Supreme Court of India
Babubhai Ranchodbhaipatel vs State Of Gujarat on 26 November, 1993
Equivalent citations: 1994 AIR 1400, 1994 SCC (1) 410
Author: K J Reddy
Bench: Reddy, K. Jayachandra (J)

PETITIONER:
BABUBHAI RANCHODBHAIPATEL

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT26/11/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
MOHAN, S. (J)
RAY, G.N. (J)

CITATION:
1994 AIR 1400 1994 SCC (1) 410
JT 1993 (6) 549 1993 SCALE (4)550

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- These 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 Sections 302 IPC and sentenced each of them to undergo imprisonment for life. The two appellants (original accused 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 IPC. The trial Judge convicted the two appellants under Section 304, Part 11, IPC 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 IPC 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 11, IPC 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 IPC 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 Bababhai 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 May 4, 1990 at about 1.15 p.m. the deceased, his son Praveen, PW 4 and the complainant Prabhudas, PW 2 went to the place of incident along with 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 PW 2 Prabhudas and also to PW 4 Praveen. 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 postmortem. The Doctor, PW 1 conducted the postmortem 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 another stab wound over lower back of chest. On internal examination he found that injury No. 1 had passed through peritoneum and penetrated through the right lobe of liver and the death was due to shock and hemorrhage due to injury to the liver. The Doctor also found injuries on PW 4 and also on PW 2. The accused when examined under Section 313 CrPC pleaded not guilty. A-2, however, gave a complaint against the deceased and others for offences punishable under Sections 323 land 324 IPC 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 PWs 2, 4 and 5 out of which two witnesses are injured. The trial court accepted the evidence of the eyewitnesses 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 a 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 11, IPC. The High Court considered the evidence of the three eyewitnesses 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 PWs 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 IPC 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 11, IPC 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- ] 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 1 nor Clause III of Section 300 IPC are attracted.

5. The evidence of PWs 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 penetrated through the interior surface of right lobe of liver. There cannot 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 cannot be a ground to hold that he had only the knowledge. The intention for the purpose of Clause 3rdly of Section 300 IPC 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 went straight 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 3rdly of Section 300 IPC. Therefore an offence under Section 302 IPC is clearly made out against him. The High Court has convicted both A-1 and A-2 under Sections 302/34 IPC. 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 IPC.

6. In the result the conviction of A-1 Babubhai Ranchhodbhai Patel under Sections 302 read with 34 IPC is altered to one under Section 302 IPC 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 IPC and sentence of imprisonment for life awarded thereunder are set aside. Instead he is convicted under Section 326 IPC and sentenced to undergo R.I. for five years. The sentence of 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.

BRIJ MOHAN V.STATE OF RAJASTHAN (N.P.Singh,J.) The Judgment of the Court was delivered by N.P. SINGH, J.- The three appellants, Brij Mohan, Gulla and Barchia, were convicted under Sections 396, 397, 450 and 397/149 of the Penal Code by the learned Additional Sessions Judge, who passed sentence of death under Section 396 against each of the appellants and various terms of imprisonment under the remaining sections. The High Court confirmed the conviction and the sentence against each of the three appellants, including the death sentence. On basis of leave granted by this Court, the appellants have questioned, the legality of their conviction and sentence.

2. The prosecution case is that Chiranji Lal (PW 7) and the inmates of his family were sleeping in their house in the night between October 1 1 and 12, 1983 in Village Baswa. At about 1.00 a.m., Chiranji Lal heard the ladies of his family weeping and crying. He came in his courtyard and saw two or three persons giving blows to Smt Gora (PW 6) and Smt Gulab (deceased). The culprits also gave blows to Chiranji Lal (PW 7). In the meantime his brother's wife Smt Saroj (PW 8) came to help them and she was also given blows. Some of the culprits were standing outside the house. One of them fired a gunshot. Hearing the gunshot, Mool Chand (deceased) rushed to the house of Chiranji La] (PW 7). The culprits assaulted him with Pharsies and Lathies. Panna Lal (deceased) whose house was also near the house of Chiranji Lal also rushed to the spot and he was shot dead by the persons, who were standing outside the house. Smt Shakuntla (PW 14) was also assaulted and beaten when she tried to resist the culprits. Bheru Lal (deceased) whose house is also situated nearby came near the house of Chiranji Lal and one of the culprits shot at him causing his death on the spot. The culprits thereafter assaulted with tin boxes, suitcases, containing clothes, silver and gold ornaments, utensils and currency notes.

