

Mohamed Arif and Others

Vs

State of Gujarat

Criminal Appeal No. 103 of 1994

State of Gujarat

Vs

Mohamed Arif and Others

Criminal Appeal No. 387 of 1995

(M. K. Mukherjee, J.)

(M. K. Mukherjee, S. P. KurdukarJJ)

#### JUDGMENT

M. K. MUKHERJEE, J. –

1. Seven persons were tried by the Additional Designated Court, Ahmedabad under Sections 143, 147, 148, 302/149, 307/149, 452, 395, 435, 436, 427, 323, 336 and 188 of the Indian Penal Code, Section 135(1) of the Bombay Police Act, 1951 (22 of 1951) and Section 3(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA' for short). On conclusion of the trial the Designated Court acquitted three of them of all the charges and convicted the four others under Section 307 read with Section 149 IPC and Section 3(2) of TADA. Two of them were also convicted under Section 135(1) of the Bombay Police Act. Against their conviction and sentence the four convicts (hereinafter referred to as the appellants) have filed one of these appeals (Criminal Appeal No. 103 of 1994) while the other (Criminal Appeal No. 387 of 1995) has been filed by the State of Gujarat against their acquittal of the other offences. Bereft of details the prosecution case is as under.

2. In the wake of the demolition of Babri Masjid in Ayodhya on 6-12-1992 a mob of about 700 to 1000 members of the Muslim community went on a rampage in the city of Ahmedabad on the following morning armed with various deadly weapons and burning rags. After forming themselves into small groups they went to different parts of the city and started destroying and damaging the shops and other properties of the members of the Hindu community and beating them up. The appellants were the members of one of such mobs comprising 70/80 people which went to Khamasa Chowky under the Police Station of Karanj and pelted stones on the houses occupied by the Hindus there, broke the glasses and ripped the hoods of rickshaws parked on the roadside and attempted to kill Bharat Kanaiyalal Modi.

3. The defence of the appellants, who pleaded not guilty, was that they were implicated on suspicion.

4. Apart from examining a number of witnesses to prove the rampage, the prosecution examined Bharat Kanaiyalal Modi (PW 3) and his father Kanaiyalal Modi (PW 6) to prove that part of it, with which we are concerned in these appeals. In narrating the incident Bharat stated that on 7-12-1992 at or about 10 a.m. when he was engaged in cleaning his rickshaw outside his house a mob consisting of about 60/70 persons and armed with various weapons and burning rags came there and encircled him. One of them first attacked him with a razor on the backside of his neck and then two others hit him, one with a glass bottle and another with a knife. When his parents came to his rescue his mother also got an inquiry due to a stone hurled at her. Thereafter both of them were taken to the hospital, where he was operated upon and kept as an indoor patient for 10 days. He identified the four appellants as members of the mob and stated that Mohd. Arif (Appellant 1) hit him with a knife and Mehboob Hussain (Appellant 4) with a glass bottle. As regards the other two appellants it be averred that they were carrying pipes. He lastly stated that his rickshaw was also broken and damaged. Kanaiyalal fully supported the above testimony of his son and identified the four appellants as some of the miscreants. He stated that they used to visit their locality.

5. Having carefully gone through the evidence of the above two witnesses we find no reason to disbelieve them. There is nothing on record to show that they had any enmity with the appellants; and, though they were subjected to lengthy cross-examination the appellants could not succeed in discrediting them. Rather, we find that their evidence stands amply corroborated by that of Dr Anjanaben (PW 14) who examined Bharat on the same day (7-12-1992) at 11.30 a.m. and found three stab injuries on his person one of which was on the chest and another on the lumber region. She stated that the injury on the lumber region was of a serious nature and he had to be operated upon to explore the depth of the injuries. The other corroboration is furnished by the evidence of Popatji Javanji Chavada (PW 15), a Sub-Inspector of Karanj Police Station who investigated into the case. He testified that when he went to khamasa Chowky on 7-12-1992 in the afternoon he found 4/5 rickshaws in a broken condition, stones lying scattered on the road and signboards of nearby shops broken.

6. In spite of our above discussion we do not feel it safe to sustain the conviction of Mohd. Arif (Appellant 1) as we find that though Bharat identified him correctly, his father Kanaiyalal identified another accused (since acquitted) as Mohd. Arif. He is, therefore, entitled to the benefit of reasonable doubt. We, therefore, set aside the conviction and sentence of Mohd. Arif but uphold the conviction and sentence of the other three appellants in Criminal Appeal No. 103 of 1994. This appeal is thus disposed of.

7. So far as the other appeal is concerned (Criminal Appeal No. 387 of 1995) we find from the record that the activities of the mob of which the appellants were the members were confined to terrorising the members of the Hindu Community in and around Khamasa Chowky and were attempting to commit murder of Bharat. In such circumstances this appeal has got to be dismissed; and we order accordingly.