PETITIONER:
AHER BHAGU JETHA

Vs.

RESPONDENT:
THE STATE OF GUJARAT

DATE OF JUDGMENT27/11/1973

BENCH:
BEG, M. HAMEEDULLAH
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CHANDRACHUD, Y.V.

CITATION:
1974 AIR 292 1974 SCR (2) 477
1974 SCC (3) 653

ACT:
Practice and Procedure Criminal trial--Case with a communal background-Assessment of evidence.

HEADNOTE:
A riot which was alleged to have a communal background resulted in the death of a person. The trial court convicted the appellant and some others under s. 302 read with s. 149, I.P.C. The High Court, in appeal, convicted only the appellant under s. 3020. The High Court, while discarding the case of unlawful assembly as set up by the prosecution held the appellant guilty of murder only because the appellant was found lying injured near the scene of occurrence and had pleaded that he was attacked by a group of members of the Muslim community.
Allowing the appeal to this Court,
HELD : The High Court had not given due importance to the fact that the appellant had serious injuries on his body. The High Court dismissed his statement that he had only a stick with him without examining the credibility of his version which was supported by the fact that only a stick was found near him; while the only injury on the deceased was caused by a sharp edged weapon. It is not uncommon in cases of a communal nature to find witnesses coming forward to depose falsely about an attack by a person who is believed to be guilty, and, partisan witnesses may depose falsely out of a mistaken or misplaced sense of group loyalty. In the present case, the participation of the appellant in the occurrence might have seemed to the witnesses to have been established by his having been found lying near the scene of occurrence in an injured condition. This may be enough to convince unsophisticated persons of his complicity in the murder, but a court of justice has to sift and analyse the evidence very carefully, particularly in a case with a communal background, to determine whether the case against the accused is established beyond reasonable doubt. [479E-F; 480B-D)

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 151 of

1970.
Appeal by Special Leave from the judgment and order dated the 25th March 1970 of the Gujarat High Court at Ahmedabad in Criminal Appeal No. 517 of 1969.
N. P. Maheshwari, for the appellant.
S. N. Anand, M. N. Shroff and S. P. Nayar, for the respondent.
The Judgment of the Court was delivered by
BEG. J.-The appellant, Ahir Bhagu Jetha, is one of the 18 persons charged with the Offence of rioting, armed with deadly weapons, on, 28th of June, 1968 ' 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.
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,
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I.P.C. read with s. 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 s. 302, I. P. C. and sentenced to life imprisonment. Another accused, who did not appeal, and who was convicted under s. 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 s. 302, I. P. C., although he was charged and convicted of an offence punishable under s. 302 I.P.C. only with the aid of s. 149 I. P. C. As the charge for rioting failed, he was not and could not be convicted with the aid of s. 149 I. P. C. No separate charge was framed under s. 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.
The two groups, between which tension existed, prior to the occurrence, consisted of Ahirs, who are Hindu, and Samas, who are Muslims, over the taking out of "tazia" processions during Mohurrum. On the day of occurrence, Bhuraii Ravii and Ranaji Viraji, of the Samas community, were said to be sitting at the trance of the Samas locality when Govan Mandam, an Ahir, objected to it on the ground that Ahir womenfolk 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 lo have come to the scene of occurrence and covered her husband, was also injured An F.I.R. was lodged at noon on 29-6-68 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.

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

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pond from the Samas locality by Ahir women folk had ever before taken place. It also came to the conclusion that the story that the Lalmamad was dragged 50 feet by the Ahirs before he was assaulted and killed was untrue. The postmortem 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 Megha 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 sharpedged 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.

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 had 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.

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 postmortem examination :

> "There was only one injury on the neck mentioned in the column No. 7. The mustoid 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 upto 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".

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The injury on the body of Lalmamad belies the whole prosecution case that a body of persons had fallen upon Lalmamad and done 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.

It is not uncommon in cases of a communal nature to find witnesses coming forward to depose falsely about an attack by a person who is believed to be guilty. Apparently, this 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 complicity in the murder of Lalmamad. But, a court of justice has to sift and analyse evidence very carefully' so as to determine whether the case against an accused person is established beyond reasonable doubt. This is particularly necessary in a case with a communal background in which partisan witnesses may depose falsely out of a mistaken or misplaced sense of a group loyalty.

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

V.P.S.

Appeal allowed,

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