IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1739 of 2004

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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THE STATE OF GUJARAT
Versus
JORSINGBHAI VASNABHAI DAMOR

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Appearance:
MR BHARGAV PANDYA, 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 : 09/12/2025

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

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 17.03.2004 passed by the learned Additional Sessions Judge, Fast Track Court No.3, Surendranagar in Sessions Case No.60/2003, whereby the respondent-accused came to be acquitted for the offences punishable under Sections 352, 323, 324, 395 and 397 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. The complainant, resident of Vadi in Sarvoday Madhyamik Gram Panchayat near Choraniya village, lodged a complaint alleging that on 20.06.1999 at about 01:30 to 02:00 hours during night, while he was sleeping at home with his wife and children, 6-7 persons armed with sticks, iron pipes and knife entered the house by breaking open the door. They assaulted the complainant and his wife on the head with the weapons, threatened the family, and looted gold-silver ornaments, cash of Rs.31,200/- and clothes worth Rs.2,400/-, totaling Rs.33,600/-. The miscreants spoke in Hindi, wore black half-pants and shirts, and were of wheatish complexion with sturdy builds. The complainant and his wife sustained head injuries and were treated at Limbdi Government Hospital. The incident was informed to the nephew and his wife, who were present nearby.

2.2. The FIR was lodged at Limbdi Police Station under Sections 395, 397, 452, 323, 324 of IPC and Section 135 of Bombay Police Act, registered as CR No.I-90/1999. After investigation, six accused were chargesheeted before the Judicial Magistrate First Class, Limbdi, registered as Criminal Case No.40/2003. The present respondent-accused was arrested on 07.04.2003.

2.3. As the Judicial Magistrate First Class lacked jurisdiction to try the offences under Sections 395 and 397 IPC, the case was committed to the Sessions Court, Surendranagar vide order dated 08.09.2003 and registered as Sessions Case No.60/2003 for trial. Upon conclusion of the prosecution evidence, the learned Sessions Judge put various incriminating circumstances appearing in the evidence to the respondent-

accused for his explanation under Section 313 of the Code. In his further statement, the respondent-accused denied all the incriminating circumstances as false and stated that he is innocent and has been falsely implicated. After examining the oral and documentary evidence and the submissions from both sides, the learned Sessions Court recorded a finding in favour of the respondent-accused and acquitted him of all charges.

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 6 witnesses. The details of the oral and documentary evidence are as under:

~:: Oral Evidence ::~

Sr. No.	Particular	Exh.
1.	Mohanbhai Dalabhai (Complainant) – PW-1	10
2.	Parvatiben Bhanjibhai – PW-2	12
3.	Bhanjibhai Bhavanbhai – PW-3	13
4.	Kankuben Mohanbhai (Wife of complainant) – PW-4	15
5.	Dr. Devjibhai Kuberbhai Parmar – PW-5	19
6.	Retired PSI Omkar Chimanlal Joshi (Investigating Officer) – PW-6	22

~:: Documentary Evidence ::~

Sr. No.	Particular	Exh.
1.	Original Complaint	11
2.	Panchnama of scene of offence	16
3.	Panchnama of place of loot	17
4.	Panchnama of identification parade of accused	18
5.	Medical certificate regarding complainant's injuries	20
6.	Medical certificate regarding injuries of Kankuben	21
7.	Panchnama regarding arrest of accused	23

4. The learned APP appearing for the appellant – State submitted that the impugned judgment requires interference, primarily relying upon the depositions of the complainant (PW-1 at Exh.10) and his wife (PW-4 at Exh.15). Their testimonies, according to the prosecution, establish the dacoity on 20.06.1999 at 01:30 to 02:00 hours by 6-7 armed miscreants, including the respondent-accused, who assaulted the victims on the head and looted property worth Rs.33,600/-. It is not in dispute that the complainant and his wife suffered head injuries requiring treatment, as supported by the medical certificates (Exh.20 and Exh.21). Hence, it was contended that the learned Sessions Court erred in acquitting the accused.

4.1. The learned APP further submitted that the evidence of other material witnesses, including PW-2 and PW-3, corroborates the prosecution case and, therefore, the acquittal warrants interference and conviction of the respondent-accused.

5. Having heard the learned APP for the appellant-State and perused the depositions of the witnesses, documentary evidence, and the judgment of the Sessions Court, it appears that the prosecution case, resting primarily on the ocular evidence of interested and related witnesses, is riddled with contradictions and lacks independent corroboration.

