IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 186 of 2001
With
R/CRIMINAL REVISION APPLICATION NO. 77 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
DAHYABHAI JAGMALBHAI NADODA & ANR.

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Appearance:
MR RONAK B RAVAL, APP for the Appellant(s) No. 1
MR JIGAR SALVI on behalf of MR ASHISH M DAGLI(2203) for the Opponent(s)/Respondent(s) No. 1,2
Criminal Revision Application No.77 of 2001
MR ROHAN VAGHELA on behalf of MR PRAVIN GONDALIYA for the Applicant(s) No.1

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

Date : 10/12/2025
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 20.12.2000 passed by the learned Sessions Court, Ahmedabad Rural at Mirzapur in Sessions Case No.51 of 1999, whereby the respondents-accused came to be acquitted for the offences punishable

under Sections 392, 302, 201 and 120B of the Indian Penal Code, 1860 ("IPC" for short), the appellant - State has preferred the present Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short). The applicant - wife of the deceased has also filed Criminal Revision Application No.77 of 2001 under Section 401 of the Code, seeking enhancement of sentence or, in the alternative, setting aside the impugned acquittal order. Both the matters arise out of the same impugned judgment and order and are, therefore, being disposed of by this common judgment.

2. The brief facts leading to the filing of the present appeal and revision are as under:

2.1. On 03.06.1997, the Viramgam Rural Police Station received information through a telephone message from the MLA regarding a dead body lying near Khengariya Patia. Upon inquiry, it was found to be the dead body of the deceased, who was proceeding to Deesa for recovery of an amount of Rs.4,50,000/- on behalf of Dinesh & Company. The prosecution case, in short, is that the deceased was standing at the S.T. Bus Stand, Rajkot, with the said amount in a suitcase. Respondent No.1, who knew the deceased, along with respondent No.2, hatched a conspiracy to rob him. They offered the deceased a lift in their jeep (No.GJ-02-M-1938) under the pretext of proceeding to Deesa. En route, near Khengariya village, respondent No.1 inflicted a hammer blow on the deceased's head, and with the aid of a nylon string, they strangled him to death. To destroy evidence, they poured diesel on the body and set it ablaze, besides looting the suitcase containing Rs.4,50,000/-. The FIR was registered at Viramgam Rural Police Station under Sections 302, 201 and 174(b) of the Code read with relevant provisions of the IPC, bearing C.R. No.8/97, later altered to include Sections 392, 396 and 120B IPC.

2.2. The respondents-accused were arrested on 27.11.1997 and remanded to judicial custody. After investigation, a charge-sheet was filed on 06.02.1998 before the Judicial Magistrate First Class, Viramgam, registered as Criminal Case No.145/98, under Sections 120B, 396, 302 and 201 IPC. As the offence under Section 302 IPC was triable by the Court of Session, the case was committed to the learned Sessions Court, Ahmedabad Rural at Mirzapur vide order dated 21.03.1998 and registered as Sessions Case No.51/1999.

2.3. The learned Sessions Court framed charges against the respondents-accused under the aforesaid sections. The respondents-accused denied the charges and claimed trial. Upon conclusion of the prosecution evidence, the learned Sessions Court put various incriminating circumstances appearing in the evidence to the respondents-accused for their explanation under Section 313 of the Code. In their further statements, the respondents-accused denied all incriminating circumstances as false and stated that they were innocent and had been falsely implicated. After examining the oral and documentary evidence and hearing submissions from both sides, the learned Sessions Court recorded findings in favour of the respondents-accused and acquitted them of all charges by the impugned judgment and order dated 20.12.2000.

3. We have heard the learned advocates for the respective parties and carefully examined the oral and documentary evidence adduced before the learned Sessions Court. During the course of the trial, the prosecution examined a total of 27 witnesses. The details of the oral and documentary evidence are as under:

~:: Oral Evidence ::~

Sr. No.	Particular	Exh.
1	Jeevanbhai Palabhai Rathod - PW-1	7
2	Imranbhai Chandbhai - PW-2	15
3	Rafiqbhai Kalubhai - PW-3	16
4	Kishorbhai Somabhai - PW-4 (Panch Witness)	17
5	Kanubhai Popatlal Bhartiya - PW-5 (Panch Witness)	19
6	Valjibhai Kalubhai - PW-6 (Panch Witness)	22
7	Dineshchandra Ramanlal Modi - PW-7	24
8	Govindbhai Faljibhai - PW-8	27
9	Popatlal Chelabhai Vaghela - PW-9 (Sanand)	28
10	Mukeshkumar Raychandbhai - PW-10 (Panch Witness, Sanand)	29
11	Batakumar Manubhai Makhija - PW-11 (Panch Witness)	31
12	Munir Ahmed Gulam Ahmed - PW-12	34
13	Rajkubhai Khengarbhai - PW-13 (Sanand)	35
14	Hematbhai Mahadev bhai Thakkar - PW-14	36
15	Hitenbhai Bavabhai Patel - PW-15	38
16	Jayantibhai Dhanjibhai Patel - PW-16	39
17	Vallabhbhai Dharmashibhai Phaldu - PW-17	40
18	Vallabhbhai Jethabhai - PW-18	41
19	Popatlal Rupaji Mewada - PW-19 (Panch Witness)	42

