

**HIGH COURT OF GUJARAT (D.B.)****SOMAJI NATHAJI**  
*Versus*  
**STATE OF GUJARAT****Date of Decision:** 24 July 1998**Citation:** 1998 LawSuit(Guj) 369**Hon'ble Judges:** [J N Bhatt](#), [A K Trivedi](#)**Eq. Citations:** 1999 CrLR 24, **1998 3 GCD 2445****Case Type:** Criminal Appeal**Case No:** 867 of 1992**Subject:** Criminal**Acts Referred:**[Indian Penal Code, 1860 Sec 324](#), [Sec 34](#), [Sec 302](#)**Final Decision:** Appeal dismissed**Advocates:** [R C Jani](#)**Cases Referred in (+): 1**

**[1]** The appellants were sent up for trial before the Sessions Court at Mehsana upon a charge under Sec.302 and Sec.324 read with Sec 34 of IPC for committing murder of one deceased Somaji Bhupatji and for causing serious injuries with deadly weapons to the complainant. Keshaji Bhupatji for which all came to be convicted and sentenced by the Ld. Addl Sessions Judge, Mehsana for the said charges by the impugned judgment and order, dated 13 1993 which is precisely assailed before us in this appeal by the original accused through jail, and we have provided services of an advocate under the Legal Aid Scheme for their defence.

**[2]** Few material facts giving rise to this conviction appeal may shortly be stated just the prosecution case has been that on 7/11/1991 at about 3.00 p.m. appellants who are the original accused persons had formed and entertained a common intention to commit murder of deceased Somaji Bhupati and to cause voluntary hurt with deadly weapons to the body of the deceased complainant Keshaji Bhupatji Pursuant to the

common intention the appellants who are hereinafter referred to as the accused persons for the sake of convenience and brevity armed with weapons.

**[3]** The original accused Nos. 1 & 2 (appellant Nos 1 & 2 respectively) were armed with sticks and original accuse No.3 (appellant No.3) was armed with dharia had accused No .4 (appellant No .4) was armed with sword. The accused persons caused intentionally murder of deceased Somaji Bhupatji by inflicting blows of deadly weapons held by them Accused nos 1 & 2 gave stick blows and accused No 3 gave dharia blow and accused No.4 gave sword blow.

**[4]** The complainant injured Keshaji Bhupatji was also attacked and accused No 4 inflicted injuries on his person by using sword. That is how the accused persons came to be charged for having committed offence punishable under secs.302 & 324 read with Sec .34 of IPC by the Trial Court which they denied and came to be tried. The trial Court upon the appreciation facts and circumstances and examination of evidence held the accused persons guilty for the offence punishable under Sec 302 read with Sec.34 of IPC and awarded imprisonment for life for committing murder of deceased Somaji Bhupatji Pursuant to the common intention entertained by them they also came to be convicted and for the offences punishable under Sec .324 read with Sec .34 IPC no separate sentence is recorded by the trial Court.

**[5]** In support of the charges the prosecution relied on the evidence of 13 PWs and also on documentary evidence to which reference will be made by this court as and when required at an appropriate juncture..The prosecution also ascribed deep-seated motive for commission of crime in question.

**[6]** The deceased Somaji Bhupati and his brother Keshaji Bhupatji and his son Rauchandaji were returning at about 4.00 p.m from a function which was organised to celebrate on new year day which is popularly known in the local colloquial language as Rawana. When they reached near the house of one Thakore Savanji Galabji at about 4.00 p.m., at that time, accused persons armed with weapons came there and accosted them. The deceased asked the accused No. 3 Chhanaji Malaji as to why he and other accused were abusing yesterday and at that time accused No. 3 replied that yesterday only abuses were given but today like that on that day of incident blows will be given to kill him. Accused No. 3 at that time was armed with dharia, accused No, 4 Khodaji was armed with sword and accused No. 1 Somaji and accused No. 2 Parbatji were armed with stick. Thereafter, all the four accused persons started beating the deceased Somaji, Accused Nos. 1 & 2 gave stick blows and accused No. 3 gave dharia blow on the head and face and accused No. 4 Khodaji gave blows with sword, as a result of which the deceased fell down and succumbed to said injuries there and then, and the son of the deceased started crying whereas the brother of the deceased

Keshaji tried to intervene, At that time, he also sustained serious injuries on account of blows of sword given by the accused No. 4. One PW. Amtaji Bijalji who came running there also tried to intervene. Therefore all the accused persons fled away from the venue of offence. PW. Amtaji was also injured on his finger. The son of the deceased went to his uncle's field to inform him and injured PW. Keshaji and Amtaji remained in the meanwhile near the dead body, The complaint was recorded by the police in the afternoon as narrated by the injured complainant Keshaji.

