IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1040 of 2002

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
ANILSINH DIPSINH CHAUHAN & ANR.

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Appearance:
MR ROHAN RAVAL APP for the Appellant(s) No. 1
MR DK DESAI(278) for the Opponent(s)/Respondent(s) No. 1,2
MS DARSHANA TRIVEDI(2388) for the Opponent(s)/Respondent(s) No. 1,2

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

Date : 22/10/2026

ORAL JUDGMENT

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

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 16/08/2002 passed by the learned Additional Sessions Judge, Ahmedabad Rural in Sessions Case No.57 of 2000 acquitting the respondents- accused from the charge of offence punishable under Sections 504, 302 and 34 of the Indian Penal Code and under Section 135

of the Bombay Police Act, the appellant – State has preferred the present appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (for short "the Code").

2. The brief facts leading to the filing of the present appeals, are as under:

2.1. The prosecution case in brief is that the complainant is residing at village Kolvada, district: Gandhinagar with his family and he is earning his livelihood by way of driving rickshaw. That on 21.8.2000 complainant came to his village and at about 9 O'clock, he was in the Hanuman Mandir situated in the same village. At that time, his uncle's son Arvindsinh Waghela came there running and informed him that the brother of the complainant Dilipsinh had a quarrel with the accused at three road Kolwada and that accused Anilsinh had given knife blows to Dilipsinh. He, further, informed the complainant that Dilipsinh is admitted in the Civil Hospital, Gandhinagar. The complainant, therefore, rushed to Gandhinagar, Civil Hospital, where his brother informed him that he was traveling in the rickshaw of Vanrajsinh and that rickshaw collided with the rickshaw of accused No.1. Anilsinh. Rickshaw of Anilsinh had some damage and, therefore, in order to avoid quarrel Dilipsinh told Anilsinh that he would pay the repairing charges of the Rickshaw. However, while the deceased Dilipsinh was standing near three road of Kolvada, the accused came to him and started quarreling. That accused No.3 Pravinsinh Hamtuji Chauhan and the deceased Champaksinh alias Bhurio Dipsinh Chauhan caught hold of the deceased and Anilsinh Dipsinh Chauhan inflicted knife blows on the stomach and hand of the deceased. Thereafter, the deceased became unconscious. He

was then shifted to Ahmedabad Civil Hospital where he died during treatment. The complaint was filed with Pethapur Police Station and the Police after investigation chargesheeted the accused. However, the original accused No.2 Champaksinh alias Bhurio Dipsinh Chauhan expired during the pendency of the trial and, therefore, the case against him is abated.

3. In pursuance of the complaint lodged by the complainant, investigating agency recorded statements of the witnesses, collected relevant evidence in form of medical evidence and drawn various Panchnamas and other relevant evidence for the purpose of proving the offence. After having found material against the respondent accused, charge-sheet came to be filed in the Court of learned JMFC, as said Court lacked jurisdiction to try the offence, it committed the case to the Sessions Court provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, learned Sessions Judge framed charge against the respondent accused for the aforesaid offence. The respondent accused pleaded not guilty and claimed to be tried

5. In order to bring home charge, the prosecution has examined various witnesses and also produced various documentary as well as oral evidence before the learned Sessions Court, more particularly described in para No.5 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the Sessions Court put various incriminating circumstances appearing in the

evidence to the respondent accused so as to obtain his explanation/answer as provided u/s 313 of the Code. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him. After hearing both the sides and after analysis of evidence adduced by the prosecution, the learned Sessions Judge acquitted the respondent accused of the offences, for which he was tried, as the prosecution failed to prove the case beyond reasonable doubt.

7. We have heard learned APP for the appellant – State and learned Advocate Mr.D K Desai assisted with Ms. Darshana Trivedi, learned Advocate appearing for the respondents – accused and have minutely examined the documentary evidence provided to us by learned Advocate during the course of hearing.

8. Learned APP appearing for the appellant – State would submit that the learned Sessions Court has failed to appreciate the evidence of the important witnesses who have deposed in favour of the prosecution and nothing contrary has come on record to disbelieve their evidence. He would further submit that though there is an eye-witness to the incident in question in the form of deposition of PW – Vanrajsinh examined at Exh.48; however in spite of the fact that nothing has come on record to disbelieve his evidence, the learned Sessions Court has totally disbelieved the case of prosecution.