20	Amrutlal Ramanlal - PW-20	44
21	Iliyaskhan Tajkhan Pathan - PW-21	48
22	Trivedi Dineshkumar Hargovindas - PW-22	49
23	Sureshkumar Ganpatram Thakkar - PW-23	55
24	Devshankar Ratilal Trivedi - PW-24 (Sanand)	56
25	Dr. Anil Lalitbhai Verma - PW-25	25
26	C.P.I. Popatji Masangji Chavda - PW-26 (Investigation Officer)	59
27	P.S.I. Jaysinh Ajitsinh Chauhan - PW-27 (Complainant/Investigation Officer)	63

~:: Documentary Evidence ::~

Sr. No.	Particular	Exh.
1	Panchnama of the Scene of Offence	8
2	Inquest Panchnama	9
3	FSL Receipt	17
4	Letter from FSL	18
5	Letter from FSL	20
6	FSL Report	21
7	FSL Report (Serology Division)	22
8	FSL Report	23

4. The learned Additional Public Prosecutor appearing for the appellant - State submitted that the impugned judgment requires

interference, primarily relying upon the circumstantial evidence chain, including the recovery of the jeep, the post-mortem report establishing homicidal death by strangulation, and the recoveries of cash from the respondents-accused. It was contended that the learned Sessions Court erred in discarding the prosecution case on hyper-technical grounds and acquitting the respondents-accused, warranting reversal and conviction.

4.1. The learned Additional Public Prosecutor further submitted that the evidence of material witnesses, including the investigation officers and panch witnesses, corroborates the prosecution story, and the acquittal is perverse, calling for interference under Section 378 of the Code.

5. The learned Advocate for the respondents-accused submitted that the impugned judgment does not call for any interference. He contended that the prosecution case is built on a faulty and biased investigation, with major lapses such as non-verification of the jeep's ownership through RTO records, failure to seize account books or vouchers from the firm, and reliance on secondary evidence without corroboration. The recoveries of cash were voluntary and unexplained in source, raising doubts about their linkage to the looted amount. No eye-witnesses were examined, and the chain of circumstances remains incomplete, failing to prove guilt beyond reasonable doubt. The revision application lacks merit as the acquittal is well-reasoned. Hence, both the appeal and revision deserve dismissal.

6. Having carefully heard the learned advocates appearing for both sides and having thoroughly examined the depositions of the witnesses, the documentary evidence on record, and the impugned judgment rendered by the learned Sessions Court, this Court finds that the entire prosecution case rests exclusively on circumstantial evidence. It is well settled that such evidence must satisfy strict and rigorous standards,

namely that it must be complete, cogent, and of such a nature as to conclusively exclude every hypothesis consistent with the innocence of the respondents-accused. The testimony of PW-27, Jaysinh Ajitsinh Chauhan (Exh.63), was relied upon to corroborate the discovery of the semi-charred dead body near Khengariya Patia on 03.06.1997. In his oral evidence, he described visible head injuries with blood oozing from the wounds and noted clear signs that the body had been set on fire using diesel. The post-mortem report, duly proved through PW-25 (Exh.25), was relied upon to establish further findings, including strangulation as the cause of death. However, during cross-examination, several serious procedural lapses were admitted, which substantially weakened the prosecution case. These included the failure to record the phone slip allegedly recovered from the pocket of the deceased in the inquest panchnama at Exh.9 and the complete failure to verify the registration details of the jeep on the date of the incident through proper RTO inquiry. These omissions strike at the root of the prosecution case and severely undermine the basic link sought to be established between the respondents-accused and the alleged offence. The matter was further compounded after the investigation was transferred to PW-26, C.P.I. Popatji Masangji Chavda, whose deposition is at Exh.59. During his cross-examination, he admitted that he had also failed to investigate the ownership and control of the jeep, despite its alleged central role in the case. These cumulative lapses and omissions clearly render the investigation deficient and give rise to a reasonable apprehension of bias.

