
(2001) 01 SC CK 0094

In the Supreme Court Of India

Case No : Criminal Appeal No. 957 of 1999

Chavda Jivanji Chelaji and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Indian Penal Code, 1860 — Section 34, 149, 300, 302, 303, 304(II), 447
Code of Criminal Procedure, 1973 — Section 428

Citation : (2001) 2 ACR 1103 : (2001) 2 ALD(Cri) 69 : (2001) 2 ALT(Cri) 76 :
(2001) CriLJ 3299 : (2001) 3 JT 551 : (2002) 9 SCC 576 : (2001) 1 UC 734

Hon'ble Judges : R. P. Sethi, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. This is an appeal as of right for the appellants. They were all acquitted by the trial court but on appeal by the State they were all convicted by the High Court under Section 302 read with Section 149 of the Indian Penal Code and sentenced to imprisonment for life.

2. Seven persons were arrayed in the trial court for the murder of one Hariji Moghaji Chavda. After the trial, the verdict of acquittal was pronounced and when the appeal in the High Court was pending, two of them died. They were arrayed in the trial court as A.1 and A.2 bearing the names Manuji and Gajaji respectively. The substance of the case against all the accused was this: A. 1 to A.4 were brothers and the remaining three were the sons of those brothers. Deceased had a field in the village adjacent to which the accused had another field. It appears that there was some boundary dispute regarding the aforesaid lands. A quarrel took place between some of the accused on the one side and the deceased on the other side just on the previous day of the occurrence of this case.

3. On the date of occurrence i.e. 28/5/1990 all the accused, some of them armed with 'dharial' (a stick with a sickle- shaped metal fitted at the top) and others

armed with sticks crossed over to the land of the deceased. Some of the assailants shouted for attacking the deceased . All the accused thereafter showered blows on the deceased with 'dharial' or stick which each of them carried. Deceased fell on the ground, bled and died.

4. FIR was lodged by one of the brothers of the deceased at 5.45 p.m. The incident was witnessed by Public Witness 3 Manuji who is the brother of the deceased Public Witness 10 - Ganpat who is the son of the deceased and Public Witness 11 - Ranjit Singh who is the son of Public Witness 3 Manuji.

5. The injuries sustained by the deceased had been noted by Public Witness 1 - Doctor who conducted the postmortem examination on the dead body. Those injuries are important for dealing with this appeal and therefore, we reproduce them in the way they were described by the Doctor in the postmortem report:

1." Incised wound 2" proximal to (Lt) wrist joint obliquely placed - skin deep 3" x 1" size. 2. Incised wound 3" x 2" bone deep - through middle of (Lt) forearm-forearm is attached to proximal part C tag of 2" skin on palmar and lateral aspect. 3. 4" x 2" part of skin is avulsed through sharp cut on antero-lateral aspect of lower part of (Lt) upper arm - upto antero-lateral aspect of (Lt) elbow joint. 4. Incised wound- cutting through upper part-head of Lt. humerus - below greater tuberosity -cutting through lateral surface of upper arm-skin, muscles, bones, artery and vein (axillary). The part below the cut is hanging through lateral fold of (Lt) axillary fossa through a tag of skin of 3" long. 5. Incised wound on back of scalp -occipital region 1" x «" scalp deep. 6. Contused lacerated wound 1 «" x «" on (Lt) parietal region -transverse - scalp deep. 7. Wheal mark-reddish - lateral wall of abdomen (11)3" x 1". 8. Wheal mark-back of Rt. chest across scapula 8"x 1" 9. Wheal mark on Rt. buttock verticle- 4"x 1"-reddish.

6. We are told that the trial court acquitted the accused mainly on the ground that Public Witness.1 Doctor found that there was no food in the stomach of the deceased and learned Sessions Judge held that if he had taken food at 12 O'clock, such a condition could not have been reached at the time when the incident happened. The High Court has rightly repelled the said reasoning because incident happened a little before 5.00 p.m. Even if the deceased had taken the last food at 12 noon the evacuation of the food from the stomach during recess is a very clear possibility. Another reasoning advanced by the Trial Judge was that the three witnesses who spoke to the occurrence were the kith and kin of the deceased and hence they are all interested witnesses. That reasoning was too broad a ground for acceptance in dealing with murder cases particularly when the incident happened in the property of the deceased himself. Such persons would be the most natural witnesses as their presence in their own property cannot be doubted in the normal way.

7. The contused lacerated wound found on the parietal region of the head was only scalp deep and that injury was attributed to A.2 Gajaji. All the other injuries

of the deceased could only have been inflicted with sharp cutting objects (except injuries 7, 8 and 9 which were wheal marks and they cannot be attributed to blows with sticks).

8. The resultant position is that, only those who had possessed weapons with sharp cutting objects can be roped into this criminal liability. When we perused the evidence of Public Witness³ we found that A3 Jivanji, A6 Parvinji and A7 Ranjit Singh were the only three appellants who were armed with dharia and all others (except Gajaji who died already) had only sticks with them.

9. The only injury which caused the death of the deceased is the one described as injury no. 4 mentioned above. That was inflicted on the left humerus which cut the artery and vein. The question is whether any one of the accused would have intended to inflict that injury, even if we assume that the said injury was sufficient in the ordinary course of nature to cause death. In an action described by the eyewitnesses where the deceased sometimes was standing up and at other times was running and was surrounded by the assailants, one particular injury on the humerus cannot be said to be a wound which was specifically intended by the assailant at whose hand that injury was caused. If that be so, it is difficult for us to bring the offence within the purview of the "thirdly" Clause of Section 300 of the India Penal Code. In this connection we refer to the celebrated decision of this Court in *Virsa Singh v. State of Punjab* [AIR (1958) SC 465] which has later been described by the Judges of this Court as *locus classicus*.

10. We have no reason to disbelieve the evidence of Public Witness³, Public Witness¹⁰ and Public Witness¹¹ when they said they have seen the incident and their uncle deceased was surrounded by the assailants including the armed persons. But we are unable to convict any one of them who was not possessed of a weapon/sharp object, for the death of the deceased.

11. We, therefore, alter the conviction from Section 302 read with Section 149 to Section 304 (Part II) India Penal Code read with Section 34 of the Code. Such conviction can be fastened only with A3 - Jivanji, A6 - Pravinji and A7 - Ranjit Singh. In the circumstances of this case each of those three persons can be sentenced to undergo rigorous imprisonment for a period of five years. We impose the said sentence on them.

12. Regarding the others no offence beyond Section 447 India Penal Code can be sustained. We therefore maintain the conviction as for all the accused under Section 447 of the India Penal Code and impose a sentence of rigorous imprisonment for six months each.

13. In the result we direct all the appellants except A3 - Jivanji, A6 - Pravinji and A7 - Ranjit Singh to be released from jail forthwith unless they are required in any other case. As for those three accused they need. be released only on completion of the sentence of imprisonment for five years after setting off the period covered by Section 428 of the Code of Criminal Procedure. We make it clear that the sentence imposed under Section 447 of the India Penal Code will

run concurrently with the other sentence imposed on the aforesaid three persons.

14. This appeal is disposed of accordingly.