

Ladha Shamji Dhanani and others

Vs

State of Gujarat

Criminal Appeal No. 180 of 1980

(K. Jayachandra Reddy, R. C. Patnaik JJ)

11.03.1992

JUDGEMENT

K.JAYACHANDRA REDDY, J.:-

1. The six appellants in this appeal along with 24 others were tried for offences punishable u/ Ss. 147, 148, 342, 353, 435, 440 and 302 read with Ss. 149/34, I.P.C. It is alleged that these 30 accused who were found in a mob consisting of 300-350 persons armed with weapons like axes, dharias and spears and A-15 amongst them armed with agun and A-12 armed with a pipe surrounded a bus on 5-8-1976 at 7 p.m. at village Lalavadar in which the four deceased persons were travelling and set the bus on fire, as a result of which the four deceased persons were burnt to death. Outside the bus another deceased Surag Bhan was beaten, as a result of which he died. The trial Court acquitted the accused persons holding that the prosecution had failed to prove its case. The State preferred an appeal before the High Court against the order of acquittal. The High Court convicted A-15 and A-16 under S.302 read with S. 34, I.P. C. and sentenced each of them to undergo imprisonment for life. A-26 was convicted under S. 307, I.P.C. and sentenced to undergo R. I. for 7 years. Accused Nos. 18, 24 and 28 were convicted under S. 326 read with 34, I.P.C. in respect of the injuries caused to Surag Bhan, the deceased and sentenced each of them to undergo R.I. for 7 years. The acquittal of the remaining accused was confirmed. The six accused persons convicted by the High Court have preferred this appeal.

2. The learned counsel for appellants submitted that the case arose out of an acute faction and witnesses examined are all interested and that the overt acts attributed to these appellants are not mentioned in the earliut report and that at any rate the view taken by the Sessions Court is quite reasonable and the High Court in an appeal against their acquittal ought not to have interfered. The prosecution case is that all the deceased persons, eye witnesses and the accused belong to the village Lalavadar which has a population of about 2,500 people. They belong to two different castes. The accused persons belong to kanbis caste and the prosecution party belong to Kathi caste. One Jattubhai belonging to Kathi caste was detained under MISA and because of the Panchayat election there was enmity between them. On the day of occurrence i.e. 5-8-76 in an earlier incident A-29 and A-30 received serious injuries caused by the persons belonging to the opposite party. This infuriated the Kanbis caste people. On that day P.W. 2 had, gone to Amreli and in the evening at about 7 p.m..he boarded a bus. In that bus the deceased K. B. Dewayat and his three sons were also travelling and when the bus reached Lalavadar bus stop a mob consisting of 300-350 persons surrounded the bus shouting "kill kill". They were armed with axes, dharias, spears and other weapons. They started hitting the bus. They compelled the conductor, driver and other passengers to

get down and that only the four deceased persons belonging to the Kathi caste were inside the bus. A-15 asked A-16 to bring stubbled grass from his house nearby. Stubbled grass was brought and put inside the bus and then the kerosene oil was sprinkled and the bus was set on fire. The four deceased persons inside the bus were burnt to death. One Surag Bhan interfered and he was given dharia blows by Accused Nos. 18,24,28 as a result of which he died. During the same occurrence A-26 is said to have dealt a blow on the first deceased. Thereafter the crowd left the place. This was witnessed by PWs. 2, 3, 4 and 5. P.W. 2, the principal witness in this case who travelled in the same bus is no other than the brother of the deceased Surag Bhan. He having witnessed this occurrence went to Amreli Police Station on a cycle and reported the matter to P.W. 25 who registered the complaint. P.W. 25 then informed the Circle Inspector and the police reached village Lalavadar along with the fire brigade. The fire was put off. Inquests were held and the dead bodies were removed and sent for postmortem examination. The doctors P.W. 20 and P.W. 21 conducted the postmortem on the dead bodies. The doctor P.W. 21 also examined A-29 and A-30 for their injuries. The High Court while disagreeing with the reasons given by the trial Court, however, held that only such of those accused to whom specific overt acts are attributed could be convicted for their individual acts. In that view of the matter the High Court held that A-15 and A-16 were responsible for burning the bus which resulted in the death of four deceased persons and therefore they are liable under S. 302 read with S. 34, I.P.C. The High Court also held that A-26 who gave a spear blow to the first deceased before the bus was burnt would be liable under S. 326, I.P.C. Now coming to the injuries on the other deceased Surag Bhan, the High Court noted that he had only one fatal injury and the other 15 external injuries were simple and that accused Nos. 18, 24 and 28 cannot be said to have pre-planned the attack and therefore they would be liable under S. 326 read with S, 34, I. P. C. and accordingly convicted all the six accused.