7. The medical evidence placed on record provides clear and unambiguous conclusions. PW-25, Dr. Anil Lalitbhai Verma, who conducted the post-mortem examination, has duly proved the post-mortem report, which has been exhibited at Exh.25. His detailed examination notes establish the presence of definite ante-mortem injuries,

including multiple contused lacerated wounds on the head, distinct ligature marks encircling the neck that were deeper on the front side and relatively lighter on the backside, and extensive burn injuries covering nearly 100% of the body surface caused by the pouring of an inflammable substance. Dr. Verma has categorically stated that the cause of death was asphyxia due to strangulation and that the burning of the body occurred only after death. These conclusions are further corroborated by the FSL and serological reports, which have been marked as Exhs.21, 22, and 23. This Court finds no material whatsoever to doubt or disbelieve these medical findings. Accordingly, it stands conclusively proved that the death of the deceased was homicidal in nature and that the body was intentionally burnt after death. To this limited extent, the prosecution has succeeded in proving its case beyond all reasonable doubt.

8. The alleged recoveries of cash amounting in all to Rs.2,50,000/- are wholly unreliable and cannot be accepted as credible evidence due to fundamental defects in both documentary proof and oral testimony. The prosecution relies upon a recovery panchnama at Exh.32 and the deposition of PW-11, Batakumar Manubhai Makhija, recorded at Exh.31, along with an alleged recovery of Rs.50,000 referred to as Exh.23. However, Exh.23 is merely an FSL forwarding letter and not a recovery document. Although PW-11 deposed regarding the recovery of cash from a locked room situated in Nakoda Society, Sanand, no document establishing ownership, possession, or tenancy of that room was ever collected or produced. PW-24, Devshankar Ratilal Trivedi, whose testimony appears at Exh.56, specifically stated that he had no connection with the said premises. Further, PW-5, Kanubhai Popatlal Bhartiya, recorded at Exh.19, acted as a panch witness for an entirely different panchnama and had no role whatsoever in any cash recovery. The prosecution has confused exhibit numbers and witnesses in relation to

these alleged recoveries, rendering the entire evidence not only unreliable but also legally inadmissible, and wholly incapable of supporting a finding of guilt.

9. With regard to the alleged looted amount of Rs.4,50,000, the testimonies of several witnesses require close scrutiny. PW-15, Hitenbhai Bavabhai Patel (Exh.38), and PW-16, Jayantibhai Dhanjibhai Patel (Exh.39), stated that the deceased had received cash payments from Mant Traders, Rajkot. PW-17, Vallabhbhai Dharmashibhai Phaldu (Exh.40), further deposed about alleged grain-sale proceeds paid at the Sanand market. However, not a single cheque, cheque counterfoil, bank statement, cash book, or ledger of the firm was seized, collected, or exhibited. PW-21, Iliyaskhan Tajkhan Pathan (Exh.48), claimed to have seen the accused carrying a suitcase at Rajkot ST stand on 02.06.1997, but candidly admitted that he never saw the deceased in the vehicle. Most damagingly, PW-27 admitted during cross-examination, particularly in paragraphs 18 to 20 of Exh.63, that no effort was made to collect documentary evidence from any bank or business establishment. Consequently, neither the source nor the exact amount of the allegedly looted cash has been proved through legally acceptable evidence.

10. The alleged recovery of the jeep bearing registration number GJ-02-M-1938 is equally unsustainable and incapable of being relied upon due to serious procedural and evidentiary lapses. There exists no valid recovery panchnama for the vehicle, and Exh.20, relied upon by the prosecution, is only an FSL letter and not a recovery document. No verification regarding the ownership or registration status of the jeep on or around 02.06.1997 was ever carried out. PW-27 admitted in paragraph 15 of his deposition at Exh.63 that no inquiry was made with the RTO, even though a power-of-attorney holder had applied for release of the

vehicle without producing proper ownership documents. The investigation was further tainted when the case was transferred midway and remand was obtained from the Deesa Court instead of the competent court at Viramgam. These procedural irregularities further vitiate the alleged recovery and render it legally untenable.

11. While the prosecution has established that the death was homicidal to the limited extent that the body was recovered in a burnt condition, the entire chain of circumstantial evidence collapses due to multiple serious deficiencies. These include reliance on non-existent or wrongly numbered exhibits, the complete absence of documentary proof regarding the alleged loot, and admitted investigative lapses on the part of PW-26 and PW-27. When considered cumulatively, these shortcomings create substantial gaps in the prosecution case, making it impossible to establish a complete and reliable chain of circumstances connecting the respondents-accused with the alleged offence.