6. On scrutiny of the deposition of the complainant (PW-1 at Exh.10), it is evident that while he detailed the incident of dacoity, his account deviates significantly from the original complaint (Exh.11). In the complaint, he described 10 miscreants armed with sticks, iron pipes and knife, speaking Hindi, wearing black half-shirts and trousers, of wheatish complexion and sturdy build; however, in court, he reduced the number to 6-7 and claimed they spoke Gujarati, contradicting his police statement. He identified the respondent-accused as one of the four in the outer room, but admitted no specific distinguishing marks except a general sturdy build, which was common to all. Regarding the assault, he stated that his wife was hit first with a pipe, leading her to scream, after which her gold pendant was snatched, but this sequence is not corroborated by PW-4 Kankuben Mohanbhai (Wife of complainant), who claimed unconsciousness immediately upon opening the door due to a blow, without mentioning the pendant incident. The complainant's failure to mention threats to his son Lalit or nephew Bharat in the complaint, only introduced in cross-examination, further undermines credibility. Moreover, the description of looted bags—one small containing cash and one large with ornaments—contradicts PW-4's version of two bags without specifics. Such embellishments and inconsistencies render the testimony unreliable, as no court would convict solely on such wavering evidence without corroboration.

7. PW-4, the wife of the complainant (at Exh.15), deposed that upon hearing a knock during rain around midnight, she opened the door assuming it was a child, only to be assaulted on the head with a pipe, leading to unconsciousness and fall. She regained senses to see 6-7 men in the room, three with pipes and sticks, who then assaulted her husband. She identified the respondent-accused in identification parade (Exh.18) based on a cloth mark on his eye from the incident, but in cross-examination, admitted no clear recollection of weapons or specific acts by the accused, attributing blows vaguely to intoxication-like haze from injury. Her account conflicts with PW-1 (complainant) on the number of assailants with turbans (she claims three, he claims two), the language (Hindi vs. Gujarati), and the loot (she mentions two bags taken without resistance, while PW-1 describes a struggle). Critically, she did not witness the respondent-accused's specific role, and her identification relies on a post-arrest parade after 5 years, without prior test identification. The medical certificate (Exh.21) confirms head injury but attributes it to blunt trauma without linking to any weapon recovered. These contradictions, coupled with her semi-conscious state, make her evidence improbable and uncorroborated, failing the test of inherent consistency required for conviction in a dacoity case.

8. PW-2 (Parvatiben at Exh.12), wife of PW-3 and sister-in-law to PW-1, deposed that she and her husband were sleeping in an adjacent room when awakened by noises; four miscreants entered, threatened them with sticks, pipes and knife, and looted Rs.4,000/- from a suitcase. She identified the respondent-accused as one but admitted in cross-examination that he wore mixed clothes, not black as per PW-1 (Mohanbhai Dalabhai) and PW-4 (Kankuben Mohanbhai), and no face cloth; all appeared similar in height. No specific act by the accused was

attributed, and her first sighting of him post-incident was in court after five years, without parade corroboration. PW-3 (Bhanjibhai at Exh.13), her husband and nephew of PW-1, corroborated the threats in Hindi and loot of Rs.4,000/- but contradicted on assaults—claiming PW-1's nephew Bharat was hit on the head, unsupported by medical evidence or PW-1's testimony. He too identified the accused generally, without marks, and admitted all assailants looked alike. As related witnesses, their testimonies exhibit familial bias and inconsistencies with PW-1 and PW-4 on attire (black vs. mixed), language consistency, and exact number, weakening the chain of identification.

9. PW-5, Dr. Devjibhai (at Exh.19), confirmed that PW-1 (Mohanbhai Dalabhai) and PW-4 (Kankuben Mohanbhai) sustained only simple injuries on the head caused by blunt objects, which were not grievous in nature (Exh.20 and Exh.21). Significantly, the doctor found no forensic features that could connect the injuries to any particular weapon or to the accused persons. PW-6, the Investigating Officer (Exh.22), deposed in a routine manner about the procedural steps, arrest panchnama (Exh.23) and scene panchnama (Exh.16 & Exh.17), but fairly admitted that no looted ornaments, cash, weapon or blood-stained clothes were ever recovered either from the possession of the accused or at their instance. The prosecution’s attempt to show discovery of ornaments through an alleged sale to a goldsmith in Jesavada was reduced to a meaningless panchnama (Exh.23), inasmuch as the goldsmith himself denied any knowledge of the transaction and stated that the accused’s family was in Rajasthan at the relevant time, thereby rendering the entire exercise hearsay and worthless. No memorandum or discovery admissible under Section 27 of the Evidence Act was ever recorded. Furthermore, despite the arrest of the accused on 07.04.2003 (more than four years after the incident), no test identification parade was held promptly, and

the dock identification during trial (Exh.18) stands completely vitiated for want of safeguards, as laid down in ***Rameshwar Singh v. State of Jammu & Kashmir (1994) 1 SCC 116***. Thus, there is not even a shred of circumstantial evidence or recovery linking the accused to the crime.

10. The prosecution's case hinges on identification by related witnesses after an inexplicable delay, marred by contradictions on assailants' descriptions, weapons, language, and loot sequence, without independent witnesses, recoveries, or scientific evidence. The learned Sessions Court rightly appreciated these infirmities, noting the incident's occurrence in rainy night at 01:30-02:00 hours, impairing visibility, and the general resemblance among accused rendering specific identification improbable. Sole reliance on such flawed ocular evidence cannot sustain conviction, as the prosecution must prove guilt beyond reasonable doubt. The respondent-accused, entitled to benefit of doubt, cannot be linked to the dacoity or arms prohibition violation under Section 397 of IPC or Section 135 of Bombay Police Act.

