

Babuhai Ranchodbhai Patel And Another vs State Of Gujarat on 26 November, 1993

Equivalent citations: AIR1994SC1400, 1994CRILJ2099, JT1993(6)SC549, 1993(4)SCALE550, (1994)1SCC410, 1994(1)UJ180(SC), AIR 1994 SUPREME COURT 1400, 1994 AIR SCW 1802, (1994) 2 SCR 208 (SC), 1994 CRI. L. J. 2099, (1994) 2 CURCRIR 1194, 1995 APLJ(CRI) 5, (1994) 2 JT 108 (SC), 1994 ALLAPPCAS (CRI) 303, 1995 BLJR 1 6, (1994) 2 CRICJ 351, (1995) 1 EASTCRIC 374, (1994) 1 FAC 342, 1994 CALCRILR 121

Bench: S. Mohan, G.N. Ray

ORDER

K. Jayachandra Reddy, J.

1. These two appeals are directed against the judgment of the High Court of Gujarat whereby acquittal of the two appellants of murder charge was set aside and the High Court convicted them under Section 302 I.P.C. and sentenced each of them to undergo imprisonment for life. The two appellants (original accused Nos. 1 and 2) were tried along with three others for offences punishable under Sections 302, 324, 326 read with Sections 143, 147, 148 and 149 I.P.C. The trial Judge convicted the two appellants under Section 304 Part II I.P.C. and sentenced each of them to suffer five years' R.I. and to pay a fine of Rs. 5,000/- in default of payment of which to suffer one year's R.I. The other three accused were convicted under Section 324 I.P.C. and sentenced to six months' R.I. The two appellants, A-1 and A-2 preferred an appeal against their conviction under Section 304 Part II I.P.C. and the State also filed an appeal against their acquittal of the murder charge. The State also filed another appeal for enhancement of sentence. The other accused who were convicted for minor offences also preferred an appeal. The High Court dismissed the appeal filed by the two appellants and allowed the appeal filed by the State against them and convicted them under Section 302 I.P.C. as stated above. The sentence of fine was also confirmed. The other appeal filed by the State for enhancement of sentence was dismissed. We are not concerned with the convictions and sentences of the other three accused in these appeals.

2. The prosecution case is as follows.

The deceased Babubhai Visabhai and the first appellant Babubhai Ranchhodbhai had a dispute about right of way regarding their agricultural land and the first appellant filed a suit in which a Court Commissioner was to make a local inspection and send a report. On 4th May, 1990 at about

1.15 P.M. the deceased, his son Praveen, P.W.4 and the complainant Prabhudas, P.W.2 went to the place of incident alongwith two panchas. Likewise the first appellant (A-1) with the other accused including two of his panchas went there. In the presence of the Court Commissioner there was hot exchange of words between the two parties while the panchnama was being made on a point about depth of a pit. The Court Commissioner, apprehending breach of peace, left the place. Thereupon it is alleged that A-1 and A-2 took out their knives and gave blows to the deceased and to P.W.2 Prabhudas and also to P.W.4 Pravin. The other three accused are alleged to have held the victims. A report was given to the police and the injured were admitted in the hospital. The deceased died on the way. After the inquest was held, the dead body was sent for post-mortem. The Doctor, P.W. 1 conducted the post-mortem on the dead body of the deceased and he found one vertical stab wound on the spinal region at the level of 10th rib and Ors. stab wound over lower back of chest. On internal examination he found that injury No. 1 had passed through peritoneum and penetrating through the right lobe of liver and the death was due to shock and haemorrhage due to injury to the liver. The Doctor also found injuries on P.W.4 and also on P.W.2. The accused when examined under Section 313 Cr.P.C. pleaded not guilty. A-2, however, gave a complaint against the deceased and others for offences punishable under Sections 323 and 324 I.P.C. stating that in the presence of the Court Commissioner the deceased and his people attacked them. The Doctor no doubt found some injuries on A-2 but the Doctor having examined the injuries on A-2 opined that they were self-inflicted. Therefore the police concluded that A-2 has given a false complaint.

