

State of Gujarat Vs. Nanusing and ors.

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Court : Gujarat

Decided On : Mar-09-1978

Reported in : 1979CriLJ627; (1978)GLR967

Judge : D.P. Desai and; M.K. Shah, JJ.

Appellant : State of Gujarat

Respondent : Nanusing and ors.

Judgement :

M.K. Shah, J.

1. At about 12-30 A. M. between the night of the 18th of Nov. 1974, and the 19th, an incident happened in the field of complainant Babubhai of village Santhal, Taluka Mehsana, where his cousin i. e. uncle's son Chandulal Ambalal, his brother Maneklal, and the complainant himself were assaulted by some persons with spears and sticks causing fatal injuries to Chandulal who died at 4-30 A. M. the same morning, as also injuries to the complainant and Maneklal, including a couple of fractures.

2. The prosecution case was that the seven accused were closely re-'lated to one another. Accused No. 1 being the father of accused No. 5 accused No. 6 being the brother of accused No. 1, accused Nos. 2 and 4 being uncles of accused Nos. 1 and 6 and accused Nos. 3 and 7, who were brother's with the sons of one

Balvantsing who is the uncle of accused No. 1. They are Thakores residing at Govindwadi in the village Santhal, while the deceased, the complainant and most of the prosecution witnesses were Patidars, having their fields in which they carry on agricultural operations.

3. It is alleged by the prosecution that on the night when the instant incident happened, Chandulal and Maneklal went to the field of the complainant, in which field there is an engine fitted to a well from where water is distributed to the neighbouring fields. They wanted the water to be distributed to their fields. The engine was started and both got themselves engaged in the work of diverting water to their field. The water stopped all of a sudden at 11 O'clock at night. Both rushed to the place where the engine was kept, where the complainant was working on the same, and on enquiry learnt from the complainant that the engine had got overheated, it required some rest and that it would again start working after rest of 2 to 3 hours. They were, therefore, resting in what is called Jhuda. It is a cement concrete construction attached to the well from where water is being drawn, and then poured over into the Jhuda to be further passed on through a canal. At about 12 O'clock mid-night, the complainant felt sound of some foot-steps. He, therefore, sat up and he found the seven accused armed with spears and sticks. Accused Nos. 1 and 5 had spears, while the rest had sticks. As the complainant attempted to sit up, accused No. 1 dealt a blow by means of a spear on his left leg, and he also dealt a blow on the head of Chandulal, as also on his leg. The remaining five accused attacked deceased Chandulal, the complainant and Maneklal with sticks. At this time from the southern side, i. e. from the side where the well and the field of Somabhai Narandas were situate, two persons came running with torches in their hand. They were Somabhai Naran-das and Chunibhai Somabhai. On seeing them the accused ran away. Manek-lal went to the village to inform his father Ambalal about the incident. On being asked, the complainant told the said two persons that he and Ors. were attacked by the seven accused. Chandulal was unconscious at that time. After about half an hour, people came from the village and the complainant and Chandulal were removed in cots and taken to the Police Station at village Santhal where the complainant gave his complaint, Ex. 49. Investigation started and thereafter the accused were arrested and tried for the offences under Sections 148, 302, 326, 325, 323 read

with Section 149 of the I. P. C. So far as accused Nos. 1 and 5 are concerned they were charged under Section 148, so far as accused Nos. 2, 4, 6 and 7 are concerned, under-S. 147. Accused Nos. 1 and 5 were also charged under Section 302 and all the accused for the offences under Section 302 read with Section 149, for causing the death of Chandulal; and alternatively, accused Nos. 1 and 5 under Section 302 and accused Nos. 2, 4, 6 and 7 for the offence under Section 302 read with Section 34, and all the accused for the offences under Section 326 read with Section 149, and accused Nos. 2, 4, 6 and 7, for the offences under Sections 325 and 323 for their individual acts.

4. The defence of the accused was that they had nothing to do with the incident; that they were falsely involved because there was a long standing enmity between them and the complainant and his family members, as also Patidars, and that they had not committed any of the acts for which they were tried.

5. The learned Additional Sessions Judge, Mehsana, before whom, the accused stood their trial, found all the accused not guilty of the offences with which they were charged and acquitted them of the same. Aggrieved by the said order of acquittal, the State has preferred this appeal against the respondents, that is the original seven accused.

6. The prosecution examined the injured complainant Babubhai, Ex. 49, injured Maneklal, Ex. 52, as eye witnesses to the incident. It also examined Chunilal Somabhai, Ex. 54, as the person in the company of Somabhai who saw the seven accused running away immediately after the incident when the said witness and Somabhai came rushing on hearing the commotion with torches in their hands. Ramanlal Nathalal, Ex. 59, who was one of the persons who went along with the cots to bring the deceased and the injured complainant, is examined at Ex. 59. It also examined Ambalal, Ex. 44, the father of deceased Chandulal and Maneklal, to show that immediately after the incident, Maneklal rushed to his father in the village and gave information about the attack.