**[7]** Pw. No. 1 Dr. S.M. Naik who had performed autopsy and who is examined at Exh. 18 has clearly testified in his evidence that there were following marks of external injuries which are highlighted in Column No. 17 of the Post Mortem report produced at Exh. 19 at page No. 61 :

1. Incise wound 2 CM behind the Rt. ear going forward and downward crossing the midline extending lower border of Lt. jaw 2 CM in front of Lt. jaw angle, Deep muscle trached, deep verelsa and maditote cut, length about 9 inches to 2 cm width.
2. I.w. oblique Rt. tempero-ocipital region 8 cm x scalp deep.
3. I.w. oblique Rt. fronts pariatal region 10 cm x 1.5 cm I.W. behind the Rt. ear adjusting postilobhule of Rt. ear 6 cm x 1 cm Rt. lower lobule cut.
4. I.w. arrested flap on Rt. cheek. 5 cm diameter.
5. I.w. 6 cm x 1.5 cm on Lt. frontopartal region besides the midline.
6. I.w. 4 cm x 1 cm Rt. F/A post side middle 1/2.
7. I.w. 3cm x 1 cm Rt. F/A upper 1.3.
8. I.w. 5 cm x latflexor aspect of Lt. wrist Jt.
9. 2 Cm antusion in front of Lt. shoulder Jt.
10. 4 Cm antusion on Rt. claricle middle part.
11. I.w. on Rt. thigh upper part 3 cm x 1 cm.
12. I.w. Rt scapular region. 5 cm x bone deep oblique.

**[8]** According to the version of Dr. Naik that the injuries sustained by the deceased were ante-mortem and all the external injuries except 9 & 10 were possibly by sharp cutting instruments like dharia and sword whereas the external injuries 9 & 10 as

aforesaid were possibly by infliction of stick blows. The external injury No. 1 was individually sufficient and remaining injuries were collectively sufficient in ordinary course of nature to cause death, as per the version of Dr. Naik. The cause of death, according to Dr. Naik, was shock due to haemorrhage and multiple injuries on the head and neck. The medical evidence supports the prosecution case.

**[9]** Pw. 2 Babuji Majhuji Thakore at Exh. 20 was working as Circle Inspector at Vadnagar area in Kheralu at the relevant time, and he has prepared, with the help of panchas, the map and panchnama of venue of offence. The offence came to be registered against the accused persons vide Cr. Reg. No. 195/91 of Vadnagar PS. The incident occurred on the public road in village Nawa Delwada of Kheralu Taluka.

**[10]** Pw. 3 son of the deceased Rauchandji Somaji is examined at Exh. 22. He has fully supported the prosecution case. He is the eye witness. It is very clear from his evidence that accused No. 1 Somaji and accused No. 2 Bhupatji were armed with sticks and accused No. 3 Chhanaji was armed with dharia and accused No. 4 Khodaji was armed with sword. According to his evidence when they were returning home after the celebration of new year and reached near the house of Savaji Galabji accused persons came there with arms and his father deceased Somaji asked the accused No. 3 Chhanaji and others as to why they abused yesterday to which Chhanaji replied saying that yesterday only abuses were given but today his life will be taken. Thereafter the accused started giving blows. The accused No. 3 Chhanaji gave dharia blow on the head and the face of the deceased and accused No. 4 gave sword blows and the accused Nos. 1 & 2 gave stick blows on the person of the deceased as a result of which the deceased fell down and sustained serious injuries and succumbed to the same there and then. The evidence of eye witness Rauchandji is quite reliable and he has fully supported the prosecution case.

**[11]** The PW- 4 eye witness Keshaji Bhupatji is examined at Exh. 23. His evidence is also quite dependable and rightly relied on by the Trial Court. He is an injured eye witness. It is very clear from his evidence that the accused persons who were armed with weapons started inflicting blows on the person of his brother deceased Somaji. Accused Nos. 1 & 2 gave stick blows, accused No. 3 gave dharia blow and accused No. 4 gave sword blows. Despite searching cross-examination his evidence has remained unshaken. He has also sustained three injuries. When he tried to intervene, in the course of attack made by the accused on the deceased, accused No. 4 Khodarji gave two sword blows on the person of the complainant. One blow was given on the left hand and the second one was given on the abdomen. In the meantime, PW. Amtaji Bijalji reached the venue and he tried to help the injured persons as a result of which the accused persons ran away from the venue. He had also lodged a complaint before the police at the earliest point of time. The Trial Court has rightly placed reliance on the

evidence of the injured eye witness Keshaji whose evidence has remained totally unimpeachable.

