IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 415 of 2001

With
R/CRIMINAL APPEAL NO. 416 of 2001

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
RASIKBHAI CHATURBHAI PATEL

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Appearance:
MR JK SHAH, APP for the Appellant(s) No. 1
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1
MR UMANG H OZA(2440) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI
Date : 04/12/2025
COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Here are the Appeals by the State against the judgment and order of acquittal.

2. Since the facts of the case and issue involved in the above appeals are identical and arise out of the same common judgment, both the appeals are taken up together and are being disposed of by this common judgment.

3. Being dissatisfied by the judgment and order passed by the learned City Sessions Judge, Ahmedabad, passed in Sessions Case Nos.318 of 1997 and 76 of 1998, dated 05.03.2011, acquitting the respondents - accused from the offence under Sections 143, 147, 149, 307, 453 and 427 of the IPC, the State has preferred instant appeals under Section 378 of the Cr.P.C.

4. This Court has heard Mr. J. K. Shah, learned Additional Public Prosecutor and Mr.Umang Oza, learned advocate, for the respective parties.

5. Brief facts giving rise to file the present appeals are that, the respondents accused were tried and prosecuted for the offence of attempt to murder. Before the incident, due to celebration of Ganesh Festival, allegedly celebrated by the accused parties, the complainant party was not happy with the said celebration, as a result, there was a dispute between two groups. In order to teach lesson, the accused formed an unlawful assembly with common object to cause fatal injuries to the other side, assembled at the place of incident, armed with deadly weapon like swords, hockey, pipes and sticks and assaulted Ishwar Rabari and others who were sitting near the Rajkiran Panshop. The incident of assault being taken place on 16.09.1991 in the noon hours. The injured Ishwar Rabari and others who were sitting on the bench nearby Panshop. According to the prosecution case, A5 Gokul Patil gave a blow upon Ishwarbhai, whereas A3 inflicted a sword blow in the stomach of Ishwarbhai. In the said incident, after the

attack the injured Ishwarbhai managed to escape from the place and in order to catch him, the accused chased him and in that process, they ransacked and caused damages to the property belongs to Vikash Association allegedly administered by Dharamsinh Rabari. On the basis of FIR, and due investigation, the accused were chargesheeted. After committal the sessions case, framed the charge and proceeded to record the evidence.

6. In the course of trial, the prosecution adduced the following oral as well as documentary evidence in support of its case:

Oral evidence - 7

PW 1 – Exh.19	Bhikhubhai Patubhai Rajput
PW 2 – Exh.27	Ishwarbhai Ranchhodbhai Rabari
PW 3 – Exh.29	Lalitkumar Jasmatbhai
PW 4 – Exh.32	Shashikant Nanndlal
PW 5 – Exh.35	Kersibhai Vasingbhai Parghi, PI
PW 6 – Exh.38	Dr. Digantbhai D. Chaudhari
PW 7 – Exh.97	Virendra Bhanuprasad Raval, PI

Documentary evidence - 9

Exh.57	Varghi from civil hospital
Exh.58	Complaint
Exh.59	report for registering the offence
Exh.60	Panchnama of scene of offence
Exh.25	Panchnama of seizure of cloth of injured Ishwarbhai
Exh.61	Panchnama of seizure of hockey and sword
Exh.40	Injury certificate
Exh.36	Dispatch note
Exh.37	FSL report

7. On conclusion of oral evidence, the trial Court recorded further statements of the accused as provided under Section 313 of the Code,

wherein, they claimed their innocence.

8. The learned Sessions Judge after appreciating and examining the oral as well as documentary evidence acquitted the accused herein for the offences with which they were charged, on the ground that, the factum of unlawful assembly being not proved by the prosecution as none of the witnesses were sure about the number of persons involved in the incident, nor the witnesses did not know the name of any of the accused and there is omission and contradiction between the statement made under Section 161 of Cr.P.C. and the statement made in the Court and considering the substantial contradiction on the aspect of identification and role attributed to the accused, reliance cannot be placed on the testimonies of witnesses.