11. Though the medical evidence establishes injuries, the attribution to the accused remains unproved due to lack of specificity in assaults. The panchnama of the loot place (Exh.17) notes disarray but no fingerprints or traces. Cumulatively, the evidence creates a lingering doubt, justifying acquittal, as interference in appeals against acquittal is warranted only if perverse.

12. The entire prosecution case rested upon the ocular testimony of four closely related witnesses – the complainant, his wife, his nephew and the nephew’s wife. Their accounts, when tested against each other and against their own earlier police statements, disclose serious and irreconcilable contradictions on almost every material particular. Such

pervasive inconsistencies go to the root of the incident and destroy the substratum of the prosecution story. When the foundational narrative itself keeps shifting in vital details, no court can safely act upon it to deprive a citizen of his liberty.

13. The identification of the respondent-accused is wholly unreliable and inadmissible in the eye of law. The incident occurred on a rainy night between 01:30 and 02:00 hours. Visibility was admittedly poor. Most of the assailants are said to have covered their faces with cloth. The accused was arrested more than four years after the incident. Despite his arrest, no test identification parade was conducted at the earliest reasonable opportunity. The witnesses claim to have identified him for the first time in court nearly five years after the event, and that too on the basis of vague features which are common to a large number of persons and which were never recorded contemporaneously. When visibility was limited, faces were partially covered, and an enormous time gap intervened without any controlled identification procedure, the so-called dock identification in open court after years cannot be accepted as safe or sufficient to fasten guilt on the accused.

14. There is absolutely no recovery of any incriminating article from the possession of the respondent-accused or at his residence. No looted ornaments, no cash, no weapon, and no clothes matching the description given by the witnesses were ever seized. Thus, there is not even a shred of circumstantial evidence connecting the accused with the crime. In a case of dacoity, where direct evidence is already shaky, the complete absence of any recovery or discovery considerably weakens the prosecution version and reinforces the presumption of innocence.

15. Although the medical evidence proves that the complainant and his wife did sustain simple head injuries caused by blunt objects, the evidence falls far short of establishing that these injuries were inflicted by the respondent-accused or in his presence. None of the witnesses could attribute any specific overt act to him – no witness says that this particular accused struck any particular blow with any particular weapon. The injuries, therefore, remain unconnected to the respondent-accused personally. In the absence of proof of individual participation, the mere presence of injuries on the victims cannot lead to a safe conclusion that this accused was part of the gang that caused them.

16. When the direct evidence is contradictory and unreliable, the identification is delayed, defective and unsubstantiated, and there is no corroborative evidence of any kind – no recovery, no independent witness, no forensic support – the cumulative effect is that serious and lingering doubts arise about the involvement of the respondent-accused. In a criminal trial, it is not for the accused to prove his innocence; it is the bounden duty of the prosecution to prove his guilt beyond reasonable doubt. Whereas here, the evidence leaves ample room for two views, one pointing to innocence, the view favourable to the accused must prevail. The benefit of every such doubt must necessarily go to the accused, and the order of acquittal recorded by the learned Sessions Court court, being neither perverse nor based on irrelevant considerations, calls for no interference in appeal. The dock identification of the accused, conducted for the first time in court after a lapse of five years, in the absence of any prior test identification parade and without any contemporaneous description of the assailants, is wholly devoid of evidentiary value and cannot be acted upon.

17. In the instant case, where the prosecution's case hinges on the identification of the accused as a stranger to the witnesses, with no prior acquaintance, this Court places reliance on the authoritative pronouncement of the Hon'ble Supreme Court in ***P. Sasikumar v. State Rep. by the Inspector of Police (Criminal Appeal No. 1473 of 2024, decided on 08-07-2024)***, which underscores the critical necessity of conducting a Test Identification Parade (TIP) to corroborate subsequent dock identification, particularly when the accused is arrested promptly and no substantive motive is established. The apex court, in setting aside the conviction upheld by the Madras High Court, held that the absence of TIP constitutes a fatal flaw in the investigation, rendering dock identification doubtful and insufficient to establish guilt beyond reasonable doubt, as it fails to provide the requisite assurance of reliability, especially in circumstantial evidence-based prosecutions; applying this ratio decidendi, the trial court's order acquitting the accused on grounds of flawed identification and investigative lapses is unassailable, and the State's appeal challenging the said acquittal must be dismissed, as any doubt in identification must inexorably benefit the accused, thereby upholding the principles of fair trial and presumption of innocence enshrined in our criminal jurisprudence.

18. 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."

19. 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."

20. 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 trial Court, the present appeal fails and is accordingly dismissed. 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 09/12/2025 16:25:40