**[12]** B.d. Rabari of Vadnagar PS on 7.11.1991. It is produced at Exh. 51. It is also upon the basis of cryptic message and the entry in the police dairy came to be made at Vadnagar PS. Entry No. 15 was recorded by the PSO, Vadnagar PS on the basis of telephonic message given by one Shivaji Chaturji in which it was mentioned that there was serious commission of serious crime of murder as Somaji Bhupatji, who was aged 50, was killed. One brother Of the deceased Katiji Bhupatji informed the said Police Constable Shivaji Chaturji who in turn informed the PSO, Vadnagar over telephone. That is how the Entry No. 15 produced at Exh. 46, a telephone message entered in the said dairy came to be made which are produced at Exh. 46 & 47. After having read the entry No. 15 in the police dairy recorded by the PSO of Vadnagar PS on the complaint made by the injured Keshaji to the PSI Mr. Rabari we find that the view taken by the Trial Court in treating the complaint made by the injured Keshaji in detail and recorded by Mr. Rabari within 2 and 1/2 hours of the incident is quite justified as the telephonic entry recorded by the PSO on the, basis of one Police Constable who was in the hospital who was informed by the brother of the deceased and it is nothing but telephone messages. Therefore, the FIR Exh. 55 fully corroborates the version of the complainant in the prosecution.

**[13]** Pw 5 Amtaji Brialji Thakore examined at Exh.24 who had actually reached the venue and had witnessed the incident and had intervened and had tried to ward off the further blows and in that process he had also sustained injury on his finger. His evidence also fully reinforces the prosecution case. The Medical Officer Dr. K.S.Patel who was working in visnagar civil hospital at the relevant time is examined as PW 7 at Exh.26 who had seen and examined the injuries sustained by the eye witness Keshaji, the brother of the deceased. The medical certificate in respect of the injuries sustained by Keshaji is produced at Exh.27 The injuries had sustained the following three injuries.

- 1.Incised wound at 3cm x 0.5 cm x 1cm deep excessive bleeding at vertical direction of post aspect of upper 1/3 part of Lt forearm.
2. Incised wound at 0.6cm x 0.2 cm x 0.5cm deep at Rt. epigretic region of abdomen.
- 3.Incised wound at 0.5cm x 0.2 cm x 0.5cm deep at below 1 cm of injury No.2 at Rt. epigretic region of abdomen.

It is very clear from Medical evidence of Dr.Patel that the aforesaid injuries were incise wounds and were possibly by sharp cutting instruments. Medical evidence of

Dr.Patel is also fully supporting the version of the complainant.

**[14]** The deep seated motive ascribed by the prosecution for commission of crime is also proved to the halt. In fact it appears from the evidence of prosecution that there was longstanding group rivalry between the deceased and the accused party. It is very clear from the evidence that the accused No.1 Somaji Nathaji was working is Sarpanch and deceased Somaji Bhupatji was working as Deputy Sarpanch in the village Nawa-Delwada since long prior to the time of incident. It also appears that they were in the opposite camps. It is clearly established from the evidence of prosecution it the deceased Somaji being the Deputy Sarpanch of the village had filed a criminal complaint against the accused. No Somaji who was working as Sarpanch and other accused persons for illegal felling of trees. This aspect is not even disputed.

**[15]** There was another aspect which also supports the motive put of the prosecution case. The decease Somaji being a public servant and working as Upa Surpanch had scolded the members of the accused party against indecent behaviour of Dhanaji Kalaji with Sajjanba. This aspect is also clearly established by the prosecution.

**[16]** In so far as motive put is concerned there is one another aspects with requires serious consideration. There is no dispute about the fact that 15 years before the brother of the deceased i.e.Amaraji was murdered. In that murder trial accused persons in this trial were arranged is accused persons Of course the acquittal was the outcome of the sessions case In short, the deceased his family and associated on one hand and on the other hand the accused and their associated were divided in to two groups and were having their group rivalry since long. So the deep-seated motive ascribed by the prosecution in commission of offence under consideration is established without any doubt Even without motive the culpability of the accused persons could be established by the prosecution but the proof of motive lends more reinforcement to the authenticity of prosecution case.

**[17]** The Ld. Advocate Mr. R.C. Jani who was appointed for the defence of the accused under Legal Aid Scheme his placed reliance on a decision of the Apex court in the case of Ram Jattan & ors. State of UP, reported in AIR 1994 SC 1130. He has contended relying on the said decision that the accused persons are entitled, to benefit of some doubt and therefore they can not be held guilty for the offences punishable under Sec. 302 IPC but at the best could be convicted under Sec.304 Part II for causing the death of Somaji After having read the said decision we find that it is not applicable to the facts of the present case for the, reason in that, case the deceased had sustained multiple injuries inflicted by 12 accused persons on vital parts. The common intention to cause death was not present Medical report did not certify the injuries sustained by the deceased were sufficient in ordinary course to cause death. Therefore the

conviction recorded by the trial Court and confirmed by the High Court under Sec.302 IPC came to be converted into offence under sec 304 Part II IPC and the benefit was extended to accused persons. In that case the deceased had sustained 11 injuries and there were 12 accused persons and in the fight of facts of that case the conviction was altered from Secs 302 to 304 Part II read with Sec. 149. The factual scenario emerging in the present case is altogether different. The common intention ascribed by the prosecution for the commission of crime has been succinctly established from the surrounding circumstances and facts.