7. Medical evidence has been led by the prosecution by examining Dr. A. K. Patel, Ex. 20, attached to the Civil Hospital, Mehsana, and through him, the post mortem notes are brought on record at Ex. 21. He had also examined the complainant and

Maneklal with regard to their injuries and the certificates with regard to injuries on them are at Exs. 22 and 25 respectively. Panch Bandevbhai, Ex. 28, is examined for the Panchnama of the scene of offence, Ex. 29, and, Panch Jerambhai Asharam Suthar, Ex. 35, is examined with regard to the discovery of the spear containing bloodstains at the instance of accused No. 1 and the Panchnama in this connection is a Ex. 37. Evidence has also been led by the prosecution to show that there was enmity between the accused, particularly accused Nos. 1 and 5 on the one side and the complainant, and the Sarpanch of the village and the Patidars on the other side. It is not necessary to refer specifically to this evidence at this stage as we propose to refer to the same as and when it becomes necessary to do so during the course of the discussion which follows.

8. In order to get some idea about the topography, a look can be had at the map, which is at Ex. 15, which has been brought on record through the evidence of Circle Inspector Kalubhai, Ex. 14. As shown in the map. the field of the complainant is surrounded by several fields on all sides. On the southern side there are the fields of Patel Joitaram Shankar and Somabhai Narandas and on the eastern side, there are the fields of Bachubhai Shankar. On the northern side there is a field bearing S. No, 745, the field of the complainant on its south bearing S. No. 755; and on the south-eastern corner of that field is installed the engine for drawing water from' the well which is nearby the engine towards its north. ; Adjoining the well on the eastern side lies the said Jhuda, i.e. the cement concrete flat place where water drawn from the well would be first brought to be passed on through the canal to the various fields including the field of the complainant. That canal is touching the Jhuda; going towards the north.' On the western side of the well, there is water trough.

9. With this background in mind, we will now take up the points which were raised by the learned Public Prosecutor Mr. Mehta, in support of his contention that, the order of acquittal passed by the learned Additional Sessions Judge should be set aside and the accused be convicted for the offences with which they. were charged. We have been, taken through the evidence of the witnesses enumerated above, as also documentary evidence giving some idea about the dispute with regard to the land used for grazing between the accused i e. Thakores of

Govindwadi and the village Panchayat; as also, chapter proceedings between some of the parties to the proceedings in which the cattle of some of the accused were impounded at the instance of the complainant and the Sarpanch or some family members of the complainant. Mr. Mehta submits that in the instant case, at the earliest opportunity when the complaint was lodged by the complainant, the names of the seven accused were disclosed. Presence of the complainant, as also Maneklal, who is examined as P. W. No. 11, Ex. 52, cannot be disputed in view of the multiple injuries caused on them. The evidence also shows that Maneklal immediately rushed to the village and gave information to his father Ambalal giving names of the seven accused as the assailants of the deceased, the complainant and Maneklal, Chunilal Somabhai, P. W. No. 12, Ex. 54 also says that he was in the nearby field along with Somabhai. He had gone to the nearby field along with Somabhai for a round and when they were about to go home from the northern side they heard shouts and on focussing the torch they found the shouts to be coming from the side of the field from near the the complainant's field where engine had been installed, and when they were on the way to the said field, they saw the seven accused armed with spears and sticks going towards Govindwadi. Ambalal, P. W. 9, Ex. 44, also, in his evidence says that Maneklal reported the matter to him and the names were disclosed. It is, ' therefore, contended that, in the instant case, there is evidence led with regard to motive in the form of existence of previous enmity, disputes and litigation between the parties, presence of eye witnesses and the witness coming on the spot immediately after the incident and sighting the accused running away and the disclosure of the names of the seven accused at the earliest opportunity in the complaint filed by the complainant establishes the case of the prosecution beyond reasonable doubt and the learned Additional Sessions Judge, therefore, erred and acted contrary to the evidence on record and failed to apply his mind to the relevant evidence on record in passing the order of acquittal. .

10. It is true that there were some disputes occurrences and instances between some of the accused on the one side and the complainant and some of his family members or some Patidars on the other side. In all the proceedings accused Nos. 1 and 5 were the common accused, while in some proceedings some other accused were involved. But this may also provide a cause for the prosecution

witnesses to involve the accused. The evidence, therefore, has to be judged after closely scrutinising the same on its own merits. The learned Judge has adjudged the evidence on merits and unless it is shown that the view taken by him is such as no reasonable body of men properly instructed in law, can reach the conclusion arrived at by him, on the evidence or they are so palpably wrong as to shock the sense of justice, this Court will not be justified in taking a contrary view by giving its own reasons. It is not enough that it is just possible for this Court to take a contrary view. But it should be demonstrated clearly that the conclusions of the trial Court are what can be described as containing unworthiness having regard, to all the relevant evidence on record. In our opinion, this is not a fit case where this Court should interfere with the order of acquittal for more than one reason.

