IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1408 of 2003

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
HINDU @ HINDUDA GALABHAI SOLANKI

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Appearance:
MR RONAK B RAVAL, APP for the Appellant(s) No. 1
NOTICE SERVED 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 : 18/12/2025

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

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 13.08.2003 passed by the learned Additional Sessions Judge, Palanpur, Banaskantha in Sessions Case No.32 of 2002 for the offences punishable under Sections 307, 504 of the Indian Penal Code and Section 135 of the Bombay Police Act, the appellant – State has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 (“the Code” for short).

2. The brief facts leading to the filing of the present appeal are

as under:

2.1. As per the prosecution case, on 26.11.2001 at around 9.00 p.m. near the bus stand of village Pansa, Taluka Danta, District Banaskantha, the accused Hinduda Gala Solanki, after a quarrel over liquor or money, abused the injured Badhabhai Nolabbhai, slapped him, kicked him on the stomach and thereafter stabbed him with a knife on the upper part of the stomach with intent to murder him. The injured was immediately taken to Ambaji Cottage Hospital and subsequently referred to Palanpur Civil Hospital and then Ahmedabad Civil Hospital for further treatment.

2.2. Accordingly, FIR being Ambaji Police Station I-C.R. No.73/2001 came to be registered for the aforesaid offences. After completion of investigation, charge-sheet was filed before the learned Judicial Magistrate, Danta, and the case was committed to the Sessions Court, Palanpur where it was registered as Sessions Case No.32/2002.

3. On conclusion of evidence, the Sessions Court put various incriminating circumstances to the respondent-accused under Section 313 of the Code. The respondent-accused denied all allegations and claimed to be innocent. After hearing both sides, the learned Sessions Judge acquitted the respondent-accused.

4. We have heard learned APP for the State and examined the oral and documentary evidence adduced before the sessions Court.

5. Learned APP submits that the impugned order of acquittal is required to be set aside because the evidence of the injured witness identifies the accused in Court and the medical evidence fully corroborates the ocular account. He therefore prays for allowing the appeal.

6. The incident took place on 26.11.2001 at about 9.00 p.m. in an open place near the bus stand of village Pansa. It was completely dark and, as admitted by the injured and other witnesses, there was no light. The injured and the three persons accompanying him had consumed liquor shortly before the incident. The only person who named the respondent-accused as the assailant is the injured Badhabhai Nolabbhai himself. The remaining three persons who were present at the spot either turned hostile or categorically stated that they could not identify the assailant because of darkness.

7. PW-1 Dr. Jayantibhai Ambhara Patel at Exh.11 found a single penetrating stab wound on the upper abdomen, dangerous to life and caused by a sharp cutting weapon. His evidence is reliable but does not identify the assailant. PW-2 Badhabhai Nolabbhai the injured at Exh.18 is the only witness who named and identified the accused in court. However, he admitted complete darkness, consumption of liquor, no prior acquaintance with the accused, inability to identify even the muddamal knife, and made material improvements from his police statement. No test identification parade was conducted. His solitary evidence is wholly unreliable. PW-3 Ditabhai Nolabbhai complainant-brother, at Exh.19 deposed that when the injured reached home bleeding, he only said “Hindu” had stabbed him and did not give the full name or description. He admitted another person named “Hindu” resides just behind the

bus stand in the same village, creating serious doubt about the identity of the assailant. PW-4 Babubhai Bhurabhai at Exh.21 was sitting with the injured just before the incident. He turned hostile and categorically stated that the accused had neither come there nor stabbed the injured; he left the spot before anything happened. PW-9 Dalabhai Rupabhai at Exh.36 was present at the spot and stated that someone suddenly stabbed the injured and ran away, but because of total darkness he could neither see nor identify the assailant. He learnt the name “Hinduda” only the next day from newspaper or police papers. He could not identify the accused in court. PW-10 Jorabhai Bhanabhai at Exh.37 was also with the group; he left the place while the others were arranging to drink liquor and before the stabbing took place. He knows nothing about the incident and does not know the accused. PW-5 Dhanji Kevla at Exh. 22 and PW-8 Nanabhai Virabhai Garasiya at Exh. 35 the panchas of knife discovery both turned hostile and did not support the recovery. PW-11 Investigating Officer Jagatsinh Chauhan at Exh.38 admitted that no test identification parade was ever held.

8. A significant aspect which further weakens the prosecution case is the issue of identity of the assailant. The record reveals that immediately after the incident the injured was rushed to the hospital, admitted, and examined by the doctors. At no point of time, either before the medical officer or at the earliest stage, did the injured disclose the name of the assailant. For the first time, during his deposition before the Court, the injured stated that “Hinduda” had inflicted a knife blow upon him. However, in his cross-examination, specific suggestions were put to him that another person named “Hinduda” also resides in the same locality, which fact was admitted by the injured. He further categorically deposed that he had never met the present accused prior to the

incident, had never consumed liquor with him, and had never visited the house of the accused, thereby clearly establishing absence of any prior acquaintance. The incident admittedly occurred during night hours, and therefore identification of the assailant became a crucial and determinative factor. In such circumstances, holding a test identification parade was imperative, but admittedly no such parade was conducted. The identification of the accused for the first time in Court, without any prior test identification parade and in the absence of prior acquaintance, is inherently weak and unsafe to rely upon.

9. Thus, the only evidence against the accused is the solitary testimony of the injured, which suffers from serious infirmities, absence of prior acquaintance, complete darkness, consumption of liquor, material improvements, and non-conduct of test identification parade. In such circumstances the sessions Court rightly held that it is not safe to convict the accused on the sole testimony of the injured. The medical evidence proves that a stab injury was inflicted, but the identity of the person who inflicted it has not been established beyond reasonable doubt. In the absence of any corroboration and in view of the glaring infirmities pointed out by the sessions Court, the view taken by the learned Sessions Judge is not only a possible view but the only reasonable view on the evidence on record.

10. It is settled law that in an appeal against acquittal there is a double presumption in favour of the accused. Unless the findings of the sessions Court are shown to be perverse, the appellate Court will not interfere merely because another view is possible.

11. 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]*
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> *"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.*
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> *(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."*

12. 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."*

13. In the light of the above discussion and the settled legal

position, the prosecution has failed to prove the guilt of the respondent-accused beyond reasonable doubt. The impugned judgment and order of acquittal dated 13.08.2003 passed by the learned Additional Sessions Judge, Palanpur in Sessions Case No.32 of 2002 does not call for any interference.

14. The appeal is devoid of merit and is accordingly dismissed. The judgment and order of acquittal is confirmed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: KAUSHAL MAHESHBHAI RATHOD(HCD0078), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 18/12/2025 13:03:20