

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 488 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PURSHOTTAM LAKHABHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 488 of 1995
MRS SHILPA J UNWALLA for Petitioner No. 1
MR. A.J. DESAI, LD. APP for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 30/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE N.G.NANDI)

1. This Appeal under section 374 (2) of the Criminal Procedure Code (herein after referred to as the "Code") is directed against the judgment & order in Sessions Case No. 297 of 1993 by Learned Addl. Sessions Judge, Rajkot, convicting the appellant accused for the offence under section 302 I.P. Code and sentencing him to suffer imprisonment for life. The appellant convict is also found guilty for the offence under section 135 of the Bombay Police Act for committing breach of the Notification issued under section 37 (1) of the Bombay Police Act prohibiting carrying/ possessing weapon in a public place and sentenced to suffer six months R.I. and fine of Rs.100/-; in default 10 days S.I.

2. The facts leading to the filing of the present appeal shortly stated are; that the complainant Narsinhbhai Mavjibhai residing at Village Bedi on Rajkot - Morbi road, on 30-6-1993 had gone to Rajkot in connection with some work in Mamlatdar office and Taluka Development Office; that while returning at about 6.00 O' clock to his house on bicycle, he came near Velnathpara area on Rajkot-Morbi Road; that for purchase seeds of Radish he stopped at the shop of Gandubhai Talsibhai Koli who was dealing in the sale of seeds of radish. Gandubhai was not available at his shop; that Narsinhbhai purchased 750 grams of seeds of radish and as Bharat, son of Gandubhai did not know accounting, he called Karsanbhai from opposite shop for ascertaining the amount payable by Narsinhbhai to Bharat for purchase of seeds of radish; that in the meantime Bhalabhai Motibhai resident of Velnathpara came to the shop of Gandubhai and was talking with the complainant; that at that time Narsibhai came on bicycle with Purshottam Lakhabhai Koli sitting on the carrier of the bicycle from Velnathpara; that they went little ahead and then came back to the shop of Gandubhai and asked Bhalabhai as to how is he, Bhalabhai said, he is alright. Purshottambhai asked for a pan from Bharat, but Bharat said they are not selling pan. Thereafter Purshottam started giving filthy abuses to Bhalabhai whereupon Bhalabhai slapped Purshottam, Purshottam became enraged took out the knife from pocket of his pant and started giving knife blows to Bhalabhai; that Bhalabhai tried to escape but did not succeed. Narsinhbhai intervened to free Bhalabhai from the hold of Purshottam, in the process Narsinhbhai sustained knife injury on his right hand. In the meantime Purshottam dealt four knife blows successively on the person of

Bhalabhai. Bhalabhai fell down on the spot; that Purshottam ran after Narsinhbhai, Narsinhbhai pelted stone at Purshottam and Purshottam escaped; that Narsinhbhai went towards the house of Bhalabhai to call some persons, Narsinhbhai returned with some persons at the place where Bhalabhai was lying, there many people had collected by that time. Narsinhbhai told that Purshottam with knife giving abuses has gone towards Bedi village on cycle with Narsibhai; that Bhalabhai was gasping at the place of incident, Bhalabhai was lifted and placed near the lamp post on the road. In the meantime Bhalabhai succumbed to the injuries received by him. Narsinhbhai asked Ramjibhai to inform police; that in the meantime Kanjibhai came on luna. Ramjibhai told Kanjibhai to inform police; after some time police arrived at the place of incident. Narsinhbhai gave his complaint to the police at the place of incident. Thereafter the offence was registered and the usual investigation commenced; that in the course of investigation the statement of witnesses were recorded, inquest panchnama on the dead body of Bhalabhai was drawn. Panchnama pertains to the the place of incident in the presence of panchas was also drawn. Dead body was sent for postmortem examination. On completion of the investigation chargesheet came to be filed against Purshottam Lakhabhi Koli for committing offence under section 302 I.P.Code and section 135 Bombay Police Act. The accused appeared before the trial Court. Vide exhibit-1 charge came to be framed against the accused. The accused denied the charge levelled against him and claimed to be tried. The prosecution in order to bring the guilt home to the accused adduced oral as well as documentary evidence and also recorded statement under section 313 of the Code as regards the circumstances incriminating against the accused emerging from he prosecution evidence. Learned Trial Judge appreciating the evidence on record and also considering statement under section 313 of the Code found the accused guilty for offence under section 302 I.P. Code and section 135 Bombay Police Act and sentenced the accused to suffer imprisonment for life, also awarding sentence of six months R.I. and fine of Rs.100/- for offence under section 135 of the Bombay Police Act, making both the sentences to run concurrently. It is this conviction and sentence imposed on the appellant accused which is assailed in the present appeal.