11. Now, first of all it will be significant to note that the complainant, when asked by Prosecution witness Chunilal who was first to arrive along with Somabhai at the scene of offence, told him that he was beaten by 'Thakores of Govindwadiwala.' This therefore is a general statement made by the complainant referring to 'Thakores of Govindwadi' and not specifically referring to the seven accused. So far as Maneklal is concerned, though he refers to the seven accused in his evidence, his evidence is full of infirmities and contradictions and his conduct is such that it is difficult to rely on his statement with regard to the identity of the seven accused. Leaving the two injured in the field, he rushes to the village and gives information to his father Ambalal. It is difficult to understand why, thereafter, he does not go to the police and lodge a complaint and waits for the injured to be brought and thereafter also the complaint is lodged by complainant Babubhai who was more severely injured than Maneklal.

11A. The most significant factor is that the incident happened in darkness at 12 O'clock and it passes one's comprehension as to how in such darkness the complainant and Maneklal could identify the seven accused. Realising this difficulty, the witnesses started referring to a lantern at the place of the incident. Now, in the complaint, as also in the evidence of the complainant, there is no mention about any lantern being (here at the scene of the incident. Maneklal for the first time refers to the fact that the complainant and the witness went to the field where the engine was, with a lantern, and that when they rested waiting for

the engine to cool down, the lantern was put near the Jhuda. In cross-examination, the omission with regard to the mention of lantern, in his police statement was pointed out to him and the same was brought on record through the evidence of the P. S. I. Narpatsinh, P. W. 15, Ex. 62. This witness tried to make an improvement on his statement about there being lantern by coming out with a reply in cross-examination that there were two lanterns hung near' the scene of the incident, one to the cactus plant and the other near the well Thala i. e. well's outer ring. This witness, therefore, cannot be relied upon with regard to there being light enabling the witnesses to see and identify the assailants, as also his having seen and identified the seven accused. So far as Chunilal is concerned, as rightly observed by the learned Additional Sessions Judge, he appears to be a chance witness. He happens to be the nephew of the complainant and, therefore, his evidence requires to be closely scrutinised. The learned Judge has done the same, and, he has come to the conclusion that, his evidence does not inspire confidence and should not be relied upon. We have no reason to differ from this assessment of the learned Judge. His statement that he was a partner of the cultivation in the land of Somabhai rests on his bare word. Somabhai has not been examined to corroborate this say of his, or to show that the seven accused were seen running away with weapons just after the incident. Somabhai may have been an ideal witness and there is no reason assigned as to why he was dropped. The story put forward by Chunilal is an improbable one. It is difficult to understand how he would be able to see and identify all the seven accused with the aid of a torch after the accused had assaulted three persons, causing fatal injuries to one. The accused when faced with dazzling light from a torch would try to turn round and all of them would not give an opportunity to the witness to observe their faces as the witness says. Most unnatural conduct on his part is that, though he had seen the assailants, as he says, he does not say a word about it to any of the persons whom he meets including the complainant, the father of the deceased, Ambalal, and so many village people. Had he seen the accused persons, the natural conduct on his part would have been to give out the names, at least to some persons. In the instant case, he had not disclosed the names, even to a single person.

12. Thus, this is a case in which complainant Babulal does not give the names of the assailants immediately after the incident when he is asked about the 'incident by Chunilal. Maneki Lal, who is an eye witness, goes to the village and gives information to his father but does not go to the police station which is hardly 150 paces from his place, and his father Ambalal, even after an eye-witness account from Maneklal, does not ask him to go to the police station to lodge the complaint and, though he does not know more than four of the accused personally, and is informed about the names of the other accused by Maneklal, as he says, reproduces all the seven names from memory including the names of the three accused not known to him, when he gives evidence after a few months of the incident. He appears to have -rammed the names. Chunilal who claims to arrive on the spot, immediately after the incident, seems to be a chance witness. The evidence of these witnesses, who were examined before the learned trial Judge who had an opportunity to mark their demeanour, has not inspired confidence before the learned trial Judge. In these circumstances, we see no reason to interfere with the order of acquittal passed by the learned trial