8.1 Learned APP would further submit that the evidence of the witnesses examined before the Court have specifically deposed as to how

and in what manner the entire incident took place and narrated the actual event prior to commission of offence and described the role of each of the accused and the manner in which the assault was made which resulted into death of the deceased. He would submit that the learned Sessions Court has not believed those aspect merely on the basis of some omissions and contradictions which would not be relevant and not proved fatal to the case of prosecution.

8.2 Learned APP would further submit that though the scientific evidence in the form report of the FSL and the blood group found on the weapon recovered used in commission of the crime in question and the muddamal clothes of the accused where-upon the blood was found are of the same group and there is no reasons to disbelieve the scientific evidence which would link the accused with the crime. However the learned Sessions Court has not considered this piece of evidence and has acquitted the accused while overlooking to the factum as to their involvement.

8.3 By making the above submissions, learned APP would submit to allow the present appeal and to quash and set aside the judgment and order of acquittal and to sentence the respondents – accused.

9. Learned Advocate appearing for the respondents-accused while supporting the impugned judgment and order of acquittal would submit that the learned Sessions Court after threadbare examination of the witnesses examined before the Court has recorded the finding of acquittal. He would further submit that the learned Sessions Court has

found some contradictions and omission in the evidence of the prosecution witnesses which has proved fatal to the case of prosecution and therefore this Court may not interfere with the said finding of acquittal.

10. Having heard the learned Advocates appearing for the respective parties and examining the facts of the case, what appears from the record that if the evidence of the complainant – Ratansinh Rajuji Vaghela examined at Exh.46 and the complaint produced at Exh.47 is taken into consideration, it appears that he had no personal knowledge about the occurrence of the incident and he was informed about the incident took place on 21/08/2000 at about 9:00 hours in the night by Arvindsinh Gandaji Vaghela, son of his uncle and he was not aware as to the fact of what kind of words were used by the accused. It would be relevant to note here that the person who informed the complainant viz., Arvindsinh Gandaji Vaghela has not been examined before the Court and therefore the evidence of the complainant does not get corroborated. However, upon taking into consideration the complaint at Exhibit-47 , it appears that when the complainant met the deceased for the first time and asked him what had happened, the deceased replied that at about 7:00 p.m., he was sitting in Vanrajsinh's rickshaw near the outskirts of the village when Anilsinh Dipsinh Chauhan's rickshaw came from the opposite direction, resulting in a collision between the two rickshaws. As a result, Vanrajsinh’s rickshaw caused some damage. Anilsinh had an altercation with Vanrajsinh, whereupon the deceased told Anilsinh that he should get the rickshaw repaired and that he would bear the expenses incurred for the repairs, thereby settling the dispute. Thereafter, while the deceased

and Vanrajsinh were standing on the road leading to Kolvada, at about 8:30 p.m. at night accused – Anilsinh and Bhuriyo Dipsinh and Pravinsinh Hemtuji came and quarrel was taken place. Thus, from the facts stated in the complaint, it is established only that a verbal altercation had taken place between the accused persons and the deceased, as well as witness Vanrajsinh. However, it is not clearly established what abusive or provocative words were used by the accused persons during the altercation. Moreover, there is no clear evidence to establish whether the words allegedly used were sufficient to provoke the deceased or Vanrajsinh to disturb the public peace, or whether any such words were actually uttered. The only fact established is that witness Vanrajsinh was present at the time of the incident.

11. Now, if the deposition of prosecution witness No. 8, Vanrajsinh Huzan Vaghela, recorded at Exhibit 48 is examined, he has deposed that on 21/08/2000, at about 6:00 p.m., he had gone to the house of his maternal uncle, Dilipsinh, at Kolavada, Gandhinagar, and had stayed there for approximately one and a half hours. Thereafter, his maternal uncle, Dilipsinh, took him in his rickshaw to Pan-masala stall near the village outskirts. On the way, they encountered the rickshaw of Anilsinh coming from the opposite direction. Anilsinh's rickshaw collided with their rickshaw, causing a minor dent. Consequently, a verbal altercation took place, during which the deceased told Anilsinh to get the dent repaired the following morning. He has deposed that thereafter, he and Dilipsinh went and sat near a Pan stall on the other side of the road. At about 8:30 p.m., Anilsinh arrived there in his rickshaw along with two other persons. Those two persons caught hold of the deceased, while

