

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 68 of 2002
With
R/CRIMINAL REVISION APPLICATION NO. 513 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
 BHALABHAI CHHATRABHAI BARIYA & ORS.

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Appearance:

MR BHARGAV PANDYA, APP for the Appellant(s) No. 1

ABATED for the Opponent(s)/Respondent(s) No. 1

MR VISHAL VICCHI FOR MR HARDIK H DAVE(6295) for the
 Opponent(s)/Respondent(s) No. 2,3

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

Date : 11/02/2026

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

1. Here is the Appeal filed by the Stat against the judgment and order of acquittal and the Revision Application, challenging the judgment of acquittal at the instance of original complainant.

2. We have heard learned APP Mr.Bhargav Pandya for the State, learned counsel Mr.Vishal Vicchi for learned counsel Mr.Hardik Dave, appearing for and on behalf of the respondents accused and Ms.Kruti

Shah, learned counsel appearing for the revisionist – original complainant.

3. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge at Godhra passed in Sessions Case No.99 of 1999, dated 31.08.2001, acquitting the respondents from the offence under Sections 302, 506(2), 504, read with Sections 34 and 114 of the IPC, the State has preferred instant appeal under Section 378 of the Cr.P.C, whereas the original complainant being aggrieved with the order of the acquittal filed a revision against the impugned judgment and both are taken up together and being disposed of by this common judgment.

4. Brief facts giving rise to file the present Appeal as well as Revision are that, the offence of murder being registered with Rajgadh Police Station being II-C.R.No.43 of 1998 against the three accused viz. Bhalabhai Chhatrabhai, Chhatrabhai Dabhai and Bachchubhai Chhatrabhai. On the issue of possession of agricultural land, the deceased Chemabhai came to be assaulted by the accused when he was cultivating his disputed farm. According to the prosecution case, on 01.09.1998, in the afternoon, the deceased Chemabhai was busy in his agricultural farm situated at Village Jingri, Tal.: Gogambha, and at that time, the accused no.2 Chhatrabhai Dabhi came there and objected for the agricultural activities allegedly undertaken by the deceased and also gave filthy abuses to the deceased. Meanwhile, the accused no.1 Bhalabhai Chhatrabhai who happened to be a son of accused no.2 came with stick in his hand and gave a blow on the right hand of the

deceased and second blow on the head of the deceased and also on the back of the deceased. It is further alleged that accused nos.2 and 3 gave a fisticuffs blows and instigated accused no.1. The incident was witnessed by the wife of the deceased Reshmaben as she was present in the field and due to her hue and cry, the persons from the vicinity viz. Manubhai Dolabhai, Mohanbhai Nanabhai, Gordhanbhai Bhatibhai, Anubhai Chemabhai and Savitaben Pappibhai and others came for rescue and before they could reach there, the accused ran away from the field. The deceased Chemabhai was taken to the Gogambha Government Dispensary and due to non-availability of doctor, he was taken to the Ranjitnagar Dispensary and before he could reach, he succumbed to his injuries. The FIR of the incident came to be registered with Rajgadh Police Station, allegedly lodged by eyewitness Rashmaben. The investigation was entrusted to the PSI Bhagvanbhai Ahir – PW;8. After completion of investigation of the case, the chargesheet came to be filed against the accused and case was committed to the Sessions Court at Godhra, Panchmahal. After due framing of the charge and upon the accused pleaded not guilty, the trial commenced.

5. In order to prove the charge, the prosecution has examined as many as 9 witnesses and relied upon 11 documentary evidence.

Oral evidence - 9

PW 1 – Exh.12	Anupbhai Chemabhai
PW 2 – Exh.14	Savitaben Pappibhai
PW 3 – Exh.15	Gordhanbhai Bhattibhai
PW 4 – Exh.16	Manubhai Dolabhai

PW 5 – Exh.17	Kalsinh Rathva, Circle inspector
PW 6 – Exh.20	Koyabhai Parmar, PSO
PW 7 – Exh.23	Andrabhai Devabhai, panch witness
PW 8 – Exh.27	Bhagwanbhai Aahir, IO
PW 9 – Exh.30	Bhagwatsinh Itare, PM doctor

Documentary evidence - 11

Exh.21	Complaint
Exh.6	Police yadi to medical officer for treatment
Exh.7	Inquest yadi
Exh.22	Inquest panchnama
Exh.24	Panchnama of place of offence
Exh.25	Panchnama of recovery of weapon
Exh.8	Panchnama of recovery of clothes from deceased
Exh.9	Police report for examination of body of deceased
Exh.10	PM yadi
Exh.31	PM Note
Exh.12	Map of place of offence

6. After closure of the prosecution evidence, the respondents accused were questioned under Section 313 of the Cr.P.C. to which they stated that they were innocent of all charges levelled against them and they have been falsely implicated due to land dispute.

