

# The Haren Pandya Judgment: Dissection of a Botched Investigation

SARIM NAVED

The acquittal of the 12 accused in the 2003 murder of Gujarat Bharatiya Janata Party leader Haren Pandya brings out all that can go wrong in high-profile cases where “terrorism” is invoked to convict those who are rounded up for a criminal act. Investigation and prosecution end up becoming an exercise to prove a theory, not necessarily to find out the truth. Even if a reinvestigation is ordered of the Pandya murder, it is now unlikely that the guilty will be brought to book.

The Haren Pandya murder case, which attracted a degree of coverage and scrutiny owing to the high-profile status of the victim who was a senior leader of the state unit of the Bharatiya Janata Party and earlier also a minister in the state government, serves as a reminder of many fundamental facts about our criminal justice system.

First, the Gujarat High Court’s acquittal of all the accused is a strong statement against the existing investigative techniques where scientific and technological scrutiny is ignored in favour of unreliable witnesses and so-called confessions. Second, it is a reminder that laws like the Prevention of Terrorism Act 2002 (POTA) can have a dangerous effect on the administration of justice by allowing investigators to become complacent and theorise on the basis of insufficient information and (often forced) confessions instead of seeking actively and persistently to find out what really happened. Third, it affirms the fact that public safety as well as state security cannot be assured by a system which takes eight years to exonerate 12 persons of the crime of murder, for the simple reason that this delay has ensured that the real culprits are now hardly likely to be identified.

In the words of justice D H Waghela, who spoke on behalf of a Gujarat High Court bench consisting of himself and justice J C Upadhyaya (in para 23 of the judgment).

What clearly stands out from the record of the present case is that the investigation in the case of murder of Shri Haren Pandya has all throughout been botched up and blinkered and has left a lot to be desired. The investigating officers concerned ought to be held accountable for their ineptitude resulting into injustice, huge harassment of many persons concerned and enormous waste of public resources and public time of the courts.

To a layperson, the image of a criminal investigation comes from watching films and television. While investigators are usually portrayed as sleuths who can figure out the clues and catch the culprit with one breathtaking deduction after another, there is another genre of cinema, especially in Hindi cinema, where the investigators are portrayed as being clumsy and unfortunately buffoonish. This case brings the latter image to mind.

The case made by the prosecution is as follows: Haren Pandya left his house on the morning of 26 March 2003. He was going to the Law Gardens in Ahmedabad for his morning walk, and he took his car, a white Maruti, to go from his home to the Law Gardens. As he reached his destination and parked his car, a man came and shot him through the window of his car. This window was partially open, and five shots were claimed to have been fired at Pandya who had been driving the car himself and was alone in the car. The prosecution claimed to have an eyewitness who could testify to seeing Mohd Asghar Ali (Accused No 1 in this case) shoot Haren Pandya. The investigators then figured out that there were 11 other individuals who had been part of this conspiracy and arrested them as well. A straightforward case as it stands, but one that turned out to be completely at variance with the evidence collected.

## Lapses in Investigation

First, the Central Bureau of Investigation (CBI), which was drafted in as the investigating agency for the case, failed to examine Pandya’s wife and the members of his family to ascertain the simple fact of the time at which he left his home. This became crucial when the eyewitness, a small vendor operating from a handcart nearby, made a number of self-contradictory statements in his deposition before the trial court. He was confused about when he saw the car coming, about the details of the shooting and could not explain satisfactorily as to when his statement was finally recorded. The police personnel present on the day of the incident and later the CBI also failed to produce records of Pandya’s phone calls on that day which would not only have provided evidence of his movements but

Sarim Naved ([sarim.naved@gmail.com](mailto:sarim.naved@gmail.com)) is a Delhi-based practising lawyer.

would also have helped them to figure out the time of death by ascertaining the time at which he stopped answering his phone. Of course, the accused might still have been convicted if the CBI had been able to link the accused, at the very least, to the scene of the crime. A perusal of the judgment, however, shows that the forensic evidence collected actually proved that the sequence of events suggested by the prosecution could not possibly have happened.

### The Curious Incident of Injury No 7

Different witnesses have testified that the window on the driver's seat was open, but only to a slight degree. Witness statements range in their estimates, but the version accepted by the trial court was that the window was open a little, almost "to the measurement of a palm". This became a crucial factor because, as per medical evidence, one of the injuries to Pandya could not have happened unless he was shot from a level below his waist. This was injury No 7 which was described as

External injury No (7) has passed through skin, subcutaneous tissue, muscles, left testis and has entered abdominal cavity through pelvis from left lateral of urinary bladder. Bullet has found perforated coils of small intestine, ascending colon and has passed behind liver through posterior aspect of right abdominal wall from 10th intercostal space and is found lodged in chest muscles on back of right chest at 4th-5th ribs region. Vessels and other tissues coming in plane of bullet are lacerated and ecchymosed. Track of bullet is directed upward, slightly right and backward.

Regarding this injury, Pratik Patel, head of the forensic medicine department at V S Hospital, who had examined Pandya's body, had this to say in his cross examination,

160 Q: What is your view with regard to the injury No 7?

A: In this case, track of the bullet was directed upward, slightly right and backward. It depends on the position of a person, whether standing, sitting or inclining. In this, weapon should be on front, slightly left at the level below the scrotum.

164 Q: With regard to the Injury No 7, irrespective of the position of the victim, sitting or standing, the assailant will have to be in front left and beneath?

A: Yes.