Anilsinh inflicted knife blows on Dilipsinh's abdomen. When the deceased, Dilipsinh, attempted to catch hold of the knife, he also sustained an injury to his hand. When the witness intervened, he was pushed forcefully, causing him to fall onto the road. He sustained minor injuries to his right hand and leg. He has further deposed that he was threatened with the words, "*Leave this place; otherwise, I will kill you*." Thereafter, he became frightened and went to the house. However, the said fact has not been mentioned in his cross-examination or police statement. It is not stated in his police statement that, when the deceased Dilipsinh caught hold of the knife, the accused sustained an injury on his hand, nor has it been stated in his police statement that the accused told the deceased, "*Leave this place; otherwise, I will kill you.*" Further, the witness has not stated in his police statement that, since the deceased had sustained simple injuries, the accused threatened to kill him during his deposition before the Court with a view to exaggerate the seriousness of the incident, or that the deceased had sustained simple injuries and that the deceased himself sustained an injury to his hand while attempting to catch hold of the knife. It is thus evident that the witness appears to have introduced this statement during his deposition before the Court.

11.1 From the testimony of the aforesaid witness, it becomes clear that the deceased, Dilipsinh , was his maternal uncle, and a close relative of the witness. According to the testimony of this witness, when he intervened at the time of the incident, accused Anilsinh had pushed him forcefully, as a result of which he sustained a simple injury to his right leg. However, upon considering the entire evidence on record, there is no evidence to show that the said witness had undergone any medical

treatment for the injury allegedly sustained by him or that any medical certificate or medical record pertaining to the said injury had been obtained. Thus, there is no corroborative evidence to establish whether the said witness had actually sustained any injury during the incident.

Furthermore, as per the testimony of this witness, at the time of the incident, he and the deceased, Dilipsinh, were travelling in his rickshaw to the village outskirts to eat Pan Masala. At that time, the rickshaw driven by accused Anilsinh collided with their rickshaw, causing damage to the rickshaw of accused Anilsinh. Consequently, a verbal altercation took place, during which the deceased stated that the cost of repairing for the damage would be paid on the next morning. This indicates that the dispute arising out of the said incident had been amicably settled between the parties. Thus, there is reason to believe that accused Anilsinh or any of the other accused had no motive to harbour any ill will, animosity or grudge against the deceased.

Furthermore, at the time of the incident, the aforesaid witness, Vanrajsinh, was driving the rickshaw. During that time, it collided with the rickshaw of accused Anilsinh Chauhan, as a result of which the another rickshaw got damaged. Thus, even if accused Anilsinh Chauhan had any dispute or grievance arising out of the incident, it would naturally have been against the said witness, Vanrajsinh. Consequently, any verbal altercation or quarrel would also have been with the said witness. The deceased, Dilipsinh was merely sitting in the rear portion of the rickshaw. Thus, even if accused Anilsinh had felt any anger or harboured any ill will, animosity, hostility or grudge on account of the damage caused to

his rickshaw in the collision, such feelings would more naturally have been directed towards the aforesaid witness, Vanrajsinh, who was driving the rickshaw in which the deceased was travelling, rather than towards the deceased, Dilipsinh, who was merely a passenger sitting in the rickshaw. Thus, the possibility of the accused harbouring such feelings against the deceased appears to be less probable.

12. It would be relevant to note that even if assuming, for the sake of argument, that the deceased, Dilipsinh, had refused to pay the expenses in the morning incurred in connection with the auto-rickshaw collision and that, as a result, the accused had developed resentment or anger towards him, the testimony of the aforesaid witness, Vanrajsinh Vaghela, clearly establishes that the accused, Anilsinh, inflicted a blow on the abdomen of the deceased, Dilipsinh, with an open knife in his hand. Thus, it clearly emerges that accused Anilsinh inflicted more than one knife blow upon the deceased, Dilipsinh, including a blow on his abdomen. The aforesaid witness has further stated that when he intervened, Anilsinh pushed him, and when he moved aside slightly, the accused again inflicted a blow upon Dilipsinh. This testimony of witness Vanrajsinh also constitutes evidence that accused Anilsinh inflicted more than one knife blow upon the deceased, Dilipsinh.

