

Aher Bhagu Jetha

Vs

The State of Gujarat

Criminal Appeal No. 151 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

27.11.1973

JUDGMENT

BEG, J. -

1. The appellant, Aher Bhagu, Jetha, is one of the 18 persons charged with the offence of rioting, armed with deadly weapons, on June 28, 1969, at about 7-30 p.m. at the village Kumbharia in the State of Gujarat. This riot, which was alleged to have a communal background, was said to have resulted in simple injuries to several persons, grievous injuries to others, and the death of Lalmamad Murvaji.

2. The Sessions' Judge of Kutch, who tried the case, acquitted 9 accused persons and convicted the rest of various offences said to have been committed in the course of the riot. Out of those, six accused persons, including the appellant, were convicted under Section 302, I.P.C., read with Section 149, I.P.C., and sentenced to imprisonment for life. On an appeal to the High Court of Gujarat, the whole story of riot, as set up, was disbelieved. Seven convicted persons were acquitted. The appellant alone was convicted under Section 302, I.P.C., and sentenced to life imprisonment. Another accused, who did not appeal, and who was convicted under Section 324, I.P.C., only and sentenced to 9 months rigorous imprisonment and to pay a fine of Rs.300/- is not before us. We are, therefore, concerned only with the case against Bhagu Jetha who has been convicted by the High Court for an offence punishable under Section 302, I.P.C., although he was charged and convicted of an offence punishable under Section 302, I.P.C., only with the aid of Section 149, I.P.C. As the charge for rioting failed, he was not and could not be convicted with the aid of Section 149, I. P.C. No separate charge was framed under Section 302, I.P.C., simpliciter. We need not consider the effect of the omission in this case as we are satisfied, for reasons given below that the appeal must be allowed on a bare examination of allegations and evidence in the case.

3. The two groups, between which tension existed, prior to the occurrence, consisted of Ahirs, who are Hindus, and Samas, who are Muslims, over the taking out of "tazia" processions during Mohurrum. On the day of occurrence, Bhuraji Ravji and Ranaji Viraji, of the Samas community, were said to be sitting at the entrance of the Samas locality when Govan Mandam, an Ahir, objected to it on the ground that Ahir women folk had to pass that way for fetching water. Bhuraji and Ranaji were alleged to have expostulated and said that they were doing no wrong in sitting outside in their own locality and that the Ahir ladies are like their own sisters and daughters to them. It is said that the deceased Lalmamad then appeared at the scene and took the side of Bhuraji and Ranaji. Thereupon, Govan Mandan (acquitted) is alleged to have dragged Lalmamad towards a dunghill. At that time, a number of Ahirs are said to have collected and fallen upon Lalmamad, who was thus said to have been done to death. It was also alleged that Ahirs threw stones at members of the Samas

Community, as a result of which Bhuraji and Ranaji were injured. One Nandaji, who is said to have tried to save Lalmamad, is also alleged to have been injured. Shrimati Jambai, P.W. 8, the wife of Nandaji, who is alleged to have come to the scene of occurrence and covered her husband, was also injured. An F.I.R. was lodged at noon on June 26, 1968 by a cousin of Lalmamad who alleged having seen the attack on Lalmamad and to have been near Lalmamad (deceased) when he was actually struck by the appellant by a Dharia. In this F.I.R. only four accused persons, including the appellant, are mentioned, and Lalmamad, Ranaji and Nandaji, are shown to have been injured. No injuries on the person of the appellant were mentioned.

4. The High Court, in the course of a fairly elaborate judgment, came to the conclusion that the origin of the incident set up, intended to suggest that the Ahirs picked up a quarrel deliberately by saying that their women folk were to take water from the Samas locality, was most improbable in view of the previous tension and division of the village into Ahir and Samas compartmentalised localities. It pointed out that no quarrel over the taking of water from any well or pond from the Samas locality by Ahir women folk had ever before taken place. It also came to the conclusion that the story that Lalmamad was dragged 50 feet by the Ahirs before he was assaulted and killed was untrue. The post-mortem report shows that there were no marks of dragging on the body of Lalmamad. No clothing of the deceased was proved to be torn. It pointed out that all the prosecution witnesses spoke of an attack upon the deceased Lalmamad begun by a heavy blow on the head given by Negha Bhima (acquitted accused person) with a Lathi which had an iron ring attached to it. This version was belied by the only injury with a sharp edged weapon found on the body of Lalmamad (deceased). The serious injuries of the appellant, who was also found lying on the road, could not be explained by the prosecution version. It was also found that a stick and not a Dhariya was found lying beside the appellant. No one spoke of the Dhariya, alleged to have been used by the appellant, having been taken away from the scene by anybody. Therefore, the whole story of an attack by the appellant on Lalmamad, deceased, with a Dhariya, either in the course of the riot or after it, became most improbable.

5. The High Court, while discarding the case of an unlawful assembly, as set up by the evidence of the prosecution witnesses, had held the appellant guilty of murdering Lalmamad only because the appellant was undoubtedly found lying injured on the spot and had pleaded that he was attacked because he had objected to the beating of a boy named Duda Pachan by a group of members of the Samas community approaching with Dhariya, spears, sticks, and axes. The High Court had found that the appellant had serious injuries on his body. We think that the High Court had not given due importance to this fact and dismissed the statement of the appellant that he had only a stick with him, without examining the credibility of this version supported by the fact that only a stick was found lying near the appellant who was so badly injured that he could not get up.

6. There was only one injury found on the body of Lalmamad. It was described as follows by Dr. D. A. Joshi, who also performed the post-mortem examination :

"There was only one injury on the neck mentioned in the column No.7. The mastoid bone was not fractured. The wound was 9" long 4" broad and 3" in depth. The place where the impact of the weapon would take place will be deeper. The depth of the wound 3" shown by me is the maximum depth which I found and it was at the back of the neck. The breadth of the injuries does not depend upon the breadth of the Dhariya. The width is correlative with the depth of the wound. I was not sent any weapon. The wound is also possible by an axe having a blade 9" or less, and it depends on injury of the weapon from the back side of the neck up to the chest. The

wound started from the middle of the back of neck. There was no injury on the teeth but the jaw bone was exposed. This injury was possible by one blow."

7. The injury on the body of Lalmamad belies the whole prosecution case that a body of persons had fallen upon Lalmamad and one him to death and that a Dhariya blow was inflicted by the appellant in the course of that attack. The place where Lalmamad had fallen as well as the nature of the injury on his neck indicates that it was most probable that Lalmamad was caught alone in the dark near the Ahirs' locality by somebody who cut his neck with a weapon like a Dhariya. Night had fallen then. It could not be asserted, on the evidence on record, that the person who cut the neck of Lalmamad, was necessarily the appellant.

8. It is not uncommon in cases of a communal nature to find witnesses forward to depose falsely about an attack by a person who is believed be guilty. Apparently, his is why the witnesses had tried to involve the appellant whose participation in the occurrence seemed to them to be established by his having been found lying on the road in an injured condition. This may be enough to convince unsophisticated persons of his publicity in the murder of Lalmamad. But, a court of justice has to and analyse evidence very carefully so as to determine whether the against an accused person is established beyond reasonable doubt. This particularly necessary in a case with a communal background in which witnesses may depose falsely out of a mistaken or misplaced sense group loyalty.

9. The result is that we allow this appeal and set aside the conviction sentence of the appellant, who will be released forthwith unless wanted some other connection.

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