You do not give said. We will see to it." The prosecution says that to teach Kolis a lesson, the appellants, along with some others, gathered in the residence of appellant Apabhai on 14th March when a Dayra (musical performance) was arranged. After this performance was over around 2-3 a.m. of 15th, the appellants remained in the house of Apabhai and when Fuljibhai and other members of the complainant party crossed the house of Apabhai around 7 to 7.30 a.m. in the normal course of going to their fields, they were attacked by the appellants. At first the complainant party was dealt with sticks and rods. Subsequently, 8-10 of the appellants took their stand on the terrace of the first floor of Apabhai's house and started firing indiscriminately therefrom. Rajabhai sustained gun shot injuries along with others. He succumbed whereas others survived after some treatment was given in a hospital.

5. The aforesaid shows, according to the prosecution, that the appellants, all of whom belong to Darbar community, were animated by the common object of murdering complainant Fuljibhai and other Kolis of village Sarangpur, in which the house of Apabhai is situated. It was urged by Shri Adhyaru that as the appellants had thered in Apabhia's house to take revenge on Kolis of rangpur because of what had happened a few days earlier, the purpose of the appellants' gathering in the house of Apabhai was really not to participate in the Davra, but to see that persons of Darbar community from nearby villages gather to teach Kolis a lesson.

6. Shri Lalit's submission, however, was that the appellants had assembled in the house of Apabhai, not with any sinister motive, but to enjoy the musical programme in which even outside singer had been invited as admitted by Fuljibhai who was examined as PW.2. It was also urged that if the intention of the appellants would have been to cause death either of Fuljibhai or other Kolis, there would have been a blood bath inasmuch as according to the prosecution 8-10 appellants had fire arms with them and they had taken their position on the terrace of the first floor of the house of Apabhai, wherefrom they could have well fired to death many Kolis who were on the road in front of the house. The nature of the injuries sustained on the persons of complaint party other than

Rajabhai, would show that they were not serious injuries - being lacerated wounds in the main, except those found on the person of Jagdishbhai, who had about 17 entry wounds.

7. We have found sufficient force in the contention of Shri Lalit, first because, if the unlawful object would have been to cause murder of Kolis of village Sarangpur, as has been stated in the charge, Darbars of other villages would not have perhaps made available themselves. Secondly and more importantly, if the unlawful object would have been to murder either the complainant or other Kilis, achievement of the object would not have been at all difficult in view of the fact that the appellants had fire arms with them and had taken position on the terrace of the first floor wherefrom it would have been easy to shoot down good number of Kolis who were on the road and, what is more, quite unarmed. While taking this view, we have conceded that arranging of Dayra in the house of Apabhai was a pretext for the Darbars to assemble there, though the contrary view is also possible inasmuch as if convening of Dayra would have been a ruse, outside singer would not have been invited and the Davra would not have been allowed to continue even upto 2-3 a.m. of the next day to fatigue all by that time, not leaving that much of energy as would have been expectedly required to undergo next morning's laborious work.

8. We would, therefore, hold that section 149 was not available to the prosecution in the present case. Let the next general submission of Shri Lalit relating to non- applicability of TADA to the facts of the present case be now dealt with. It was urged that the acts alleged against the appellants did not attract any of the terrorists act mentioned in section 3 of this Act. Shri Adhyaru contended that as the action of the appellants had resulted in striking terror among the Kolis, section 3 did apply.

9. Shri Lalit's submission was that if terrorizing Kolis would have been the object of the appellants they would have gone to their village and attacked them, instead of awaiting for some Kolis to pass through the road in front of the house of Apabhai. Shri Adhyaru, however, drew our attention to the evidence of the complainant Fuljibhai (PW2) who stated that there was threatening even after the occurrence in question which showed that Kolis were feeling insecured and were seized with terror. But then, PW-2 admitted in cross-examination that even ladies were going to the field after the occurrence. If the ladies could come out of their houses, may be to get engaged in their normal avocation of life which in their case was grazing of cattle, it is apparent that the Kolis had not felt so insecured as to require taking recourse to TADA by the State.

10. We would, therefore, agree with Shri Lalit that sending the appellants for trial under section 3 of TADA was not warranted. Their conviction under section 3 has, therefore, to fail.

11. Having held that section 149 had no operation insofar as the murder of Rajabhai is concerned, we have to first find out who could be held individually responsible for his death. PWs 2,3,4,5 and 7 have consistently deposed that Rajabhai was hit by the shot fired by the appellant No.1 Merambhai. There is nothing to disbelieve their evidence in this regard. We would, therefore, sentence him alone under section 302 and sustain the sentence awarded the same being imprisonment for life and fine of Rs.10,000/-. Other appellants are acquitted of the charge of section 302/149.

12. We have next to consider the conviction of the appellants under section 307/149. Appellants 3.8.9.10 and 14 have been so convicted. As the applicability of 149 has not ben accepted by us, we have to see which of the appellants can be found guilty for their individual acts under section

307.

13. The trial court has convicted the appellants under this section for attemption to murder two persons: (1) Sanjuben; and (2) Jagdishbhai. It was contended for the appellants that the injuries on the person of Sanjubhen would not show that there was any attempt to murder her as the injury sustained were these: (i) a contused lacerated wound 5 x 2 cm on the right side of the head; and (ii) swelling 7 x 5 cm on the right side of chest. X-ray of the chest did not show any fracture.