9. In view of the aforesaid facts and circumstances, these acquittal appeals have been preferred by the State.

10. In the present case, the injuries sustained by PW:2 Ishwarbhai Rabari is not in dispute as according to say of Dr.D.D. Chaudhary, the witness sustained stabbed injuries over his abdomen. The learned Trial Court in its judgment has referred the oral testimonies of PW:1 and PW:2 (Paras-11 and 12). In Para-20 to 25, of the judgment, the learned Trial Court assigned sufficient reasons to hold that the prosecution miserably failed to prove the charge against the accused beyond reasonable doubt. In order to appreciate the contentions the para-20 to 25 extracted as under:

"20. In the instant case, I have thoroughly gone through the evidence adduced by the prosecution and on over all appreciation of evidence, it appears that the prosecution has proved that on 16/9/91 at about 11-00 P.M. to 11-30 P.M., the injured Ishwarbhai alias Botham Rabari had sustained stab wound on his abdomen and was admitted in the Civil Hospital as an indoor patient till 1/11/91. According the case of prosecution, the incident had taken place at the Raj Kiran pan centre belonging to the complainant Bhikhubhai when the said Ishwar was sitting alongwith his friend and when the accused no. 1 who was known as Bako Mehta, son of Mehta Saheb, had come with other accused armed with deadly weapons and tried assault the said Ishwarbhai. The first charge levelled against the accused is with regard to constitution of unlawful assembly under Section 143 of I.P.C. It is needless to say that for the offence under section 143 of I.P.C., the prosecution has to prove beyond reasonable doubt that there were 5 or more persons whose common object was to commit any of the acts as mentioned in Section 141 of I.P. Code. So far as number of persons present at the time of alleged incident is concerned, the prosecution has relied upon P.W. 1 complainant Bhikhubhai and P.W. 2 injured Ishwar Rabari. Now, Bhikhubhai has stated that when Ishwar was sitting alongwith Kanu and Rajendra outside his Pan centre, some 4 to 5 persons had come with sword and hockey with them and he did not know the names of any of the said persons. He has also stated that the name of Bakabhai was told by somebody after the incident and the names of other persons he came to know only 4 to 5 years back. He had identified the accused but in the cross examination had stated that the names of the accused were told by the police.

21. Now, injured P.W. 2 Ishwar Rabari has stated that at about 11-00P.M. on 16/9/91, when he was sitting with his friend outside the pan centre, some 5 to 6 persons had come and he was hit on his back by hockey and, therefore, he had run towards the pan centre and he was followed by Yasesh Mehta and Mahesh Prajapati in the said Pan Centre and thereafter Yasesh alias Bako had injured him with sword. He has specifically stated that he could identify said Bakabhai and Maheshbhai because he had seen only two persons in the pan centre and he could not identify the other persons. From the said evidence of these two witnesses, it clearly appears that none these witnesses was sure about the number of persons who had come to the place of incident, namely, pan centre of Bhikhubhai. On the contrary, these witnesses also did not know the names of any of the accused except the accused no. of 1 and according to them he was known as Bako or son of Mehta Saheb. From the evidence of P.W. 7 I.O. Virenda B. Raval, though all the accused were arrested before 23/9/91, on which date according to him the T.I. parade was fixed by the Executive Magistrate, which could not be held for technical reason, there was no second attempt made by him to arrange for T.I. parade to identify the accused by the injured witness or the complainant. Under the circumstances, except involvement of accused no. 1 Yasesh and accused no.4 Maheshkumar Raymalbhai Prajapati who were identified by the injured Ishwar in his evidence, the presence muchless the involvement of other accused in the incident has not been proved by leading any cogent evidence. The charge and the evidence in the instant case are confined to the six accused of Sessions Case No.76

of 1998 and one accused of Sessions case No. 318/97 for the alleged charge of Section 143 of I.P.C. However, since the prosecution has failed to prove the presence and involvement of the five accused out of the said seven accused, the remaining two accused Yasesh and Maheshkumar could not be held to be members of unlawful assembly, so as to be convicted for the offence under Section 143 of I.P.C. As held in 1961 SC 1787, in the Kartarsingh Vs. State of Punjab:

> *"It is only when the number of alleged assailants is definite and all of them are named, and the number of persons found to be proved to have taken part in the incident is less than five, then it cannot be held that the assailants party must have consisted of five or more persons."*

Applying the ratio of said judgment to the facts of the present case, it is required to be held that the prosecution has failed to prove that the accused had constituted an unlawful assembly as contemplated in Section 141 of I.P.Code and were guilty of offence under Section 143 of Indian Penal Code.

22. The accused have been also arraigned for the charge under Sections 147 and 149 of I.P.Code for allegedly using force of violence by using deadly weapons in prosecution of their common object as members of unlawful assembly. However, since the prosecution has failed to prove that there was unlawful assembly and since the identify and the involvement of the accused except the

accused nos.1 and 4, having not been established by the prosecution, the accused could not be held guilty of the said charges under Sections 147 or 149 of Indian Penal Code. The Hon'ble Supreme Court while dealing with the applicability of Section 149 in several categories of cases in Mohan Singh Vs. State of Punjab, AIR 1963 SC 174, has observed that:-

> *"Cases may also arise where in the charge the prosecution names five or more persons and alleges that they constituted an unlawful assembly. In such cases, if both the charge and evidence are confined to the persons named in the charge and of the persons so named two or more are acquitted leaving before the court less than five persons to be tried, Section 149 cannot be invoked."*

23. It is pertinent to note that the accused have been charged for the offence under Section 307 read with Section 149 of Indian Penal Code and the court is of the opinion that the prosecution has failed prove the charge under Section 149 of I.P.Code, however, let us appreciate the evidence adduced by the prosecution even for the offence under Section 307 I.P.C. independently against accused nos. 1 and 4 identified by the injured witness Ishwarbhai Rabari. In this regard, the oral evidence of complainant Bhikhubhai and injured Ishwarbhai is required to be appreciated in the light of evidence of the investigating officer P.W. 7 P.O. Mr. Raval and the complaint lodged before him at exh. 58. The complainant Bhikhubhai in his evidence has specifically stated that he had given complaint at about 1-30 at mid night when the police had come to his house and

he had not gone to the Civil Hospital with injured Ishwarbhai after the incident. He has admitted in his cross examination that he did know whether injured Ishwarbhai was admitted in ward no. E-4 when he had given his complaint and he had also not stated so in his complaint, whereas the I.O. in his evidence exh.49 has stated that he had taken down the complaint of complainant Bhikhubhai in the civil hospital who had brought the injured Ishwarbhai for treatment and thereafter had gone to Shardaben hospital alogwith the complainant in connection with the cross case filed by Madan Jagannath. Now in the complaint exh. 58, it has been stated that Ishwarbhai Rabari was brought in Civil Hospital in ambulance and had been admitted in ward no. E-4 and was under treatment. Thus there is contradiction in a material the evidence of the complainant Bhikhubhai and the complaint on record exh. 58 and also in the evidence of I.O. Mr. Raval as regards place and time of giving the complaint. When the complainant Bhikhubhai in his oral evidence specifically stated that he did not know at the time of lodging the complaint that Ishwarbhai was admitted in ward no. E-4, the mentioning of the said fact in the complaint creates doubt in the mind of the court as to whether the complaint given by the complainant Ishwarbhai was the same complaint which is on record at exh. 58 and whether the I.O. had recorded the correct contents of the complaint given by the complainant Bhikhubhai. The court is also not satisfied as to the place where the complaint was recorded inasmuch as the complainant has stated that he had given complaint when the police came to his house at the mid night whereas the I.O. has stated that the said not complaint was taken down when Bhikhubhai was found present in the Civil Hospital. It is true that

about 10 years of time has elapsed between the occurrence of incident and recording of evidence in the court and, therefore, the contradictions are bound to occur on record in the evidence of witnesses. However, when the witnesses have given minute details of the alleged incident, it was expected from them to state the time and place of the complaint which was very material aspect for the case of prosecution. Under the circumstances, it is doubtful whether the complaint exh. 58 relied upon by the prosecution was given immediately after the occurrence of the alleged incident or was concocted thereafter to suit the case of the prosecution.