3. Ram Swaroop (PW 1), the brother of Chiranji Lal, who had also rushed to the spot hearing the gunshots, saw six or seven persons going towards the Nallah with bags, boxes and guns in their hands. He found Moo] Chand, Panna Lal, Bheru Lal, Smt Gulab, Smt Gora (PW 6), Chiranji Lal (PW 7), and Smt Saroj (PW 8) lying injured. He immediately rushed to the police outpost and lodged a report (Ex. P-1) at about 2.15 a.m. The Police Bandikui registered a case on the basis of the said statement. Jai Singh (PW 34) arrived at the spot and inspected the site. The injured persons were sent to the Government Hospital. Mool Chand, Panna Lal, Bheru Lal and Smt Gulab were declared to be dead. The postmortem examination on the dead bodies of Panna La] and Bheru La] was conducted by Dr B.S. Thakuria (PW 15), who was of the opinion that the death was caused due to gunshot injuries. The postmortem examination of Smt Gulab and Moo] Chand was conducted by Dr P.S. Agrawal (PW 19). He noticed multiple ante-mortem injuries on the dead bodies and according to him, the cause of death was the fracture of skulls. The investigating officer found six fired 12-bore cartridges lying scattered. He also noticed foot impressions around the place of incident, on basis of which he got prepared moulds of the footprints. Smt Shakuntla (PW 14) filed the list of looted properties. Chiranji Lal (PW 7) also gave the list of the stolen properties. The investigation continued but no clue could be found.

4. On November 15, 1983, Shashi Kant (PW 16), the then Station House Officer (hereinafter referred to as the 'SHO') Kherli, Alwar, had an encounter during the night near a hillock with some dacoits and after exchange of gunshots he arrested six persons four men and two women. The four men, who were arrested after an encounter, were the appellants Brij Mohan, Gulla, Barchia and Nahar

Singh (who died during trial). After the arrest, on search, country-made pistol, some fired and live cartridges, one barrel of 12-bore gun, apart from clothes and silver ornaments were found in possession of the appellants. For that a separate case was registered and investigation proceeded. However, as the modus operandi of the dacoities committed in the instant case at Baswa and in the case pending at Police Station, Kherli, was common, the SHO, Shashi Kant (PW 16) addressed a letter (Ex. P-36) on November 27, 1983 to the SHO, Police Station, Bandikui and sent under scaled packet the articles recovered from the accused persons at the encounter by Kherli Police. Ram Kripal (PW 37), the SHO, Police Station Bandikui, who had taken up the investigation in respect of the instant case went to District Jail, Alwar, on January 12, 1984 and arrested the appellants and Nahar Singh aforesaid and brought them to Bandikui Sub-Jail on January 13, 1984. The test identification of these appellants along with Nahar Singh (deceased) was arranged on January 13, 1984 itself. The test identification was conducted by the Judicial Magistrate, Shri O.P. Gupta (PW 17). At the said test identification, eleven witnesses correctly identified these appellants.

5. Consequent to information furnished by the accused persons, while they were in police custody, on January 19, 1984, some clothes, utensils and gold and silver ornaments looted in the dacoity at Baswa were recovered which had been kept hidden and concealed in the house of the appellant Barchia. The specimen moulds of the footprints of the appellants were taken, which were sent along with the footprints lifted from the place near the occurrence, for examination to the Finger Print Bureau, Jaipur. On examination, it transpired that both the footprints tallied with each other. The six empty cartridges lifted from the place of occurrence at Village Baswa were found to have been fired from the pistol and barrel of the SBBL gun recovered from the appellants in the encounter on November 15, 1983. The trial court convicted the appellants under different sections of the Penal Code referred to above and sentenced the appellants to death, as already mentioned, for offence under Section 396. The conviction and sentence of the appellants were confirmed by the High Court, which is being questioned, in the present appeals.

6. Mr Garg, appearing amicus curiae for the appellants, first challenged the claim made by the witnesses, that they had identified the appellants, during the occurrence as well as at the test identification. According to him, as the dacoity was committed during the night in a house, unless it is established on basis of reliable evidence that there was some source of light in which the witnesses could have identified the culprits, any claim of identification of the culprits by the witnesses should not be accepted, especially, when in the first information report as well as in the statements recorded during the investigation, no source of light was disclosed. It cannot be disputed that in cases relating to dacoity, the identification by the witnesses is the main evidence, as such the prosecution has to satisfy, that the witnesses were in a position to identify the culprits, during the commission of the dacoity. This claim is later tested at the test identification, which although not a substantive evidence but is a mode to verify the claim of the witnesses before they identify the accused persons in court. Any such claim that the witnesses identified the culprits during the commission of the crime, has to be examined by the court with reference to the circumstances of a particular case. The court has to be satisfied that there was not only ample opportunity for the witnesses to identify the culprits but they had identified them with the help of some light either in the house or outside.