The clear and inescapable conclusion from this opinion is that unless the assailant pushed his arm through the window, which was open for only a few inches, and shot Pandya from under his seat (a physical impossibility) the prosecution case was

untenable and, indeed, impossible. Further, the forensic team which examined the spot found no traces of cartridges near the car and no traces of gunshot residue on the car. Unless the assailant carefully cleaned up after himself, this would not have been possible. Further, the number of bullets fired by the assailant did not match with the number of injuries. To add insult to injury, even the bullets that were examined by the ballistics expert did not match with the bullets that had been extracted from the body.

### Confessional Statements

The prosecution's evidence having been disproved, the only factor left in favour of the prosecution was the confessions recorded by the accused. The appeal in the high court against the sessions court judgment did not deal only with the Haren Pandya murder case, it also dealt with an attempt on the life of one Jagdish Tiwari, some 15 days prior to the murder of Pandya. Jagdish Tiwari, a Vishwa Hindu Parishad leader in Ahmedabad, was fired at on the morning of 11 March 2003 but he managed to survive the attack. He identified Asghar Ali and Mohd Shafiuddin (Accused Nos 1 and 3 in the Pandya murder case) as the persons who had come into his shop and shot at him. Both these cases were handed over to the CBI for investigation. After these cases were brought under the purview of POTA, the confessional statements of the 12 accused were recorded. Unlike under general criminal law, special statutes like POTA (and the earlier Terrorist and Disruptive Activities (Prevention) Act as well as the current Maharashtra Control of Organised Crime Act) allow for confessions recorded by senior police officers to be considered admissible evidence. The accused in these cases almost always "confess" to police officers and then retract them at the first opportunity. However, these confessions if they are improperly recorded, or if they are in any way contradicted by the material on record, lose their evidentiary value. This is a cycle regarding police confessions that has held true for the last 25-odd years since TADA was legislated. Although a basis for conviction in certain cases, the confessions are widely distrusted as far as their value as conclusive evidence is concerned.

The same thing happened in this case as well. Once the provisions of POTA were

invoked, all the accused confessed, only to retract later. The high court has noted in its judgment that some of the accused had only confessed to the conspiracy regarding the attempted murder of Jagdish Tiwari, but such confessions were also sought to be used for the Haren Pandya murder. It was observed by the high court that the alleged confessions clashed with the other evidence on record, as far as the main accused were concerned. Apart from this, those who were convicted as co-conspirators and against whom there was no direct evidence in the first place, had allegedly confessed that they had participated in the conspiracy as Pandya had led a mob in the 2002 riots and had attacked a mosque. Regarding this facet, the high court has observed (in Para 17.3):

There was no material whatsoever to substantiate that Shri Pandya had, in fact or in perception of the victims of riots, played a leading role in the riots or caused in any way demolition of any masjid. Therefore, the object and intent of taking revenge and striking terror through his murder was provided with no basis except the dialogues narrated in the confessional statements.

### Conspiracy and the Jagdish Tiwari Case

As such, all the accused were acquitted on the charge of murdering Pandya and conspiracy and abetment thereof. However, they were all convicted for the attempted murder of Jagdish Tiwari and for conspiring and abetting that offence. The high court has, however, clarified that this conviction is not based on merits but based on a concession from the lawyers for the accused that they would not press their case

if the appeals were partly allowed on merits so as to set aside conviction for the offence under section 302 of IPC and the sentences were reduced accordingly, the appellants would not and do not insist upon acquittals or decision on merits regarding convictions for the other offences (Para 6 of the judgment).

In response to this, the high court accepted this concession observing, in paragraph 23 of the judgment, that

In view of the concession made for the appellants, as recorded in para 6 herein, and in view of the voluminous record and number of controversies about each piece of important evidence, it was found to be unnecessary to deal with and discuss each and every argument addressed by learned counsel on both sides. However, it is clarified that we are unable

to endorse the general conclusions drawn in para 32 of the impugned judgment...

As the last line in this extract mentions, the contents of paragraph 32 of the trial court's judgment have not been accepted by the high court. Paragraph 32 of the trial court's judgment details the court's conclusion that there was a clear pre-planned conspiracy to commit terrorist activities within Gujarat and to specifically target BJP and VHP leaders. It is extremely significant that the high court has said what it has, that there really is no evidence of such conspiracy. Apart from the confessional statements of the accused persons, which of course have been discredited thoroughly, the prosecution did not bring a shred of evidence before the court that would

suggest that any such conspiracy existed.

As far as merits of the Tiwari case are concerned, as pointed out above, the high court has hinted that it is not convinced about the terrorist conspiracy which the prosecution had alleged in both these cases. Pursuant to the concession made by the lawyers for the accused and accepted by the prosecution, while most of the accused were released after their prison sentences had been reduced to the sentence already undergone, accused No 1 Ali Asghar has to serve two more months of his sentence while two others remain in jail serving a life term in another case.

Cases which involve terrorist activities tend to attain a political hue. Success or failure in these cases is seen as a test of

governance itself. In such cases, to allow for the investigating agency to enjoy longer periods of police custody as well as the ability to record confessions (both are features of the erstwhile POTA, while the provisions for longer period in police custody exist under the Unlawful Activities Prevention Act, which is the current national anti-terror law) is to offer to them a great temptation.

Investigation and prosecution end up becoming an exercise to prove a theory, and not necessarily to find out the truth. Even if reinvestigation of the Haren Pandya case is ordered today, it is extremely unlikely, given the passage of time, that the real culprits can be brought to book. What we need is not harsher laws but better trained and motivated people to enforce our existing laws.