3. The learned counsel for the appellants submitted that the High Court had failed to appreciate that the overt acts attributed to A-15, A-16 and A-26 were not mentioned in the complaint namely the earliest report given by P.W. 2 and it is only subsequently that P.W. 2 as well as other eye-witnesses having improved their version attributed specific overt acts to these three accused. It is also his submission that in a case of this nature false implication cannot be ruled out and that the very fact that A-29 and A-30 who were seriously injured are also attributed a prominent role shows that there was a false implication and therefore the entire evidence has to be rejected. The further submissions is that the view taken by the trial Court is quite reasonable and that the High Court ought not to have interfered in an appeal against the acquittal of the accused. P.Ws. 2 to 5 are examined as eye-witnesses. Out of them P.Ws. 2, 3, 5 are admittedly partisan witnesses and P.W. 4 does not attribute any overt acts. In a case of this nature the evidence of the interested witnesses has to be scrutinised with great care and caution and should be examined in the light of the earliest report, the medical evidence and other surrounding circumstances. We need not go into the details of the other evidence. In the earliest report given by P.W. 2 the specific overt acts attributed to A-15, A-16 and A-26 are admittedly not mentioned. It is a very lengthy report running into 5 or 6 pages and in that P.W. 2 has mentioned the names of all the deceased and the names of 30 accused, with their father's names and the respective weapons in the hands of each of the accused. In that it is also mentioned that A-29 and A-30 were also present armed with spear and dharias. It is generally stated that all the 30 accused surrounded the bus and put the grass into the bus, sprinkled the kerosene oil and set the bus on fire. Now coming to the attack on the deceased Surag Bhan, no doubt, it is mentioned that accused Nos. 18, 24 and 28 dealt blows with dharias as a result of which the deceased fell down. The names of P.Ws. 3 and 5 are also mentioned. It may be noted that accused Nos. 18, 24 and 28 inflicted injuries on deceased Surag Bhan when he tried to intervene. It is alleged that later the bus was set on fire. In the present deposition of P.W. 2 he has specifically stated that A15 had a gun with

him and he asked A-16 to go and bring the grass and kerosene and he accordingly brought the same. The grass was put inside the bus, kerosene oil was sprinkled and the bus was set on fire. He also stated that A-26 dealt a blow on the deceased Bharat when he peeped through the window of the bus. He further stated that Accused Nos. 18, 24 and 28 beat the deceased Surag Bhan. He has also stated that A-29 and A-30 were in the crowd moving about armed with weapons. The versions of P.Ws. 3 and 5 are also exactly the same. They also mentioned that A-29 and A-30 were armed with weapons and were moving about in the crowd. P.W. 21, the doctor, examined A-29 and A-30. On A-29 Himatlal Malji he found a stab wound on the scapula and another stab wound on the right side of the scapula and a third stab wound on the right elbow and he opined that they were fresh and bleeding. He also examined A-30 Dhiru Raghav and found four incised injuries on him. The first one was on the umbilicus, the second one on the left side of the chest, third one on the abdominal cavity of the liver piercing 11th and 12th ribs and fourth one was on the left side of the back of chest and all these injuries were fresh. He further stated that they were profusely bleeding and he was semi-conscious and 300 C.C. of blood was transfused and his condition was serious. The doctor also opined that having sustained such serious "injuries they could not have taken part in a rioting or in an assault thereafter. The doctor further stated that these two accused could run or move only for 5 minutes after receiving such injuries. In the light of the medical evidence regarding the injuries on A-29 and A-30 it would have been impossible for them to join a crowd and participate in the occurrence, yet P.Ws. 2, 3 and 5 did not hesitate to implicate them. This circumstance amply indicates that they were all falling in a line and have given a specific version. Therefore, the evidence of all these three witnesses & of the same kind and has to be subjected to close scrutiny. P.W. 4 Ladhiben deposed that coming to know that the people have gathered near the bus-stand, she ran to the bus-stand and tried to intervene. She identified several persons including Accused Nos. 15, 18, 24 and 28 in the crowd. She, however, did not implicate A-29 and A-30. She did not attribute any specific overt acts against any one of the accused. The learned counsel for the State, however, submitted that she is an independent witness and that the persons implicated by her including A-15 can be convicted. It must be noted that the High Court has convicted the appellants for their specific overt acts. In that view of the matter the evidence of this witness is not very material. Now coming to the evidence of P.Ws. 2, 3 and 5, we have already stated that their evidence has to be scrutinised in the light of the earliest statement and with great care and caution. In this view of the matter, the contents of the first information report are of importance. No doubt, F. I.R. is not a substantive evidence but the same is of importance in appreciating the evidence of P.W. 2 the principal witness. As already noted he has not mentioned any overt act said to have been committed by accused Nos. 15, 16 and 26 and, therefore, to that extent they must have been given the benefit of doubt. Since P.Ws. 3 and 5 also gave the same version in their present depositions, we find it difficult to accept their evidence also in respect of these three accused regarding their overt acts. So far accused Nos. 18, 24 and 28 are concerned the part played by them is specifically mentioned in the first information report and that is the consistent version of P.Ws. 2 to 5 throughout. The medical evidence also corroborates. Therefore, the case against them to that extent can safely be accepted. In the result the convictions and sentences awarded to accused Nos. 15, 16 and 26 are set aside. The convictions and sentences of accused Nos. 18, 24 and 28 under S. 326 read with S. 34, I.P.C. to undergo R.I. for 7 years awarded against each of them are confirmed. The appeal is allowed so far A-15 Ladhia Shamji Dhanani, A-16 Kala Ladhia Dhanani and A-26 Gordhan Magan Dhanani are concerned and their bail bonds shall be cancelled and it is dismissed as against A-18 Bakul Savji Dhanani, A-24 Chiman Virji Dhanani and A-28 Ravji Duda Dhamalia. Order accordingly.

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