7. In the present case, all the witnesses have asserted that electric light was there in the house, as well as on the road, when the dacoity was committed. The trial court as well as the High Court had dealt with this aspect of the matter in detail. The factum of there being electric connection in the house and on the road was not challenged on behalf of the appellants before the trial court. Only a suggestion was given that during the commission of the dacoity there was no supply of the electricity. Apart from a suggestion, there is nothing on the record on the basis of which it can be held that although the village had electric connections and electric light was in the house, but just at the time of commission of the dacoity there was a power failure. The claim of the witnesses regarding identification of the culprits in the electric light, cannot be rejected merely on the ground that this fact was not mentioned in the first information report or in the statements made during investigation. It appears that as the village had electricity in the houses and on roads, the informant as well as the witnesses proceeded on the assumption that they were not required to disclose the means of identification by them because that was not at all a relevant fact, necessary to be mentioned, in the first information report or in their statements before the police. In villages where there is no electricity and a claim is made regarding identification of the culprits during commission of dacoity, witnesses are expected to disclose the source of light by which they have identified the culprits during the night.

8. It was then urged that the SHO, Kherli, Alwar, who arrested these appellants in an encounter on November 15, 1983, got them falsely implicated even in the present case, by writing the aforesaid letter dated November 27, 1983 to SHO, Police Station Bandikui. It was also suggested that before the test identification was held on January 13, 1984, the appellants were shown to the witnesses. Reference was made to suggestions given to the witnesses that they were made to identify the appellants, before they were put up for the test identification. This has always been a ground in dacoity cases to challenge the identification by witnesses at a test identification by claiming that the police officer had shown the suspects to the witnesses before they were put up for test identification. Before accepting the identification by the witnesses at a test identification, the court has to first consider the objection to such identification. Although, this task is not very easy, but the court has to examine on the basis of the materials on record as to whether actually the suspects, who were to be put up for test identification, had already been shown to the witnesses. In the instant case, it is an admitted position that SHO, Police Station, Bandikui, went to District Jail, Alwar, on January 12, 1984 and took custody of the appellants in connection with the present case and brought them to Bandikui and lodged them in Sub-Jail on January 13, 1984. Same day, the test identification was held in the presence of the Judicial Magistrate, Shri O.P. Gupta (PW 17), in which as many as 11 persons from Baswa participated and they correctly identified the appellants, although they had been mixed up with 11 others at the time of the test identification. If the SHO (PW 37) wanted to first get the appellants identified by the witnesses, in normal course, it was not expected that he would have held the test identification on January 13, 1984 itself, the day the appellants were brought to Bandikui. There was no difficulty in fixing the test identification on any later date and in the meantime, the appellants could have been shown to the witnesses. But the promptness with which the test identification was held, after the appellants were taken into custody in connection with the present case, is a circumstance, which satisfies the conscience of the Court about the genuineness and fairness of the test identification. When the appellants were produced before the Magistrate on January13, 1984 for being remanded to custody, it was specifically mentioned in the

order-sheet that they had been produced baparda i.e. their faceshad been concealed. This precaution was necessary, so that the witnesses may not see the appellants, while being produced for remand before the Magistrate.

9. It was pointed out, on behalf of the appellants, that the aforesaid test identification was held virtually after three months of the occurrence and as such it was not safe, to trust such identification. It is true that with lapse of time, the memory of the witnesses, who have seen the culprits at the time of the commission of the dacoity gets dimmer and dimmer, and the earliest the test identification is held, it inspires more faith about the fairness of the test identification. But no time-limit can be fixed for holding a test identification, after which the investigating officer will be debarred from putting the suspects for test identification. While accepting the position that such test identifications should be held at the earliest, at the same time it cannot be ignored that it is not always within the reach of the investigating officer or up to him to hold such test identification. Any test identification can be held only if some persons are arrested, who are suspected to have participated in the dacoity in question. The position will be different where in spite of such suspects being in custody, the test identification is postponed, there being no reasonable cause for the same. Once the investigating officer suspects that persons arrested are accused in connection with a particular dacoity, they should be put up for test identification at the earliest. It is an imperative duty on the part of the investigating officer to put up such suspects at test identification without any delay. That gives sanctity to the test identification.