3. It is submitted by Ms. Shilpa Unwala, learned advocate for the appellant-convict that the conviction is based on the testimony of sole eye witness PW-1, i.e. complainant Narsinhbhai Mavjibhai; that PW-1 is a got up

witness and that he was not present at the place of incident; that there is no evidence except the bare words of PW-1; that there is no evidence to show that PW-1 was present at the place of incident at the relevant time; that the injuries received by PW-1 is a superficial self-inflicted injury and that would not be sufficient to establish his presence at the time of occurrence; that presence of PW-1 is not natural in as much as he does not disclose the name of the assailant to Ramjibhai at whose place he had gone to inform about the incident; that even to Kanjibhai also the name of the assailant is not disclosed and that the name of assailant is disclosed in the complaint which is after about an hour of occurrence. It is further submitted that the blood sample of the accused was not taken so as to establish the presence of human blood of 'B' group on the trouser stated to have been produced by the accused; that the panch witnesses to the panchnama for the recovery of trouser of the accused have not supported the prosecution; that there is nothing to show as to how the muddamal knife alleged to have been used in the occurrence got bent; that the panchas to the panchnama regarding production of knife by the accused do not support the prosecution; that the statements of the witnesses recorded in course of investigation and examined as witnesses in the trial are all near relations of the deceased and that the accused has been falsely implicated; that no prosecution witness has supported the prosecution version; that PW-1 is a retired police constable room and everything has been cooked up by him; that if the complainant was present then why the name of the assailant was disclosed only after the police came to the place of incident. It is further contended that exhibit-73 - the message received in the police control room suggests the time of 20.08 hrs whereas PW-25 states that Kanjibhai sent message at 19.08 hrs; that this is the manipulation in the recording of the intimation in the police control room.

As against this, it is submitted by Mr. A.J. Desai, Learned APP that the incident took place at about 6.45 p.m; that the information received in the control room is at 17.08 hrs sent by PW-20 Kanjibhai; that exhibit-30 & 31 received in 'B' Division Police Station discloses the name of accused as the assailant; that in the incident PW-1 has received injury at the hands of the accused which suggests presence of the complainant at the time of occurrence; that as Bhalabhai received injuries inflicted by accused, PW-1 went to the house of Ramjibhai and informed him about the incident and Ramjibhai was told to send telephone to the police about the incident; that Ramjibhai in turn told Kanjibhai to send information

exh. 73 at the police control room and at the place of incident itself revealed name of Parshottam as the assailant to Ramjibhai; that the conduct of the PW-1 is most natural and that the complaint has been given within about half an hour of the incident no sooner the police arrived at the place of incident; that accused seeing Bhalabhai at the shop of Gandubhai came back and pretended to ask for pan from Bharat knowing full well that pan is not sold at the shop of Gandubhai; that accused coming to the shop of Gandubhai was not bona fide; that complainant PW-1 is corroborated by the medical evidence in as much as PW-9 Dr. Sapadia who performed postmortem on dead body of Bhalabhai has stated that the injuries found on the person of Bhalabhai could be caused by the muddamal knife (muddamal article No.7); that the report of Forensic Science Laboratory (FSL) and Serologist Report exh. 83 & 84 respectively also suggest human blood of 'B' group on the knife, on the clothes of the deceased as well as the trouser of the accused; that unless the accused is involved in the incident causing injury to Bhalabhai his trouser would not get human blood of 'B' group which tallies with the blood group of the deceased; that PW-15 Pravinbhai suggests that the accused after inflicting injury to Bhalabhai went on cycle with Narsibhai, carrying open knife in his hand.

We have considered the submissions advanced by the learned advocate for the appellant as well as respondent and also reappraised the evidence on record.

4. It is not much disputed that in the incident which took place at about 6.45 p.m. on 30-6-1993 on Rajkot-Morbi road Bhalabhai received knife injuries and soon thereafter succumbed to the same. The homicidal death of Bhalabhai is sufficiently established from evidence of PW-9, postmortem report exh. 46 and inquest panchnama exh. 35.

