IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 505 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI sd/-

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Approved for Reporting	Yes	No
		no

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STATE OF GUJARAT
Versus
BABU BHIMA DODIYA & ORS.

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Appearance:
MR ROHAN H RAVAL ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s) No. 1
ABATED for the Opponent(s)/Respondent(s) No. 2,3,5
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1,4,6
MR RUSHABH R SHAH(5314) for the Opponent(s)/Respondent(s) No. 1,4,6

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 08/10/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Being aggrieved and dissatisfied with the judgment and order of acquittal dated 27.02.2002 passed by the learned Additional Sessions Judge, Jamnagar, in Sessions Case No.90 of

1999 dated 27.02.2002, whereby the respondents-accused Nos.1 to 6 came to be acquitted, by extending the benefit of doubt under Section 235(1) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), of the offences punishable under Sections 394, 397 and 506(2) of the Indian Penal Code (for short 'I.P.C.') read with Section 135(1) of the Bombay Police Act (for short, 'the B.P. Act'), the appellant has preferred the appeal under Section 378 (1), (3) of the Cr.P.C.

2. For brevity and convenience, parties are referred to as per their original status before the learned Sessions Court.

2.1 Brief facts of the case are as under:

3. The complainant, a resident of Solapur in the State of Maharashtra, who earned his livelihood by seeking alms, had been residing for about two years at the Rukshmani Temple, Dwarka, along with two other witnesses, namely Kanpuri Maharaj and Pancham Maharaj. The priest of the temple, who resided at Sudamapuri, Dwarka, paid them a nominal daily sum for looking after the temple. The complainant and the witnesses, after seeking alms during the day, would ordinarily sleep at the temple at night.

3.1 On the night of 26.04.1999, a feast was held at the temple and the priest left at about 23:00 hours upon its conclusion. The complainant and the other witnesses, thereafter slept at the temple's compound. At about 02:00 hours, stones were pelted at the temple. When Kanpuri Maharaj challenged the accused, they threatened the inmates with death and directed them to cover

themselves with blankets and to remain silent. The accused assaulted the complainant and the witnesses with fists and kicks. The accused, numbering about seven to eight, broke open the door of the sanctum sanctorum, entered the temple, and after assaulting the complainant and the other witnesses with a pipe, a knife and stones, robbed silver and gold articles including silver umbrellas, plates, bowls, crowns, a gold necklace and sarees, together with the iron cupboard in which some of the articles were kept. In the course of the incident, the complainant sustained an injury on his back, Kanpuri Maharaj sustained a knife injury on his left hand, and another witnesses sustained an injury on his head. The accused remained at the temple for about half an hour and, while leaving, threatened the inmates with death should they move from the spot before morning. The value of the property stated to have been looted was Rs.45,000/-.

3.2 Out of fear, the complainant and the other witnesses remained at the temple until about 04:00 hours, where-after the complainant proceeded to the residence of the priest and then to the house of the priest's brother, and narrated the whole incident. The injured witnesses were taken to the Government Hospital for treatment. On 27.04.1999 at about 08:00 hours, the complainant lodged the complaint at Dwarka Police Station against seven to eight unknown persons, and stated that he would be able to identify some of them. The complaint was registered as G.R. No.32/1999 for the offences punishable under Sections 452, 457 and 395 of the I.P.C. and Section 135(1) of the B.P. Act.

3.3 The investigation was initially undertaken by the then Police Sub-Inspector, Dwarka Police Station, who visited the place of offence, drew the Panchnama and recorded the statements of the witnesses present. Thereafter, the investigation was entrusted to the Circle Police Inspector, who, on the basis of the *modus operandi* and information received, suspected the involvement of a gang of some indigenous people. During the course of the investigation, four to five persons were noticed running away on seeing the police. They were chased, and four of them were apprehended.

3.4 On their personal search in the presence of Panchas, articles stated to have been looted in the incident were recovered, and they were arrested. Further accused were subsequently apprehended, and property was recovered from them as well. Discovery Panchnamas were drawn with regard to the weapons, and an identification parade was held before the learned Executive Magistrate. Upon completion of the investigation, a charge-sheet was filed against the accused. As the offences under Sections 394 and 397 of the I.P.C. are exclusively triable by the Court of Session, the case was committed to the learned Sessions Court under Section 209 of the Code and, after transfer, came to be tried as Sessions Case No.90 of 1999.