10. So far the present case is concerned, as the appellants were put on test identification within 24 hours of their arrest in connection with the present case, the identification made by the witnesses cannot be rejected merely on the ground that it was not possible for them to identify after lapse of a period of three months. This was not an ordinary case of dacoity; for commission thereof, four persons were killed, one of them being a lady. The gruesome and callous manner, in which the dacoity was committed by the culprits must have left a deep impression on the minds of the witnesses, who had occasion to see such culprits in the electric light during the course of commission of assault, firing and removal of the articles from the house in question. This deep impression will also include the facial impression of the culprits, which in normal course must not have been erased only within a period of three months.

11. So far the recovery of the articles on basis of the information given by the three appellants from the residence of the appellant Barchia is concerned, the investigating officer as well as the witnesses, who witnessed the recovery have fully supported the prosecution case. The trial court as well as the High Court have examined the different aspects relating to the said recovery and have come to the conclusion that the articles removed during the dacoity had been concealed in the different parts of the residence of the appellant Barchia and were recovered pursuant to the information given by the three appellants to the investigating officer. The only objection taken on behalf of the appellants before this Court is that it looked unnatural that stolen articles would have been kept at different places by the three appellants but within the same compound i.e. the residence of the appellant Barchia. It is very difficult for court to say as to how a set of culprits, would have behaved after commission of the dacoity, in respect of disposal or concealment of the booty. According to us, there is nothing unnatural or improbable on the part of the appellants in keeping their share of the stolen

articles, concealed in the residence of one of the appellants.

12. In the present case, the moulds of the footprints which had been compared with the moulds prepared of the footprints of the appellants after their arrest was an important piece of evidence. Unfortunately, such moulds were not produced before the trial court and only the expert proved his opinion. The trial court accepted that circumstance, but the High Court has rejected the same on the ground that prosecution should have produced the moulds of the footprints, before the trial court. The same is the position in respect of the cartridges found on the spot of the occurrence. That has also been discarded by the High Court on the ground that they were not produced before the trial court. We have doubt about the correctness of the approach of both the courts. But, even if the two circumstances, referred to above, are not taken into consideration, the identification of the appellants by 11 witnesses, coupled with the recovery made of the stolen articles, pursuant to the information given by the appellants, prove the prosecution case beyond all reasonable doubt, that these appellants along with others entered into the house of Chiranji Lal (PW 7) and while committing dacoity caused the death of Moo] Chand, Panna Lal, Bheru Lal and Smt Gulab.

13. The facts of the present case present a very tragic situation in which for removal of certain ornaments and other household articles, the appellants have taken the lives of four persons, which depicts the cruel and callous personalities of the appellants. But the question which still remains for consideration is as to whether it will be just and proper to affirm even the sentences of death passed against the three appellants, after a lapse of 10 years since the offence was committed. A Constitution Bench of this Court in the case of Bachan Singh v. State of Punjab' held that the death penalty as an alternative punishment is not unreasonable and it is in public interest, but at the same time it was pointed out that legislative policy outlined in Section 354(3) was that for persons convicted for an offence, where it is open to the court concerned to impose a sentence of death as well as imprisonment for life, "life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

14. Indeed, the appellants caused death of four persons and that too for greed. The question, however, is, should they be awarded the extreme penalty of death? Keeping in view the facts and circumstances of the case, and particularly the accepted prosecution case that both Brij Mohan and Barchia, who are alleged to be armed with firearms, did not even enter the house to commit the dacoity and remained outside the house and caused the death of two persons outside the house, it was only the other accused persons who went inside the house differently armed, the number of injuries inflicted by them on the deceased inside the house and the weapons used in causing those injuries, while committing dacoity and not keeping or using the firearms, which were otherwise available, it is not possible to say that it is the "rarest of the rare cases" which may warrant the imposition of the sentence of death for the occurrence which occurred more than a decade ago. In our opinion, it will meet the ends of justice, keeping in view the peculiar facts and circumstances of the case, if we substitute the sentence of death with that of sentence for imprisonment for life on all the appellants while maintaining their conviction as recorded by the courts below.

15. Accordingly, the appeals are allowed to a limited extent, that the sentence of death passed against the three appellants is substituted by life imprisonment, with this modification in sentence, the appeals are dismissed. 1 (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898