7. Though opportunity was extended, no evidence in the defence being tendered from the side of the respondents accused.

8. Learned Sessions Judge, after hearing the parties and upon appreciation of the evidence, held that the prosecution miserably failed to prove the charge against the accused beyond all reasonable doubt. The learned Trial Court after analysis of the evidence of eyewitnesses held and observed that the witnesses came later on at the place of the incident and their presence at the place witnessing the incident are

doubtful and does not inspire confidence.

9. In view of the aforesaid facts and circumstances, this acquittal appeal has been preferred by the State and the Revision at the instance of original complainant.

10. Oral Evidence adduced by the prosecution:

10.1 Dr.Bhagvatsinh Etare (PW:9): This witness being a medical officer of the Government Hospital, Halol conducted postmortem on the body of the deceased and noticed the following external and internal injuries:

External Injuries:

- (i) Abrasion on the right shoulder (1.2 x 1.2)
- (ii) Fracture of right upper arm and swelling on right side of parietal region;
- (iii) Fracture of right humerus;

Internal Injuries:

- (i) Fracture in the parietal region and linear fracture in the brain.

According to the opinion of the doctor, the cause of death was neurogenic shock due to head injuries and the external and internal injuries were sufficient in ordinary course of nature to cause death and the said injuries could be possible by the stick.

10.2 Anopbhai Chemabhai (PW:1): This witness is the son of the deceased and according to his version, after hearing the hue and cry of her mother Reshmaben, he reached at the farm and after reaching at the farm, he noticed that his father Chemabhai was lying on the floor. The witness in his chief examination has stated that when he about to reach at the farm, he saw that the accused were running away. The FIR filed by wife of the deceased being referred in the evidence of this witness because pending the trial, the witness Reshmaben has passed away.

10.3 Savitaben (PW:2): This witness is the sister in law of the deceased and at the relevant time, she was on the way to fetch the water from the well and while passing near the farm where the incident occurred, she had witnessed the incident.

10.4 Manubhai Dholabhai (PW:4): This witness is the neighbour of the deceased and at the relevant time, after hearing the screaming of Reshmaben, wife of the deceased, the witness rushed to the field where the incident occurred and he saw the accused who were running away from the field.

10.5 Bhagvanbhai Koyabhai (PW:8): This witness being PSI of the Rajgad Police Station had investigated the case and after arrest of the accused, he filed the chargesheet against them. So far as the investigation part is concerned, there is no as such serious issue raised by defence side and therefore, the entire deposition does not require to be referred herein.

11. Mr.Bhargav Pandya, learned Additional Public Prosecutor appearing for the appellant – State and Ms.Kruti Shah, appearing for the original complainant, assailing the judgment and order of acquittal, have 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 witnesses had seen the accused running away after injuring the deceased from the distance of about 300 ft. And therefore, there is no reason to disbelieve the ocular evidence of these witnesses. Therefore, there being unimpeachable and reliable ocular evidence, to prove the charge against the accused, the Trial Court committed a serious error in law in brushing aside the evidence on frivolous grounds without any basis or material.

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.Vishal Vicchi, learned counsel 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 principal accused Bhalabhai Chhatrabhai who had caused a fatal injuries died during the pendency of the appeal and so far as accused nos.2 and 3 are concerned, there are no serious allegations made against them about causing fatal injuries and considering the peculiar facts of the case, the common intention on the part of the accused nos.2 and 3 having not been established and proved and therefore, for the offence of murder, as such there is no evidence against the respondents accused.

14. In such circumstances, referred to above, learned counsel appearing for the respondents accused, has submitted that the Trial Court while discarding the oral evidence has 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.

18. In the facts of the present case, the sole eyewitness Reshmaben who had lodged the FIR, died before recording her evidence and her evidence could not be recorded. It is also required to be noted that the principal accused no.1 Bhalabhai Chhatrabhai who had caused a fatal injury and the deceased died during the pendency of the appeal and the appeal qua him stands abated. So far role attributed to the accused nos.2 and 3 are concerned, they gave fisticuffs blows and instigated the principal accused no.1. Admittedly, the witnesses examined by the prosecution came at the place after hearing the shouting of the wife of the deceased Reshmaben and according to their version, as stated in the chief examination that they saw the accused while running away from the spot. We have carefully examined the version of the eyewitnesses and upon careful examination of their evidence, we are of the view that there is no evidence to prove that the act of the principal accused no.1 and the respondents accused being done in furtherance of the common

intention of all and as such, the prosecution has failed to prove the overt act attributed on the part of the accused nos.2 and 3 and the version of the witnesses is not sufficient to prove that the respondents accused caused injuries to the deceased as alleged. In such circumstances, in absence of any independent evidence, the testimonies of witnesses as referred above, which do not inspire confidence about their presence and witnessing the incident, 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 find no reason to interfere with the same.

19. With the observations as aforesaid, the appeal as well as revision application 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)

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