3.5 The learned Sessions Court framed the charge against the accused Nos.1 to 6 for the offences punishable under Sections 394, 397 and 506(2) of the I.P.C. and Section 135(1) of the B.P.

Act. All the accused pleaded not guilty and claimed to be tried. Upon conclusion of the trial, the learned Sessions Court, by the impugned judgment and order dated 27.02.2002, acquitted the accused Nos.1 to 6 of all the charges under Section 235(1) of the Cr.P.C., by extending the benefit of doubt. Thus, the appellant – complainant has preferred the present appeal.

4. Submissions made on behalf of the State are as under:

4.1 It is submitted that the impugned judgment and order of acquittal is illegal, erroneous and contrary to law and to the evidence on record. The learned Sessions Court has erred in not properly appreciating the evidence of the eyewitnesses, who are also the injured witnesses. Their presence at the place of offence is beyond doubt, as they sustained injuries in the course of the same incident, and their testimony, being consistent on the manner of the assault and the weapons used, ought not to have been discarded. The medical evidence also supports the version of the injured witnesses, but the learned Sessions Court has not properly considered the same.

4.2 It is submitted that the learned Sessions Court has further failed to properly appreciate the evidence of the Panchas to the Discovery Panchnama, which proves the recovery of the looted articles and the weapons from the accused, and the unexplained recovery of the looted articles shortly after the offence is a strong incriminating circumstance. The learned Sessions Court has also erred in not believing the evidence with respect to the identification parade, which was duly conducted before the learned Executive Magistrate and corroborates the ocular

version.

4.3 It is submitted that the view taken by the learned Sessions Court is not a plausible one and that the impugned judgment and order of acquittal deserves to be quashed and set aside.

5. Submissions made on behalf of the respondent are as under:

5.1 It is submitted that the learned Sessions Court, upon due appreciation of the evidence on record, has rightly held that no case was made out against the respondent-accused. It is submitted that the impugned judgment and order is just, legal and proper, and that it reflects a plausible view reasonably possible on the evidence, and that it does not warrant any interference by this Court. It is, therefore, urged that the appeal may be dismissed.

6. We have heard learned Counsels for the respective parties, and carefully adduced the oral as well as the documentary evidences adduced before the learned Sessions Court.

7. The case of the prosecution falls into two parts: first, whether the incident of robbery actually took place at the stated time and place?; and second, whether the respondents-accused were the persons who committed it?.

8. The occurrence of the robbery at the Rukshmani temple at about 02:00 hours on 27.04.1999 is proved by the consistent

evidence of the four injured eyewitnesses, namely the complainant - Rajaram Ramchandra (P.W.2, Exh.22), Ramchandra NageshwarRao (P.W.3, Exh.24), Gulabrai Ayodhyadas (P.W.13, Exh.52) and Ramsangh Gangaram (P.W.14, Exh.56).

8.1 Each of them has described the injuries inflicted on them in the course of the incident. The complainant - Rajaram Ramchandra (P.W.2) stated that one of the assailants, who wore a khaki under-pant, and another, who carried an iron pipe, pushed him onto a cot and struck him on the back. P.W.3 - Ramchandra NageshwarRao stated that he was struck on the leg by an assailant, which caused giddiness, and was also kicked. P.W.13 - Gulabrai Ayodhyadas stated that he sustained an injury to the little finger of his left hand. P.W.14 - Ramsangh Gangaram stated that he was struck on the head and kicked in the abdomen by the assailant. The witnesses further stated that the assailant in khaki under-pant struck the complainant with a pipe, and that the assailant in the pant struck Kanpuri Maharaj on the hand with a pipe. The injuries are supported by the medical evidence of Dr. Bankimchandra Chandulal Jethwa (P.W.1, Exh.14). Therefore, the learned Sessions Court has rightly held the occurrence to be proved, and the same is not in dispute.

9. The only question is whether the respondents-accused were the assailants or not. As the assailants were strangers to the witnesses and the incident occurred at night, the

prosecution case rests on identification and on the recoveries and discoveries (Exhs.30 and 32), and it was incumbent on the prosecution to prove these by reliable evidence. The evidence of the injured witnesses, though reliable on the occurrence, does not by itself establish the identity of the accused.