3. The prosecution in the instant case mainly relied on the evidence of P.Ws. 2, 4 and 5 out of which two witnesses are injured. The trial court accepted the evidence of the eye-witnesses and held that there was an unlawful assembly and during the course of occurrence the deceased and the two witnesses received injuries. The trial court also accepted their evidence regarding the participation of A-1 and A-2 to hold that the whole occurrence took place in sudden manner and that the accused have not taken any undue advantage or acted in a cruel manner and that the other accused had not participated in the occurrence. Therefore they are entitled to acquittal of murder charge. But so far as A-1 and A-2 are concerned, they used the knives with the knowledge that they were likely to cause the death and therefore they would be liable under Section 304 Part II I.P.C. The High Court considered the evidence of the three eye-witnesses and came to the conclusion that their evidence established beyond all reasonable doubt that these two accused inflicted injuries on the deceased which resulted in the death of the deceased. The High Court also held that there was no common object or intention on the part of A-3, A-4 and A-5. So far as A-1 and A-2 namely the appellants are concerned, the High Court held that they have inflicted the injuries on the deceased as well as on P.Ws. 2 and 4. The High Court also examined the plea of self-defence pleaded by A-2 and negatived the same. The High Court, however, held that the fact that these two accused came armed with knives and used them on mere exchange of words would show that they had a common intention to attack the deceased and therefore they were liable under Sections 302/34 I.P.C. and accordingly convicted them. Though they are also convicted for other offences for causing injuries to the witnesses, no separate sentence was awarded. The sentence of fine was, however, confirmed by the High Court.

4. Learned counsel appearing for the appellants submitted that the finding of the trial court that the appellants committed only an offence punishable under Section 304 Part II I.P.C. is a correct one

and the High Court erred in converting the same to one of murder. Learned counsel also submitted that there was a sudden quarrel and a fight and A-1 inflicted only one injury which unfortunately proved fatal and the other injury attributed to A-2 was only a simple injury and under those circumstances neither Clause I nor Clause III of Section 300 I.P.C. are attracted.

5. The evidence of P.Ws.2, 4 and 5 established beyond all reasonable doubt that A-1 inflicted injury on the spinal region which proved fatal. The description of the injury itself would show that the same was inflicted with force with a knife. The injury passed through peritoneum and penetrating through the interior surface of right lobe of liver. There can not be any doubt that he intended to inflict that injury which is found to be sufficient in the ordinary course of nature to cause death. Even if there was a sudden quarrel that can not be a ground to hold that he had only the knowledge. The intention for the purpose of Clause III of Section 300 I.P.C. has to be inferred from the facts and circumstances in each case. One can understand if there had been some grappling or struggle between A-1 and the deceased and in the course of which if he came to inflict an injury perhaps a doubt may arise whether he aimed and intended to cause that particular injury during that grappling or struggle. But in this case the evidence is that he straight went and attacked the deceased with a knife inflicting such a serious injury and not only that he also inflicted injuries on the two witnesses with the weapon. These circumstances would attract Clause III of Section 300 I.P.C. Therefore an offence under Section 302 I.P.C. is clearly made out against him. The High Court has convicted both A-1 and A-2 under Sections 302/34 I.P.C. Having regard to the fact that it was a sudden affair and that A-2 inflicted only a simple injury, it is difficult to hold that he had the common intention with A-1 to commit the murder of the deceased. We think it would be unsafe to convict A-2 also for the offence of murder. The injury inflicted by him endangered life and would be punishable under Section 326 I.P.C.

6. In the result the conviction of A-1 Babubhai Ranchhodbhai Patel under Sections 302 read with 34 I.P.C. is altered to one under Section 302 I.P.C. simpliciter but the sentence of imprisonment for life is confirmed. So far as A-2 Mohanbhai Bhagwanbhai Patel is concerned, his conviction under Sections 302/34 I.P.C. and sentence of imprisonment for life awarded thereunder are set aside. Instead he is convicted under Section 326 I.P.C. and sentenced to undergo R.I. for five years. The sentence of the fine with default clause against both the appellants is, however, confirmed. The conviction of both the appellants under Section 135 of the Bombay Police Act and sentence of S.I. for 4 months and fine of Rs. 100/- each with default clause are also confirmed. Accordingly the appeals are dismissed so far as A-1 is concerned and partly allowed so far as A-2 is concerned.