14. Despite these being the injuries, Shri Adhyaru urged that as these had been caused by a fire arm, as deposed by Sanjuben who was examined as PW 7, and as the pellet had struck the head, intention or knowledge to cause death was present. We do not think if we would be justified to read the aforesaid mens rea because though the injury was by a pellet, it only seems to have grazed the had of Sanjubhen. We, therefore hold that ingredients of section 307 are not satisfied qua Sanjuben. Instead, the offence committed would attract section 324. As the injuries in question had been caused, as per the evidence of PW-7 herself, by appellant No.9 Shivrajbhai (accused No.11), we convict him under section 324 and award R.I. for one year and a fine of Rs.1,000/-, in default, S.I. for one month, as sentence. Appellant Nos. 3,8,10 and 14 stand acquitted under section 307/149 for wrong done to Sanjuben.

15. But insofar as Jagdishbhai is concerned, in his being examined around 9.45 a.m. on the day of the occurrence, PW 17 had found multiple punctured wounds with about 17 entry wounds in the middle part of the hand from the right side elbow. The X-ray showed fracture of the right side ulna. An attempt to murder, has therefore, to be read insofar as he is concerned. From his evidence, who came to be examined as PW 3, it is to be found that it was accused No.4 Bhupatibhai, who is appellant No.3, at whose hand he had received the injury. We would, therefore, while acquitting other appellants for the offence under section 307/149 convict Bhupatibhai under section 307. As to the sentence for this offence, we are satisfied that imprisonment for five years, instead of 10 years as awarded, would meet the ends of justice, and we order accordingly.

16. We would now advert to the conviction of accused No. 15 Nathubhai, who is appellant No.13. Shri Mehta appearing for him had a grievance about his conviction under various sections of law inasmuch as he is one of the accused who had neither been named in the FIR nor in any of the dying declaration, nor in the statements made before the police as late as 3.4.91 - occurrence having been taken place on 15.3.91. Though in the court he was named by PW 2, 3 and 4, our attention has been invited by Shri Mehta to what PW2, who was the informant, stated in his evidence, which was that name of this appellant had not been given in his complaint nor in the police statement. This witness further stated that when his police statement was recorded on 3.4.91, he recollected that the name of this appellant was left out from the complaint, but no steps were taken by him to get his name recorded. As to PW 3, the submission was that he was minor at the time of the occurrence. As regards 4 the contention was that he had admitted about his not having named this appellant either

in his police statement or any other statement. This being the position, we entertain doubt about his presence at the place of occurrence on 15.3.1991 and order for his acquittal.

17. Insofar as offence under section 326 is concerned, appellants 2,6 and 7 have been found guilty. This has been done because of their individual acts. We would say the same about the conviction of appellant No.8 under section 325 and

323. These convictions have not been challenged before us, as really they could not have been to be reasonable. We further find that appellants 1,3,4,5,10,11,12,14 and 15 have been found guilty under sections 25 and 27 of the Arms Act. It has been urged that the arms which appellant Nos. 4,11,14 and 15 had were licensed. As regards appellant No.4 a statement had also been made that the pistol recovered from him was not in working condition. We would, therefore, set aside their conviction under these sections.

18. Conclusions (1) Conviction of all the appellants under section 302/149 IPC and section 3 TADA is set aside.

(2) Appellant No.1 stands convicted under section 302 and he would undergo imprisonment of life for this offence and pay fine of Rs.10,000/-, in default undergo S.I. for 2 years. Fine, if realized, shall be paid to the heirs of deceased Rajabhai.

(3) Insofar as offence under 307 is concerned, only appellant No.3 Bhupatibhai (accused No.4) stands convicted. R.I. for 5 years is awarded as sentence to him for this offence. Other appellants are acquitted so far as section 307 is concerned.

(4) Appellant No.13 Nathubhai (accused No.15) stands acquitted altogether.

(5) Appellant No.9 Shivrajbhai (accused No.11) is convicted under section 324, for which offence he would undergo R.I. for 1 year and pay a fine of Rs.1,000/- in default undergo S.I. for one month.

(6) Conviction of appellants 2,6 and 7 under section 326 is confirmed; so is the sentence of R.I. for five years and fine of Rs.2,000/-, in default S.I. for 3 months. (7) Conviction of appellant No.8 Babubhai under sections 325 and 323 is confirmed; so too the sentence awarded - this being R.I. for 3 years for offence under section 325 with fine of Rs.1,000/- in default S.I. for 3 months; and R.I. for six months for the 323 offence with a fine of Rs.5,00/- in default S.I. for one month. These sentences are to run concurrently.

(8) Conviction of appellant Nos.1,3,5,10 and 12 under section 25 and 27 of Arms Act is confirmed; so is the sentence as awarded - which is R.I. for one year and a fine of Rs.1,000/- in default S.I. for 3 months. The order relating to taking into custody of the fire arms alongwith the live cartridges qua them is confirmed. These sentences would run concurrently with sentence for other offences so far as appellant Nos. 1 and 3 are concerned. (9) Appellant Nos. 4,11,14 and 15 are acquitted for offences under sections 25 and 27 Arms Act.

19. The appeals are allowed accordingly.

20. Before parting, we have felt constrained to observe that though the learned counsel for the appellants had rendered due and proper assistance while advancing oral submissions, they failed to file a chart, as directed, showing which appellant was which accused and has been convicted under which section followed by what sentence. (This was needed because out of 22 accused who faced the trial, 6 have been acquitted and 1 died). This caused us difficulty in preparing the judgment, which could have been avoided by filing the chart.