10. Further, the prosecution has not established that the witnesses had a fair opportunity to see and remember the assailants. The incident took place at about 02:00 hours, and the witnesses were asleep. The assailants threw blankets over them and threatened them, and they lay covered until the assailants left. No prosecution witnesses have spoken of any source of light at the temple. The complainant - Rajaram Ramchandra (P.W.2) alone claimed in his examination-in-chief that it was a moonlit night. He admitted in cross-examination that the complaint made no mention of moonlight, or of one assailant standing near him and another near Kanpuri Maharaj. He also admitted that he did not remember the attire of the assailants beyond under-pant, and that he gave the police no description or identifying mark of any assailant. In his examination-in-chief he attributed the stone-pelting by the assailant in the khaki pant, but in cross-examination he stated that the assailant who stood near him and struck him was the one he saw on waking. The claim of moonlight is thus a material improvement on the very point on which identification depends. P.W.3 - Ramchandra NageshwarRao, P.W.13 - Gulabrai Ayodhyadas and P.W.14 - Ramsangh Gangaram said nothing about any light, and none of them gave the police a description or an identifying mark. Therefore, the learned Sessions Court

has rightly found that the prosecution has not proved conditions favorable to identification.

11. The dock identification is not corroborated by the parade, and in several instances it is contradicted by it. P.W.2 - Rajaram Ramchandra identified accused Babu Bhima and Mehaji Harji in the Court and said that he had identified the same two at the test identification parade. According to the Parade Panchnama (Exh.49), he identified Nuruji Bhima and Jhanju Kaliya at the parade. P.W.3 - Ramchandra NageshwarRao identified Babu Bhima and Tarsingh Gumji in the Court, but at the parade, he identified Nuruji Bhima and Tarsingh Gumji. Only P.W.13 - Gulabrai Ayodhyadas, who identified Mehaji Harji, and P.W.14 - Ramsangh Gangaram, who identified Nuruji Bhima, were consistent at both stages. This consistency, however, does not inspire confidence. The circumstances were the same for all four witnesses, and two of them failed to identify the same accused at both stages. Neither P.W.13 - Gulabrai Ayodhyadas nor P.W.14 - Ramsangh Gangaram gave any identifying mark or explained how they were able to recognize the accused. The learned Sessions Court, thus, has rightly held and conceded the same as doubtful.

12. The test identification parade was held on 03.05.1999 before the learned Executive Magistrate (P.W.11, Exh.47; Panchnama, Exh.49), about six days after the arrest of all the accused by 28.04.1999. In the meantime, the recoveries and discoveries had taken place, the arrest was reported in the newspapers and the accused had been produced in court.

13. The temple priest, Arunbhai Dave, who was not examined, had visited the police station and could have seen the accused and the property in the lock-up, and he took the witnesses to the Circuit House. The six witnesses were kept in one room, and each returned to that room after identifying, which allowed them to pass on information. They could also see the table and chairs of the parade room. The non-suspects were local residents of Dwarka, whereas the accused are tribals from Madhya Pradesh, distinguishable by their attire. The Panch (P.W.10, Exh.46) and the learned Executive Magistrate (P.W. 11, Exh.47) said only that some accused were identified, and neither stated which witness identified which accused. The test identification parade, as held, is therefore unreliable.

14. The prosecution relied on the Recovery Panchnama (Exh.30) of articles from accused Babu Bhima, Tarsingh Gumji, Mehaji Harji and Nuruji Bhima, and on the Discovery Panchnama (Exh.32) of an iron cupboard and articles at the instance of accused Babu Bhima. These two Panchnamas were proved through two Panchas, namely, Shaileshbhai Babubhai (Exh.29) and Ashok Vallabhdas (Exh.34). Both Panchas supported the prosecution in their examination-in-chief and named the four accused. Their cross-examination, however, destroys the reliability of their evidence. The Panch Witness - Shaileshbhai Babubhai stated that he did not know the accused by name and could recognize them only by sight, and that he could not pick out accused Tarsingh Gumji, Mehaji Harji and Nuruji Bhima among the six accused in the dock. He admitted that the police gave him the names, which he repeated in the

Court. The Panch Witness - Ashok Vallabhdas identified only one accused Babu Bhima in the Court and could not recognize the other three accused, and he offered no explanation for remembering one face and forgetting the rest. Neither Panch could say which articles were recovered at which Panchnama, or from which accused. The Muddamal produced in the Court was a mixed lot, and each Panch could separate only some articles.