**[18]** It would be interesting to mention the observations made by the Hon'ble Apex Court in Ram Jattan is State of U.P. (Supra). It is clearly observed that the common object has to be gathered or inferred from various circumstances like nature of weapon, force used and injuries that are caused. In the present case the accused persons gave serious blows. Accused No.3 gave fatal dharia blow on the head and face of the sword by accused No.4 and with sticks by deceased and with sticks by accused Nos 1 & 2 So applying the aforesaid test and observations it can safely be concluded that the common intention of the accused persons coupled with long drawn and longstanding group rivalry between the deceased party and the accused party the common intention is spelt out as, alleged by the prosecution The common intention therefore was to cause serious injuries and cause death of Somaji and to cause injuries to Keshaji

**[19]** It can very well be visualised from the analysis and appraisal of the evidence of the PWs that out of first four witnesses there are two eye witnesses and two other witnesses have sustained injuries in the course of altercation Of course, PW. No. 3 Rauchandji is the complainant and eye witness but the son of the deceased PW No 4 Keshaji Bhupatji is not only an eye witness but is also an injured witness who sustained injuries in the Incident itself. similarly, PW 5 Amtaji Bijalji is also an eye witness and he had also sustained injuries in the Course of incident. It is also true they are the relatives of the deceased person .It is also equally settled that the evidence of relatives', more so, when they are eye witnesses ordinarily should not be discarded or discredited only upon the fact of their relationship with the deceased On the contrary, their anxiety will be to see that the real assailants are brought to book and they can, not presume involvement of innocent persons in place of real criminals Apart from that evidence of eye witnesses is found quite trustworthy and radiating imprint of unvarnished truth supported by FIR which came to be lodged at the earliest point of time and corroborated by the medical evidence

**[20]** It may also be stated that several celebrated principles are articulated in case of appreciation of testimony of an injured witness, and those aspects must be kept in mind while evaluating and appreciating such evidence.

(I) Their presence at the time and venue of offence becomes doubtless.

(Ii) They would not be interested or have no reason to the real assailants and to implicate the accused persons.

(Iii) Of course, an individual mind works differently in different situations and may have different perceptions. Therefore, in the event of any exaggeration or even in case of embellishment in the testimony, ipso-facto, would not constitute a basis to discredit and/or to discard the whole testimony.

Equally true is the proposition settled that inconsequential and insignificant contradictions or microlvel discrepancies which do not affect main or broad substratum of the prosecution case then in that case no undue importance could be attached to such contradictions and discrepancies which may occur on account of variety of reasons. For example, lapse of time resulting into loss of memory, power of observations, power of perception or due to faulty or stereotype modus operandi of the investigation. The main anxiety of the court in such cases is to see as to whether upon a broad substratum the injured witness's testimony lends reinforcement to the prosecution version or not.

**[21]** Moreover, the court must also remember that in case on account of conditioning of mind or tendency even amongst truthful witnesses to exaggerate or to make an attempt to embellish with a view to back up or spoil the real version, in such a factual scenario the best course for the court would be to discard exaggeration, get rid of discrepancies and falsehood but not to discredit the main core of the version of the evidence.

**[22]** Again in case where doubt is raised in respect of certain aspects or the facts deposed by the witnesses, the proper remedy or the course open for the court is to omit or ignore that fact if it does not go to the root of the matter or the prosecution story. So long as a substratum of the main core of the prosecution remains unimpeachable, microlevel discrepancies or some insignificant contradictions should not be given undue significance or attachment.

**[23]** In our view, the prosecution has succinctly established the complicity of the accused persons arising out of the common intention, the manner and mode in which the attack was made, the method and type with which the deadly weapons like dharia and swords were used in commission of crime, the presence of all the accused persons at the venue of offence with deadly weapons when deceased and the injured were returning back home after attending a celebration party in the wake of New Year, and there is no case that they are armed with weapons, there is no case that had made any attempt to attack. Again, upon tracing the past and strong motive to commit the



offence in question has been succinctly established. Therefore, where are such several other factors and circumstances which would give rise to emergence of an inference of common intention. The Trial Court, therefore, has rightly invoked the concept of common intention and has rightly convicted the accused persons. We, therefore, find no substance in this appeal which needs to be rejected being meritless. Accordingly, this appeal stands dismissed. Since all the accused persons are reported to be in jail, no further order is required to be passed for their arrest.