5. As far as the occurrence is concerned the prosecution examined eye witness Narsinhbhai Mavjibhai PW-6 who is also the complainant who gave complaint exh. 7 about the incident. It is suggested from the evidence that on 30-6-1993 at about 6.00 O' clock in the evening he was coming on cycle for going to Bedi village; at about 6.30 p.m. he came to the shop of Gandubhai and purchased 750 grams seeds of radish; that as Gandubhai was not available and his son Bharat who was at the shop did not know accounting, Karsanbhai was called from nearby shop for accounting. In the meantime at about 6.45 p.m. Bhalabhai who is distantly related to the witness also came to the shop of Gandubhai and both of

them were talking at the said shop in Velnathpara; that in the meantime Purshottam Lakha and Narsibhai came on cycle to the shop of Gandubhai; that Purshottam exchanged pleasantries with Bhalabhai, thereafter Purshottam gave filthy abuses to Bhalabhai whereupon Bhalabhai slapped Purshottam; that becoming enraged Purshottam took out knife from his trouser and inflicted four blows successively on the person of Bhalabhai; that the witness intervened and tried to rescue Bhalabhai and in an attempt to snatch knife from Purshottam witness sustained injury in the fingers of the right hand; that Purshottam ran after the witness whereupon the witness pelted stone at Purshottam which he escaped and ran away; that the witness went towards the house of Bhalabhai to call some persons and returned with two persons at the place of incident. Bhalabhai was lying in injured condition and was gasping; that Bhalabhai was shifted from the place of incident to the place near the road for going to hospital but in the meantime Bhalabhai succumbed to the injuries sustained by him. Thereafter Ramjibhai was told to inform police on phone and Ramjibhai in turn told Kanjibhai to send telephone to police; that after Ramjibhai told Kanjibhai to inform police and Kanjibhai went to inform police Ramjibhai returned to the place of incident and asked the witness as to what had happened ? whereupon the witness revealed the name of the accused as the assailant. In the complaint also the witness has narrated the incident which has been deposed in his evidence. It may be appreciated that police came to the place of incident around 7.20 p.m. that is within half an hour of the occurrence. Complaint exh. 7 is given by PW-1 at 7.30 p.m. at the place of incident. As far as the presence of PW-1 is concerned the injury received by him in the incident is proved by the evidence of PW-10 Dr. Ajmera who has issued certificate exh. 51 as regards the injuries received by the witness. PW-10 has stated that the injuries received by PW-1 can be caused by muddamal knife. In the cross examination it has been stated by PW-10 that these injuries can be self-inflicted also. Simply because the injuries can be caused by a person himself would not necessarily mean that in the instant case the injuries received by PW-1 are self-inflicted injuries. One would not injure himself only with a view to show his presence at the place of incident to implicate the accused and there is nothing to suggest from the evidence of PW-1 that the injuries noted in the injury certificate exh. 51 are self-inflicted injuries. Now simply because PW-1 is a retired police constable it cannot be said that his presence at the place of incident is concocted when the evidence of PW-11 suggests that no sooner Bhalabhai received injuries PW-1

came to him and informed him about the injuries received by Bhalabhai and both of them came to the place of incident. It may also be appreciated that as far as PW-1 is concerned there is no evidence to suggest that he had any enmity with the accused so as to falsely implicate the accused in the incident. The conduct of PW-1 in rushing to the place of Ramjibhai PW-11 to inform about the incident is quite natural since Bhalabhai was residing in the same area and PW-11 is none else but the brother of deceased Bhalabhai.

6. Evidence of PW-11 Ramjibhai Motibhai suggests that on 30-6-1993 he had come to the house of his son in Velnathpara; that in the evening at about 6.45 p.m. he was on the roof of the house of his son for repairing/replacing roof tiles; that at that time PW-1 came and said that uncle Bhalabhai has been injured and PW-1 also said that Kanjibhai is going on road and he be told to inform the police on phone. Thereafter the witness along with PW-1 came to the road and told Kanjibhai to inform police on phone and when he returned to the place of incident Bhalabhai was found lying in injured condition and PW-1 was standing there and told the witness that Purshottam has dealt knife blows to Bhalabhai. The cross examination suggests that complainant PW-1 is distant nephew of the witness and both are on cordial relations ; that deceased Bhalabhai also had cordial relation with complainant PW-6. Referring to the evidence of PW-11 it has been submitted on behalf of the appellant that PW-1 did not disclose the name of the assailant to PW-11 and only told him that Bhalabhai has been injured and that Kanjibhai be told to inform the police; that if PW-1 had witnessed the incident then in that event he would have revealed the identity of the assailant.