24. So far as the injury to the injured Ishwarbhai is concerned, from the evidence of P.W. 6 Dr. Digant Chaudhary, appears that he had give only preliminary treatment to him. He has stated that he could not say whether the injured would have died, had he not been given immediate treatment. So, there is no positive evidence on record adduced by the prosecution that the injuries sustained by the injured were such injuries which would have been caused death of the injured rendering the accused guilty under section 307 I.P.Code. It is pertinent to note that in the history recorded by the doctor in the casepaper exh. 39, there is a mention about use of knife by person named Mehta whereas as per the story of prosecution witnesses, the said accused Bako alias Yasesh had used sword while injuring the injured Ishwarbhai. From the evidence of D.W. 1 Executive Magistrate also, it appears that in the statement before the Executive Magistrate, the injured had stated that he was injured with sword at night. Under the circumstances there is also no

consistency in the evidence adduced by the prosecution as regards use of weapon.

25. Moreover, the muddamal article no. 9 sword seized by the I.O. during the course of investigation allegedly seized from the place shown by accused no.1 is also not free from doubt inasmuch as there were two swords seized during the course of investigation and no panch slip was found on muddamal article no. 9 sword. The panch witness P.W. 3 Lalitbhai in whose presence the alleged sword was recovered has also turned hostile and has stated that his signature on panchnama was obtained by the police when he was on his lorry at about 12-00 at night on 20-9-91. It is also significant to note that no bloodstains were found in the Pan Centre where the injured was allegedly injured by accused no. 1. It is true that it may happen that if the incident had taken place within few seconds and the injured had run away immediately, the drops of blood would not be found at the said place. However, as per the case of prosecution, the injured was severely bleeding and had run away from the pan centre towards his house through the back door of house of Ishwarbhai Natubhai and thereafter fro the house of one Madhubhai and thereafter had jumped one wall for going to his house. The prosecution has neither examined said Ishwarbhai Patel nor Madhubhai Patel nor any other independent witness in support of the said story. If the injured was severely injured and was bleeding, the story put forth by him that he had run and jumped so long and thereafter had reached to his house is also believable. The defence has seriously disputed the identity of accused no. 1 by raising defence that Yasesh Mehta was not known as Baka Mehta or

Bako. However, there does not appear to be much substance in the said defence. The I.O. Mr. Raval himself has stated that the father of accused no.1 was police officer and therefore he knew that the said accused no. 1 Yasesh Mehta was also known as Bako Mehta and son of Mehta Saheb. It is true that the said accused no. 1 has been duly identified by the complainant Bhikhubhai and injured Ishwarbhai in their respective evidence by stating that he had injured Ishwarbhai in the pan centre by using Fabout sword, however, since the court is not satisfied that the place of occurrence of alleged incident and use of weapon and also the manner of occurrence of alleged incident, the accused no. 1 alongwith the other accused is required to be given benefit of doubt. In that view of the matter I hold that the prosecution has failed to bring home the guilt of the accused and prove charges beyond reasonable doubt and, therefore, the accused deserve to be acquitted by giving them benefit of doubt."