13. Mr. Mehta cited before us the decision in *Badri v. State of U P.* : 1975 CriLJ1739 , in support of his contention that, in the instant case, though the witnesses were interested or partisan witnesses, in view of there being factions bitter-ly opposed to each other in the village, it was not right on the part of the learned Judge to reject their testimony on the ground that they belong to one faction or another; and the learned trial Judge also erred in drawing an adverse inference on the ground that an independent witness, namely, Somabhai Naranbhai was not examin-ed. Now, so far as the ratio laid down in this decision is concerned, there cannot be any dispute. But the same, as it applies to the facts in the case before the Supreme Court, cannot be applied to the facts of the case with which we are dealing, because each case has to be decided on its own facts. The facts in the instant case are distinguishable from the facts of the case with which the Supreme Court was dealing. In the instant case, it was because of the infirmities in the evidence of the partisan witnesses as pointed out earlier, that the evidence was rejected by the learned Judge and not solely because they were partisan witnesses. We have also assessed the evidence of these witnesses on its own merits and then come to the conclusion that the evidence does not deserve to be

accepted.

14. Another distinguishing feature, so far as the instant case is concerned is that in the instant case the statement of the said independent witness Somabhai Naranbhai was as a matter of fact recorded by the police. Somabhai and Chunilal are witnesses similarly situated, so far as their seeing the accused running away immediately after the assault is concerned, and yet, the prosecution preferred (to examine a close relative of the complainant who is an interested witness viz., Chunilal, while dropping an independent witness viz, Somabhai. In the case before the Supreme Court, on going through the judgment, we do not find that a witness whose statement was recorded by the police was dropped, though being an independent witness. Again, when there are infirmities in the evidence of interested or partisan witnesses, and when it requires corroboration, the prosecution must examine independent witnesses, if available. Our attention was drawn to the case in *Bir Singh v. State of U. P.* : 1978 CriLJ177a , where the following important observations are very material in this connection. They appear at p. 424 para (of SCC): (at p. 181, para 8 of Cri LJ):

It would thus appear that all the eye-witnesses are interested, inimical and belonging to the faction of the deceased and have taken sides with them and against the accused in earlier litigations. The learned Additional Sessions Judge, therefore, rightly thought that it was not safe to rely on the evidence of these witnesses unless their evidence was corroborated by independent witnesses. In this connection it may be noted that in the F.I.R. it is clearly mentioned that while the altercation between Bans Gopal and the accused was taking place Shambhu Bhujwa and Bhikari apart from Roshansingh had come to the scene of occurrence. Both Shambhu Bhujwa and Bhikari were independent witnesses and bore no animus against the accused. Even from the evidence it would appear that these two persons had seen the entire occurrence.

Then appear the following important observations in this connection in para 9:

It would thus appear from the evidence of eye-witness that Shambhu and Bhikari were exactly in the same position as the eye-witness and yet no reasonable explanation had been given by the prosecution for not examining them. It is true

that it was not incumbent on the prosecution to examine each and every witness so as to multiply witnesses and burden the record. This rule however does not apply where the evidence of the eye-witnesses suffers from various infirmities and could be relied upon if properly corroborated.

The ratio laid down in this decision would properly apply to the facts of the present case, and not the one relied upon by Mr. Mehta which is distinguishable on facts.

15. Precisely formulated the correct position in this behalf which can be stated in the following terms. When there are factions in a place and when independent witnesses do not come forward to make statements about the incident, because, of factions, or when they are so terrorised that they deem it prudent not to come forward to make such statements, insistence on evidence of independent witnesses is not a must, and, testimony of interested or partisan witnesses if it inspires confidence and gives a truthful account of what happened can form the basis of conviction without the necessity of corroboration from independent witnesses. However, the position is different, if, even when there are factions, some independent witnesses do come forward and make statement to the police with regard to the incident. When such witnesses are dropped without any reasonable cause or sufficient justification, such as non availability of witnesses etc. and the prosecution merely relies on the evidence of interested or partisan witnesses whose evidence suffers from infirmities and requires corroboration, then, non-examination of independent witnesses will be fatal to the prosecution. Again, if an interested witness is examined, as in the instant case, with regard to an incident, it cannot supply an excuse to drop an independent witness on the ground that, as both the witnesses are equally situated, there would be repetition and multiplicity of evidence, if another witness on the same topic is examined. If at all, the prosecution thinks to drop any of these two witnesses to avoid multiplicity or burdening of the record, it would be prudent to drop an interested witness or a partisan witness rather than an independent witness, as the prosecution failed to do in the present case. In such a case, an independent witness, examined in addition to an interested witness, not only strengthens the prosecution but saves it from a collapse by bringing on record the evidence of an independent nature which would corroborate the evidence of the interested or a partisan witness.

16. In view of our observations earlier set out, there is no case made out for interference with the order of the Trial Court acquitting the accused.

17. In the result, this appeal fails and is dismissed. The bail bonds of the accused are ordered to be cancelled.

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