7. It may be seen that no sooner the witness was informed by PW-1 that Bhalabhai has been injured and that Kanjibhai be told to inform the police on phone, the witness comes to the place of incident and there PW-1 tells the witness revealing identity of the assailant. Now simply because identity of the appellant is not revealed at the very first moment that would not be sufficient to discard the evidence of PW-1. It may be realised that the immediate concern of PW-1 and PW-11 would be to assist the injured and that is how they came to the place of occurrence and all this has happened within short time and at the place of incident itself, after Kanjibhai was told to inform police by PW-11, the identity of the assailant is revealed to PW-11. Nothing substantial has been brought from the cross examination of PW-11 so as to disbelieve his testimony.

8. PW-20 Kanjibhai Mavjibhai states in his evidence that while he was returning to his house in Bedi Village on luna moped at about 6.45 p.m. he reached Velnathpara road where his distinctly related uncle Ramjibhai met him and told him that Bhalabhai has been injured with knife and that the witness may telephone police from Bedi; that at that time people had collected near the shop of Gandubhai where Narsinhbhai the elder brother of the witness was also present. The witness immediately went to Bedi and sent telephone to Rajkot Police Control Room. After the witness returned to Velnathpara he saw Bhalabhai lying and witness asked elder brother Narsinhbhai (PW-1) as to what had happened, whereupon PW-1 replied that Purshottam Lakhabhai dealt knife blows to Bhalabhai. In the cross examination it has been stated that when Ramjibhai met him on the road and told that somebody has dealt knife blows on Bhalabhai, the witness had no idea whether Bhalabhai is alive or dead.

9. Exhibit-73 is the intimation received in police control room sent by PW-20 Kanjibhai.

In the evidence PW-25 Anil Gokalbhai, Police Constable has stated that on 30-6-1993 the witness was working as police constable at Rajkot Police Control Room; that, on that day at about 17.08 hours telephone call was received, the said information was noted down and produced at exh. 73. It is suggested from the evidence of the witness as well as the information received in police control room exh. 73 that Kanjibhai Mavjibhai of village Bedi informed on phone that on Velnathpara-Morbi road Bhalabhai Motibhai aged 55 years has been given knife blows by an unknown person.

Referring to exh. 73 it has been submitted by Learned Advocate for the appellant that the time noted in exh. 73 is 20.08 hours. Perusal of exh. 73 suggests that the said information was given on phone by PW-20, the entry preceding the entry in question, appears to have been noted at 19.05 hours, entries subsequent to exh. 73 are noted at 19.23 hours, 19.29 hrs and 19.32 hrs. It is suggested from exh. 73 that the said information has been received and noted as exh. 73 at 19.08 hrs. In this connection reference be made to exh. 30 and 31. Exh. 30 page-62 is the information received in Rajkot City 'B' Division police station and the said information has been recorded as entry No. 20/93. It is also suggested that the said information was received at 17.45 hrs. It is further suggested that in the said information the name of the assailant has been revealed

as Purshottam. Exh. 31 is the information received by PW. 26 Mr. Dinkarrao Thakore, sent by PSO 'B' Division Police Station, Rajkot City wherein also the accused has been named as the assailant.

The evidence of PW-26 I.O. Dinkarrao Takore suggests that on 30-6-1993 at about 19.00 hrs he was at Kotaria Police Chowky where he received message from police control room that one unknown person has caused knife injury on Velnath society, whereupon the witness came to the place of incident at 19.20 hrs. It is also suggested that the complaint exh. 7 received at the place of incident was given by PW-1. It is also suggested from the evidence of PW-26 that it took about 45 minutes to take down complaint exh. 7 and thereafter with the forwarding letter the complaint was sent for registration and the offence was registered at 21.00 hrs. As seen above, the incident took place at 6.45 pm. vide exh. 73 the message was received in the control room at 19.08 hrs. PW-26 reaches the place of incident at about 19.20 hrs and thereafter the complaint was taken down around 7.30 p.m. So everything was without wasting time and it cannot be said that there was any concoction or manipulation on the part of PW-1 since within about half an hour of the incident the police reaches the place of incident and the complaint was taken within 45 minutes of the incident. So there was absolutely no time left for any concoction. At the same time there is no reason for PW-1 or PW-11 to falsely implicate the accused. The evidence of PW-20 Kanjibhai also suggests that when he came back to the place of incident after informing police control room on telephone No. 100 PW-1 told him that accused Purshottam had dealt knife blows on deceased Bhalabhai.