11. Mr.J.K. Shah, learned Additional Public Prosecutor appearing for the appellant – State, assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material. The injured eyewitness Ishwarbhai Rabari has identified the accused and his version on the aspect of injury caused by the accused is not shaken in the cross examination. In such circumstances, the learned Trial Court without sound reasons, discarded the evidence of injured witness and acquitted the accused from all the charges. It is further submitted that the learned

Trial Court has unnecessarily given weightage to the minor contradiction, however, on the core aspect of assault given by the accused on the body of the deceased remains intact and thus, the evidence of witnesses are consistent and support each other on the involvement of the accused and fatal blow given by the accused. That the medical evidence also corroborates the version of eyewitnesses. In such circumstances, the prosecution has successfully proved the charge against the accused beyond reasonable doubt.

12. In such circumstances, as referred above, it has been submitted that while acquitting the respondents accused, the trial Court has discarded and ignored the truthful, reliable and acceptable evidence and as such, no cogent reasons being assigned while discarding such evidence. Therefore, it is submitted that the conclusion of acquittal recorded by the Trial Court is contrary to the evidence on record and upon erroneous understanding of law. Thus, it is prayed that the prosecution has succeeded in proving the charge against the respondents accused and the judgment and order of acquittal be set aside and accused may be convicted and sentenced for the offence as referred above.

13. Mr.Umang Oza, learned advocate appearing for the respondents accused has submitted that the High Court in a case of Appeal against the acquittal, can interfere only when there are compelling substantial reasons for doing so and more particularly, the findings are without reasons and unreasonable and contrary to the evidence. In the facts of

the present case, the eyewitnesses are related interested witnesses and prior to the FIR, admittedly, there was a dispute with respect to Ganesh Festival Celebration as the complainant party was not happy with the celebration allegedly enjoyed by the accused parties and therefore, there are all chances of false and over implication of the accused cannot be ruled out. The area where the incident took place is a residential area and no any independent witnesses dispute of presence of the resident of that area, being examined by the prosecution. That the FIR Exh.58 was not disclosed immediately and the doctor failed to opine that the injuries sustained were likely to cause death and considering the material contradiction found in the evidence of Ishwarbhai and others, the Trial Court has rightly not believed their evidence as reliable and truthful.

14. In such circumstances, referred to above, learned counsel appearing for the respondents accused, has submitted that the Trial Court while discarding the evidence of oral testimonies of the witnesses have assigned cogent and sufficient reasons while acquitting the accused and therefore, the judgment of acquittal passed is well reasoned, legally sustainable and does not suffer any infirmity warranting interference by this Court.

15. Before proceeding to address the rival submissions, 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 bare in mind 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.

16. In the present case the issue falls for our consideration as to whether the trial Court was justified in acquitting the accused?

17. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court. In the facts of the present case, the credibility of injured witness being not relied upon by the Trial Court as the witness was not found truthfulness and trustworthy on the aspect of complicity of the accused. We have carefully examined the findings recorded by the Trial Court more particularly discussions made in Para-20 to 25 as referred above. We have carefully gone through the oral testimonies and documentary evidence relied by the prosecution. We are in agreement with the view taken by the Trial Court on the aspect of major improvement and contradiction made by the witnesses and insufficient evidence respect to injuries sustained by the witness and seizure of weapons and the procedure thereof.

18. In such circumstances, in absence of any independent evidence, the prosecution failed to prove the charge of murder against the

accused beyond reasonable doubt. Thus, therefore, the view of the Trial Court as to the credibility of the witnesses is possible and plausible view and the Trial Court while analyzing the evidence has assigned cogent and sound reasons and therefore, findings of acquittal are reasonable and based on the evidence on record and we do not find any perversity in the findings of acquittal so as to interfere. Thus, in our considered opinion, the Trial Court was justified in acquitting the accused and we are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the Court below and hence finds no reason to interfere with the same.

19. With the observations as aforesaid, the appeals are accordingly **dismissed**. The Registry is directed to send back the R & P to the Trial Court. Bail bonds are cancelled, if any, and surety is discharged.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Rakesh

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAKESH MAHESHKUMAR KOSHTI(HC00950), Principal Pvt. Secretary, at High Court of Gujarat on 09/12/2025 16:07:43