13. Thus, the deceased had sustained injuries on his hands as well as an on his abdomen. It is, therefore, apparent that the aforesaid witness, Vanrajsinh, has attempted to make the incident more serious by deposing that the deceased had been inflicted with more than one knife blow by accused Anilsinh which indicates that the witness had not actually seen

the incident and has narrated fabricated facts to support the prosecution case. It also emerges that, although the deceased Dilipsinh was his maternal uncle and a close relative, the witness allegedly fled from the place of occurrence at the time of the incident. His assertion that he was present at the place of occurrence along with the deceased and thereafter fled from the spot appears to be unnatural and does not inspire confidence. Even if the witness had become frightened at the time of the incident, he would ordinarily have informed someone about the occurrence after fleeing from the place. However, this witness did not inform anyone about the incident. To the contrary, in his cross-examination, the witness has clearly admitted that it is true that he disclosed the facts of the incident to the police for the first time when the police came to record his statement, and that he had not disclosed the same to anyone else before that. The witness has further stated in his cross-examination that the police recorded his statement on the next day after the incident, i.e., on 22nd whereas the incident took place on 21/08/2000 at about 8:30 p.m. However, the said witness did not disclose the facts of the incident to anyone for approximately for about 24 hours thereafter. The conduct of the said witness appears to be unnatural, improbable and somewhat strange. In cross-examination, the said witness has clearly admitted that even on the next day after the incident, he did not go to inquire about Dilipsinh. He did not make any inquiry regarding the condition of Dilipsinh, nor did he make any attempt to inform his relatives. He did not even make any attempt to inform the police. He has further stated that, at the time of the incident, he did not raise any alarm or make any attempt to call anyone. Even thereafter, he did not raise any alarm, nor did he make any attempt to run away, etc.

14. Thus, the conduct of the said witness also appears to be unnatural. In such circumstances, the testimony of this witness does not appear to be truthful or reliable. It appears that the said witness was subsequently brought forward to support the complainant's case. Therefore, his testimony cannot be relied upon. It would be relevant to note that although the aforesaid witness, Vanrajsinh, claims that he was present at the time of the incident and sustained injuries during the incident, he did not inform anyone about the incident for nearly 24 hours. In such circumstances, his testimony ought not to be believed.

15. PW No 2, Natuji Becharji Vaghela is examined at Exh.34. The said witness has deposed that he resides at Kolavada and on 21/08/2000, while he was at his house at about 9:00 p.m., the deceased's wife, Vilasba, called him by shouting. Upon going there, he saw the deceased, Dilipsinh, lying in an auto-rickshaw in a blood-soaked condition. The auto-rickshaw belonged to Jagdishsinh, who was sitting in the driver's seat. Thereafter, the witness and Vilasba accompanied the deceased in the said auto-rickshaw to the Civil Hospital at Gandhinagar. He has further deposed that on the way, Vilasba asked the deceased what had happened to him, whereupon Dilipsinh stated that, he, along with Vanrajsinh, went in his rickshaw at the outskirts where the said rickshaw collided with Anil Singh's rickshaw whereupon the altercation ensued. Thereafter, he went towards the road leading to Gandhinagar and sat at the outskirts. After some time, Anilsinh Dipsinh arrived in a rickshaw, accompanied by Pravinsinh Haimatji, who was the brother of Anilsinh. Both of them were known to him. They caught hold of him from both sides, and Anilsinh stabbed him with a knife.

15.1 During cross-examination, this witness stated that he, deceased Dilipsinh, and the complainant all resided in the same village, in the same locality. He had known Jagdishsinh, who was associated with the rickshaw, for a long time. During cross-examination, he stated that, at the time of the incident, he was asleep, and when he came outside, Jagdishsinh was standing outside the rickshaw. No conversation had taken place between him and Jagdishsinh, nor had he asked Jagdishsinh anything. No conversation had taken place between Jagdishsinh and Vilasba. He had seen Dilipsinh in the rickshaw, and Dilipsinh was bleeding profusely. His clothes had also become stained with blood. Dilipsinh was bleeding heavily on the road as well. Before Dilipsinh was seated in the rickshaw, Vilasba had not asked him anything, and Dilipsinh had not told him anything at that time. Dilipsinh was telling him, "*Take me to the hospital; I will die.*" His clothes had also become stained with blood. However, neither his bloodstained clothes nor Vilasba's bloodstained clothes had been produced before the police. He had not informed the police about the fact that his clothes had become stained with blood. After reaching the hospital, Vilasba and Jagdishsinh took Dilipsinh to the doctor. He had not gone inside. He did not know whether the doctor had asked Dilipsinh what injuries had sustained by him. In his presence, the doctor had not asked Dilipsinh anything. Nobody had asked him anything either, and he had not told the doctor anything. This witness did not have any conversation whatsoever with Dilipsinh's brother and nor did he disclose the conversation that took place in the rickshaw to anyone other than the police. This witness had not spoken to any other family member. This witness was not aware that he ought to inform his relatives about what Dilipsinh had said in the rickshaw. This witness

returned home from the hospital at around 10:30 or 10:45 p.m. and his wife met him at home, and the neighbours also met him . This witness told them that the injured person had been taken away. His relatives did not ask him anything, and no discussion regarding the incident took place. The police came to my house to record my statement.