10. Exh. 82 is the Report of the FSL, whereas exh. 84 is the report of the Serologist. The say of the prosecution is that the accused voluntarily produced the knife and that the trouser put on by the accused was also recovered in presence of panchas by drawing panchnama. The panch witnesses have not supported the prosecution as far as the recovery of knife and the trouser are concerned. PW-26 I.O. has stated in his evidence that muddamal knife and the trouser put on by the accused were recovered in presence of panchas. Perusal of exh. 84 report of the Serologist suggests that article No. 8 knife, article no. 9 pant contained human blood of 'B' group. Article No.2 sample earth, and article no. 3 to 6 clothes of the deceased also contains human blood 'B' group. Thus it would be seen that blood found on the trouser of the accused and the knife tallies with the

blood of the deceased, and the sample of the earth also contained the same blood group. In the further statement under section 313 of the Code all what the accused had said is that he did not produce the muddamal knife nor his pant was recovered. There is no reason to disbelieve the I.O. PW-26 as far as the recovery of knife and trouser from the accused are concerned.

11. Thus it would be seen from the above that the evidence of PW-1 has been sufficiently corroborated by the medical evidence, namely injury certificate exh. 51 which suggests the injury received by the complainant in which according to the witness was sustained while trying to snatch knife from the accused and rescue deceased Bhalabhai. His say is further corroborated by the report of the Serologist exh. 84. There does not seem any reason for PW-1 and 11 to falsely implicate the accused.

12. It is suggested from the evidence of PW-15 Pravinbhai Jugabhai that on the date of the incident at about 6.45 p.m. he was returning to his house from Mehul Printing. At that time he saw accused Purshottam Lakha going on cycle carrying open knife with blood; that Purshottam was sitting on the career of the cycle. As far as the evidence of PW-15 is concerned it is sought to be suggested that soon after the incident PW-15 saw the accused going on cycle keeping open knife in his hand which had blood on it.

In our opinion, the evidence of PW-15 in absence of any corroboration does not deserve any credit since no person who is involved in an incident like the present one would go on cycle keeping open knife in his hand with blood on it. The evidence of this witness deserves to be discarded. However it will not make any difference as far as the involvement of the accused in the occurrence is concerned as the same has been witnessed by PW-1 disclosing the name of the accused as the assailant to PW-11 as pointed out above.

It is suggested from the evidence on record that the accused produced mudamal knife and as deposed by PW-1 in the incident in the public place he inflicted knife blows on Bhalabhai and was holding the knife in a public place in breach of Notification under section 37 (1) of the Bombay Police Act prohibiting carrying/possessing weapon in a public place.

13. Exh. 13 is the map pertaining to the place of incident. According to PW-1 the incident took place opposite shop of Gandubhai. Perusal of exh. 13 suggests

that at point No.4 the incident took place . Panchnama exh. 40 also suggests blood having been found at this place. In Exh. 13 point no. 7 is the place where Bhalabhai was shifted in injured condition from point No.4. Panchnama exh. 40 also suggests that blood was also found at this place, i.e. at point no. 7 shown in exh. 13. It is suggested from exh. 40 as well as exh. 13 and also evidence of prosecution witness that in front of shop of Gandubhai there is open plot and the incident took place opposite the shop of Gandubhai. The places at Point No.4 as well as point no. 7 and other places shown in exh. 13 are in the open plot opposite the shop of Gandubhai. Thus it is sufficiently suggested that the incident took place at a distance of 35 ft. at the place shown as point no.4 in exh. 13, and as disclosed from the evidence Bhalabhai was shifted to the place shown as point No. 7 in exh. 13 where he succumbed to the injuries and his dead body was put at this place just opposite the electric pole shown as point No.11 in exh. 13. Thus evidence of PW-1 has been corroborated on all material particulars by the evidence on record. It may be appreciated that the incident took place on 30-6-1993. The evidence is recorded after 1 year and 3 months. Some addition, improvements, discrepancies would be quite natural but that does not shake the credibility of the witnesses. The contradictions brought on record through evidence of the panch witness as well as PW-26 are not material so as to discard/ignore evidence of prosecution witnesses particularly PW-1 and 11.

14. In our opinion, on overall consideration of the evidence the involvement of the appellant convict Purshottam Lakha is proved beyond all reasonable doubt and the trial Court is perfectly justified in finding the appellant convict guilty for the offence under section 302 I.P. Code and offence under section 135 of Bombay Police Act, and it is proved by reliable and cogent evidence that appellant-convict Purshottam Lakha inflicted knife blows on deceased Bhalabhai at about 6.45 p.m. on 30-6-1993 in Velnathpara on Rajkot-Morbi road and Bhalabhai succumbed to the said injuries.

15. In the result the appeal fails. The conviction recorded and sentence imposed against the appellant convict - Purshottam Lakhabhai Koli by the Trial Court are confirmed.

Dt: 30-9-2003

[N.G. Nandi, J]

[M.C. Patel, J]

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