

Atulji Nagaji

Vs

State of Gujarat

Criminal Appeal No. 1 of 1975

(A.D. Koshol, R. S. Pathak JJ)

18.04.1980

JUDGMENT

PATHAK, J. –

1. This appeal is directed against the judgment of the High Court of Gujarat setting aside the order of acquittal passed by the learned Additional City Sessions Judge, Ahmedabad and convicting the appellant under Section 302, Indian Penal Code and sentencing him to imprisonment for life.
2. Sohanji Jethaji, who resided in a chawl in the Chamanpura area of Ahmedabad, was murdered on December 17, 1972. Eleven persons, who resided in the adjoining Kumhars' Chawl, including the appellant were accused of the murder. The case of the prosecution was that Sohanji and his friend Gulabji went to attend a "havan" at about 7.00 p.m. on the day of Dussehra, October 17, 1972, conducted at the entrance of the Kumhar's Chawl. They proceeded from there to the house of Rupaji Hiraji situated in another chawl. On the way they met Ganeshji Gamnaji who owed money to Gulabji. Gulabji demanded repayment from Ganeshji. The appellant happened to reach there and intervened. It is said that the intervention enraged Sohanji and he pushed the appellant aside. The appellant, it was alleged, returned later with ten men armed with dharias, sticks, pipes and a knife. The appellant himself possessed a dharia. They moved off to Rupaji's hut where Sohanji and Gulabji were present. The appellant hit Sohanji on the head with the dharia. The other accused are also said to have attacked him. Sohanji fell down and shortly thereafter died on the spot.
3. The first information report lodged by Mohanji the maternal uncle of the deceased, at about 8.45 p.m. on the same day. A police investigation followed. The Additional City Sessions Judge tried the accused for offences under Section 147 and Section 302 read with Section 149, Indian Penal Code and also under Section 148, IPC. He acquitted them.
4. The state of Gujarat preferred an appeal against the acquittal of the appellant and one other accused, Nagaji Tejaji. The High Court confirmed the acquittal of Nagaji Tejaji, but allowed the appeal in respect of the present appellant and setting aside the order of acquittal convicted him under Section 302, Indian Penal Code and sentenced him to imprisonment for life.
5. In this appeal, although the case has been argued before us at length and we have been taken through the evidence on the record we are unable to hold that the judgment of the High Court suffers from any error calling for interference by this Court. There is credible material to establish the circumstances in which the deceased was murdered and the evidence of the eyewitnesses Gulabji Jethaji (PW 12) and Rupaji Hiraji (PW 14) is amply corroborated by supporting testimony. There is good reason for believing that they witnessed the attack on the deceased by the appellant. Their

description of the attack is supported by the medical evidence. It is urged on behalf of the appellant that even though it may be said that a dharia was used by the appellant the medical evidence discloses that it was not the sharp edge that was used and, therefore, it must be inferred that there was no intention to murder. We are not impressed by the submission. The circumstances disclose that the entire intent was to murder the deceased and the totality of injuries establishes that. Another contention is that a complaint had been made by the appellant against the deceased and Gulabji that they has assaulted him and that the High Court had erred in taking it into consideration as a piece of evidence in support of the prosecution case. It is urged that the judgment of the High Court takes vital support from the complaint and that as the complaint is inadmissible the entire case against the appellant must fail. It seems to us unnecessary to enter into the question whether the complaint was admissible in evidence. The evidence is otherwise sufficient to establish the guilt of the appellant. It is also urged that the light was insufficient for the assailant to be recognised. Here again, the evidence clearly shows that because Dussehra was being celebrated there were particular arrangements for light. Then it is pointed out that the deceased was a headstrong man and had incurred the animosity of the inhabitants of the locality and several complaints had been filed against him for criminal offence and it was quite probable that he had been done to death by one or more of such enemies. The doubt thus sought to be thrown on the prosecution case is totally negatived by the direct nature of the testimony of the two eyewitnesses. Certain other considerations of a minor character were also adverted to, but as there is no substance in them we consider it unnecessary to specifically deal with them.

6. In our judgments the High Court is right in the findings reached by it in the case against, the appellant. Accordingly, we dismiss this appeal and affirm the judgment of the High Court in respect of the appellant.

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