15. The two Panchas also contradict each other and the Panchnamas. The Panch Witness - Shaileshbhai Babubhai stated that the gilt-coated crown was produced by Tarsingh Gumji, whereas the Panch Witness - Ashok Vallabhdas stated that it was found in the cupboard discovered by accused Babu Bhima. The Panch Witness - Shaileshbhai Babubhai stated in cross-examination that the bundle of articles was not seized in his presence, and that the police told him it had been seized from the accused. He did not know whether the bundle was opened in his presence. This is consistent with the learned Sessions Court's observation that the property was seized first and the Panchnama prepared afterwards, and that the crime number was entered in the Panchnama at the outset, before the contents of the bundle were known.

16. As to Exh.32, a Discovery Panchnama ordinarily proceeds on the accused leading the police and the Panchas to the place of concealment. The Panch Witness - Ashok Vallabhdas stated that the police took the accused Babu Bhima to the place, which was open and some distance away, and that the cupboard lay in the open. This suggests that the police already knew the place,

and no real discovery under Section 27 of the Evidence Act is made out. These two Panchnamas at Exhs.30 and 32 are, therefore, not proved to be genuine.

17. Even if the recoveries were assumed to be proved, there is no evidence that the articles were the property looted from the Rukshmani temple. No priest or sadhu was present at the Panchnamas to identify them. The Police Inspector (Exh.71) stated that the temple priest, Arunbhai Dave, identified them before the police, but he was not examined, and no witness who was examined identified the articles before the police or in the Court. In these circumstances, the learned Sessions Court has rightly held that the prosecution has failed to prove either that the articles were recovered from the accused or that they belonged to the temple, and that Exhs.30 and 32 deals a heavy blow to the prosecution case. Therefore, we find no reason to take a different view.

18. Further, the recoveries and discoveries do not supply the missing link. The Panchnama of arrest and seizure (Exh.72) from accused Jhanju Kaliya and Kaliya Ramla was not proved. Both Panchas, P.W.7 (Exh.39) and P.W.8 (Exh.42), were declared hostile and did not support the prosecution even after cross-examination. P.W.7 stated that neither accused produced any article before him.

19. Of the Discovery Panchnama by Jhanju Kaliya (Exh.73), only P.W.6 Jentilal Devshi (Exh.38) was examined, and his

evidence is not reliable. His identification of the accused in the Court was hesitant, and he identified accused No.6 only when the accused was brought near him. Of the discovery of three iron rods by Nuruji Bhima (Exh.74), the Panch P.W.12 (Exh.50) turned hostile, and the second Panch was not examined. The temple priest, who is said to have identified the looted articles, was also not examined, so the articles are not proved to be those looted from the temple. Nothing has been brought to our notice to take a different view of the Panchnamas at Exhs.30 and 32., as are taken by the learned Sessions Judge.

20. The prosecution has also failed to prove the charge under Section 135(1) of the Bombay Police Act. The notification prohibiting the carrying of arms in the district, which was said to be in force at the time of the incident, was not produced at the trial, and it is therefore doubtful whether any such notification was in force. Apart from that, as the identity of the accused is itself doubtful, the witnesses have not given reliable evidence as to who carried which weapon, and the Panchas for the discovery of the weapons turned hostile. The learned Sessions Court has therefore rightly held that this charge is not proved.

21. We would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. In exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the judgment of acquittal. The Appellate Court should consider the presence of innocence of the accused and further that, the trial Court's

acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there are reasons for interference, as the same has been laid down by the Hon'ble Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67***.

22. In a nutshell, the factum of the four injured witnesses were assaulted and that articles were looted from the Rukshmani temple, is not disputed and the same even if proved is not sufficient to prove the nexus of accused, even though the evidence on the identity of the respondents-accused and on the recovery or discovery of the property at their instance is doubtful, and the benefit of that doubt must go to the accused.

23. The prosecution has, thus, failed to prove beyond reasonable doubt that the respondents-accused committed the offences punishable under Sections 394, 397 and 506(2) of the I.P.C. and Section 135(1) of the B.P. Act. The learned Sessions Court has appreciated the evidence correctly, and the view taken by it is a possible and plausible one.

24. No ground for interference is made out.

25. For the foregoing reasons, the appeal sans merit and deserves to be dismissed and accordingly, it is ***dismissed***.

26. The impugned judgment and order of acquittal dated 27.02.2002 passed by the learned Additional Sessions Judge, Jamnagar, in Sessions Case No.90 of 1999 stands confirmed.

27. Record and proceeding, if any, be sent back to the concerned Court.

sd/-
(ILESH J. VORA,J)

sd/-
(R. T. VACHHANI, J)

PARMAR KRISH

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PARMAR KRISH(HC02348), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 08/10/2026 15:58:33