12. The prosecution case rests entirely on circumstantial evidence, yet it has failed to establish any circumstance that effectively completes the chain required to implicate the accused. Notably, even as per the prosecution, there is a complete absence of any established motive. In cases based purely on circumstantial evidence, proof of motive assumes great significance. The absence of motive, when combined with broken and unreliable circumstances, is sufficient to dismantle the prosecution case. The evidence on record does not lead to a conclusion that, in all human probability, the crime was committed by the accused and by no one else.

13. Now, reverting back to the facts of the present case, nothing sort of any such material seems to be placed on record to indicate as to motive

behind the commission of the offence in question and therefore, admittedly the whole case rests on the circumstantial evidence and considering the way in which the entire incident have been described, followed by the investigation carried out by the IO and to convict the accused in absence of any direct evidence though dealing with the case based on circumstantial evidence, the important aspect which requires to be considered are such as (i) whether circumstances relied by prosecution have been proved beyond reasonable doubt; (ii) whether those circumstances are of a definite tendency unerringly pointing towards guilt of accused; (iii) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from conclusion that within all human probability crime was committed by accused; (iv) whether they are consistent only with hypothesis of accused being guilty; and lastly (v) whether they exclude every possible hypothesis except one to be proved.

14. Upon a thorough and meticulous evaluation of the entire evidence on record, both oral and documentary, this Court is fully satisfied that the judgment of acquittal recorded by the learned Sessions Court does not call for any interference. The findings recorded are based on a proper appreciation of evidence and settled principles of law. The reasons for confirming the acquittal are therefore set out hereinafter, seriatim, without adverting to any isolated issue, in keeping with the consistent practice of this Court.

15. The medical evidence firmly establishes that the death of Girishbhai Mahadevbhai Thakkar was homicidal in nature. The post-mortem notes multiple ante-mortem injuries, contused lacerated wounds on the head, clear ligature marks indicating strangulation, and extensive burns caused by diesel, culminating in death by asphyxia. However, the mere establishment of homicidal death is only the initial step. In a case

founded exclusively on circumstantial evidence, the prosecution must further prove that every link in the chain unerringly points to the guilt of the accused while completely excluding all possibilities consistent with innocence. On this crucial aspect, the prosecution has failed.

16. The most glaring defect in the prosecution case is the complete failure to ascertain the ownership or control of the jeep bearing registration number GJ-02-M-1938 at the relevant time. Both investigating officers admitted that no RTO records were obtained, no registered owner was examined, and no Form 29 or 30 was seized. A vehicle alleged to be central to the crime remained unconnected to the accused. In the absence of basic investigation on this vital link, the entire prosecution case collapses and is left without any credible foundation.

17. The alleged recovery of Rs.2,00,000 from a locked room at Nakoda Society, Sanand, is equally doubtful. The panchnama and evidence fail to disclose who owned the premises, who possessed the key, or how the accused exercised control over it. No ownership or tenancy documents were produced. PW-24 expressly denied any tenancy arrangement. Significantly, the key was never seized. Coupled with allegations of custodial violence and irregular remand proceedings, the alleged recovery lacks voluntariness and credibility and cannot be relied upon.

18. The recovery of Rs.50,000 from respondent No.2 is equally unreliable. The panch witness failed to support the prosecution, no serial numbers were matched, no bank verification was done, and the cash could not be linked to the alleged offence. In a case where robbery is the alleged motive, such lapses strike at the heart of the prosecution case and render the recovery meaningless.

19. The prosecution has also failed to prove that the deceased was carrying Rs.4,50,000 or any large sum on the relevant date. Despite oral assertions, no account books, vouchers, bank statements, or cheque records were seized. The investigating officer admitted that he never collected bank or business records. When primary evidence of the alleged looted amount is absent, the Court is left with unsubstantiated oral claims, which cannot form the basis of conviction in a serious criminal case where the liberty of the accused is at stake.

20. In the result, the chain of circumstantial evidence is not only broken at several places but is non-existent in material segments. Several hypotheses consistent with the innocence of the respondents-accused remain open, and the prosecution has miserably failed to prove its case beyond reasonable doubt. The benefit of every such doubt must necessarily go to the accused.

21. At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of ***Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

> *"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]*
>
> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
>
> *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

22. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]*** the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"*8.1. The acquittal of the accused further strengthens the presumption of innocence;*
8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;
8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

23. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned Sessions Court, the present appeal fails and is accordingly dismissed. In light of the above, the captioned revision application is also dismissed accordingly. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MITESH VIJAYBHAI PANCHAL(HCD0065), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 10/12/2025 17:32:17