15.2 It appears that during the cross-examination, this witness has categorically stated that the conversation which took place in the rickshaw was not disclosed by him to anyone except the police. In short, the testimony of this witness does not appear to be truthful, reliable or trustworthy. According to the testimony of this witness, the deceased, in his presence, had narrated the incident to his wife, Vilasben, stating that, at the time of the incident, he was sitting near the road leading towards Gandhinagar, when Anilsinh Dipsinh, Pravinsinh and the brother of Anilsinh arrived in a rickshaw, caught hold of him from both sides, and Anilsinh inflicted a knife blow upon him. However, the deceased did not disclose any such facts before Dr. K. B. Shah, who initially provided him with medical treatment, or before Dr. Rajendra Kumar Bhagirathprasad Joshi, who subsequently treated him at the Civil Hospital, Ahmedabad, or before any other doctor who treated him during the period between his admission to the hospital and his death. The deceased did not make even the slightest reference before any of the doctors to the fact that accused Anilsinh or his associates, namely, accused Pravinsinh and the brother of Anilsinh had caused the injuries to him. On the contrary, he merely stated that somebody had assaulted him with a knife. Thus, reasonable doubt exists as to whether the deceased had, in fact, narrated the aforesaid facts in the rickshaw in the presence of this witness.

15.3 Furthermore, the aforesaid witness, Natubhai Becharji Vaghela (Exh. 34), has deposed that he was the first person to see the deceased at the place where Jagdishsinh had stopped, in an injured and blood-soaked condition. However, witness Natubhai Becharji Vaghela has no knowledge whatsoever as to who brought the deceased Dilipsinh to the said place in the rickshaw, how and for what reason Jagdishsinh brought him there, or who inflicted the injuries upon the deceased, in what manner, and for what reason. There is also no evidence to show that he had discussed any of this issue with Jagdishsinh, the rickshaw driver. Similarly, witness Natubhai Vaghela has not stated that he had any conversation with the deceased while they were in the rickshaw. He has deposed that the deceased spoke to his wife, Vilasba, in the rickshaw regarding the manner in which he had sustained the injuries, and that he had heard that conversation. However, no evidence of the deceased's wife, Vilasba, has been adduced before the Court, nor has the rickshaw driver, Jagdishsinh, been examined before the Court.

15.4 It also appears that the deceased was taken to the Civil Hospital at Gandhinagar and that an entry to that effect was made in the M.L.C. Register. However, the said register mentions that the deceased had been brought by Jagdishsinh. It does not mention that the deceased's wife, Vilasba, or the aforesaid witness, Natubhai Becharji Vaghela, had accompanied him. The rickshaw driver, Jagdishsinh, is neither a close relative nor a family member of the deceased. Therefore, naturally, if the deceased had been brought to the hospital by his wife, the M.L.C. Register would have reflected the said fact. The witness stated that although the deceased had sustained injuries, no bloodstained clothes,

blood samples, or other relevant articles were collected from the place as required. Further, no prescription or medical record was produced to establish that witness Natuji had sustained any injury or had received medical treatment from a doctor. This also raises a doubt as to whether, after the incident, the deceased Dilipsinh was actually taken by the said witness Natuji in an auto-rickshaw to the Civil Hospital at Gandhinagar, as well as, raising a doubt as to whether witness Natuji had informed the deceased's wife, Vilasben, about the manner in which the incident had occurred, or whether Natuji had heard the relevant facts from her.

16. PW No.1 – Dr. Kalpesh Bababhai Shah has been examined at Exh.32 before whom Dilipsinh Vaghela was brought for treatment and upon asking as to how the injury was caused, he had given the history that injury was caused with knife. During the cross-examination, he has deposed that patient did not mention the name of the assailant in the history and only fact of assaulting injury with the knife has been mentioned in the history. Thus, it would appear from the record that the name of the assailant was not mentioned before the Doctor in the history given by the injured.

17. Likewise, PW 14 – Dr. Rajendra Joshi has been examined before whom the injured was referred and the same history was given by the injured that someone had caused knife injury and did not mention the name.

18. From the aforesaid analysis of the evidence, it clearly emerges from the record that the prosecution has not proved the case beyond all reasonable doubt and the evidence of the prosecution witnesses examined

before the Court raise the doubt as to the involvement of the accused in the commission of crime.

19. In context to consider the statement alleged to have been made by the deceased-Dilipsinh before PW No.2-Natuji, Vilasba (wife of the deceased) as well as Jagdishsinh, the person driving the auto-rickshaw taking the deceased to the hospital, it would be apt to note that even at the time when the deceased was brought before the Doctor who examined and extended the treatment, as also the Doctor to whom the deceased was referred for further treatment, no such statement naming the person who inflicted a knife blow was made by the deceased before the Doctor though the fact remains that the Doctor/s who examined and treated the deceased cited consciousness of the deceased when brought before them; but the deceased only stated that the injuries was caused to him with knife and no such other fact was stated by the deceased.

20. Since as per the case of the prosecution, the deceased narrated and described the entire set of incident before his wife – Vilasba; however to the utter shock and surprise of this Court and for the reasons best known to the prosecution, the wife of the deceased has not been examined by the prosecution which otherwise speaks volume and create a shadow of doubt on the case of the prosecution.

21. Apart from the aforesaid, even if the facts stated is considered to be the gospel truth that the deceased made a statement to his wife – Vilasba in presence of PW No.2 – Natuji while going to hospital in the auto-rickshaw which belonged to Jagdishbhai, the said rickshaw driver has

also not been examined by the prosecution who can be said to be the best witness, at least to throw the light on the case of the prosecution. However, again the non-examination of the said auto-rickshaw driver for the reasons bets known to the prosecution proved fatal to the genesis of the very incident taking the deceased to the hospital as claimed by the PW No.2 and the entries made by the Doctor in the Register showing that the deceased was brought by Jagdish Chhatrasinh and no such reference as to the deceased accompanied with his wife and PW No.2 – Natuji was made in the said Register renders the entire story doubtful which has rightly been discarded by the learned Sessions Court and therefore, the said finding does not warrant any interference at the hands of this Court.

21. At this stage, it would be relevant to refer to the decision of the Hon'ble Apex Court in the case of ***Manjunath v. State of Karnataka, 2023 LiveLaw (SC) 961*** where the dying declaration was rendered nugatory because the person who took it down was not examined, the police officer had not endorsed who recorded it, and it was unclear before which relatives it was taken and the judgment and order of acquittal was upheld. The observations made in paragraph No.29.1 reads thus:

> "*29.1 The dying declaration, although undoubtedly a substantive piece of evidence upon which reliance can be placed, in the present facts is rendered nugatory as the person who took down such declaration was not examined, nor did the police officer (PW19) endorse the said document with details of who took down the declaration. It is also not clear as to in front of which of the relatives of deceased was the same taken down.*"

22. There is no doubt that if the dying declaration is proved to be the last statement of the deceased, that can be the sole base for the conviction of the accused provided that the credibility is attached with such statement. However, weight and utility of a dying declaration depend upon the surrounding circumstances and the credibility which the court attaches to it, having regard to the evidence led before it. Insofar as the case on hand is concerned, treating the history given before the Doctor by the deceased for the first time as dying declaration, as well as, the history given by the deceased before his wife while taking him for the treatment in the auto-rickshaw is to be treated as dying declaration, it would be relevant to note that the deceased had not named any person who had caused him the knife injury before the Doctor with whom he was firstly taken and thereafter referred to another Doctor, as also the wife of the deceased with whom the deceased had disclosed the incident had not been examined. Thus, the theory of treating the last statement of the deceased as the dying declaration cannot have any legs to stand in the eye of law.

23. At this juncture, it is apt to refer the judgment of the Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67***, the relevant paragraphs of which read as under:

> *"29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, 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. The following principles have to be*

kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity,

(b) whether the judgment is based on misreading/omission to consider the material evidence on record,

(c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.'

(d) 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,

(e) 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

(f) 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."

24. Thus, as observed by the Hon'ble Supreme Court in catena of decisions, while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial

Court, it might have taken a different view.

25. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, the present appeal fails and is accordingly dismissed. Bail Bond, if any, shall stand discharged. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 22/10/2026 12:19:49