

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 615 of 2001****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

STATE OF GUJARAT

Versus

RAFIQUE DADU DAL. & ANR.

Appearance:

MR J K SHAH, APP for the Appellant(s) No. 1

MR.MRUDUL M BAROT(3750) for the Opponent(s)/Respondent(s)
No. 1,2CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**

and

HONOURABLE MR. JUSTICE R. T. VACHHANI**Date : 11/02/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal passed by the learned Additional Sessions Judge, Junagadh in the Sessions Case No. 130/1997 for the offences punishable under Sections 302, 498A read with Section 114 of the Indian Penal Code, 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, the victim Roshanben w/o Vali Mohammad Dal has died due to extensive burn injuries. There was a family dispute inasmuch as the victim was not on speaking terms with her sister-in-law (jethani, wife of accused No.2 Rafik). According to the prosecution, on 24-3-1997 at around 9:00 a.m. in Maftiyapara, Manavadar, the victim was set on fire. Information was received and she was taken to Junagadh Civil Hospital. Upon seeing her burnt condition, the post-mortem report by the doctor, the treatment records, etc., and conducting further inquiry, burnt and half-burnt pieces of clothes, a half-burnt kerosene can, a matchbox, plastic bucket showing burn marks, kerosene smell in the bathroom (chokdi) of the northern room, and other articles were found at the scene in the house under the Deli (veranda) in Maftiyapara, Manavadar.

2.2. Taking all these circumstances into account, the prosecution's case emerged as the accused persons had, on 24-3-1997 at around 9:00 a.m. in the house at Maftiyapara, Manavadar, conspired to murder Roshanben. They hatched an illegal conspiracy with the common intention to commit the murder. In pursuance of that common intention, when the deceased Roshanben had gone into the bathroom (chokdi) to bathe as instructed by her mother-in-law (accused No.4 Aayeshaben), the accused No.4 caught hold of her hands, and accused No.2 poured kerosene from a can over her body, lit a matchstick and set her ablaze. They then took her to Junagadh Civil Hospital where she eventually succumbed to the burn injuries during treatment. The prosecution alleged that the accused assisted and abetted each other in committing the offence and attempted to screen themselves by not immediately disclosing the true facts. Accordingly, the prosecution has presented its case and framed

charges against the accused persons in this manner. The Manavadar Police completed the investigation of this offence and filed the chargesheet against the accused persons under Sections 302, 498A read with Section 114 of the Indian Penal Code before the Judicial Magistrate First Class Court at Manavadar committed the case to the Sessions court.

3. On conclusion of evidence, the Sessions Court put various incriminating circumstances to the respondent-accused persons under Section 313 of the Code. The respondent-accused persons 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 dying declarations identifies the accused and the medical evidence fully corroborates the ocular account. He therefore prays for allowing the appeal.

6. The incident is said to have occurred on 24-3-1997 at around 9:00 a.m. in the bathroom (chokdi) of the northern room in the house at Maftiyapara, Manavadar. No independent eyewitness has been examined who claims to have seen the actual act of pouring kerosene and setting the victim on fire. The prosecution relies entirely on the two dying declarations- complaint at Exh. 37 and Exh. 39, the scene of offence panchnama showing burnt clothes

pieces, half-burnt kerosene can, matchbox and kerosene smell in the bathroom, the medical evidence of burn injuries, and the alleged motive of the victim not speaking with her sister-in-law (jethani). No direct ocular evidence linking the accused to the act of setting fire has been produced.

7. The panch witnesses examined for the scene of offence panchnama at Exh. 25 have supported the recovery of burnt and half-burnt clothes pieces, a half-burnt kerosene can, a matchbox, and plastic bucket showing burn marks from the bathroom area. However, no independent witness from the neighbourhood or locality has been examined to corroborate the occurrence inside the house at the relevant time. The medical witnesses PW-5 Dr. Tanrukh Govind at Exh. 30 and PW-8 Dr. Ashok Narharidas at Exh. 46 have clearly stated that the victim was never in a fit mental state or "clear state of mind" from the time of admission till her death, remaining in shock and on glucose saline drips throughout. Importantly, the two dying declarations at Exh. 37 and Exh. 39 contain material contradictions regarding the role of the accused, the sequence of events, prior beating, and motive; one version denies any cruelty from in-laws while the other alleges assault and kerosene pouring. The panch witnesses for the panchnama appeared consistent on seizure but the overall reliability is affected by the absence of any independent corroboration of the occurrence.

8. A significant weakness in the prosecution case is the complete failure to prove that the victim Roshanben was in a fit condition to give a reliable dying declaration. Both doctors treatment doctor as PW-8 Dr. Ashok Narharidas at Exh. 46 and post-mortem doctor as PW-5 Dr. Tanrukh Govind at Exh. 30 have

deposed that she remained in critical shock, semi-conscious, and never in a position to make a clear, voluntary statement. No history of how or by whom the burns were caused was given by the victim to the first examining Dr. Gondaliya. The first police officer at the hospital Head Constable R.J. Barot who met the victim was not examined, and no statement from him was brought on record. No neighbour or independent witness has been examined to prove prior cruelty, dowry demand, or the presence of the accused in the bathroom at the time. The alleged motive of mere non-speaking with the jethani has been held insufficient for such a grave offence, and the victim and her husband were residing separately in a rented room.

9. Thus, the only circumstances sought to be proved are the two contradictory dying declarations, the scene of offence panchnama showing articles consistent with kerosene fire in the bathroom, and the medical evidence of extensive burns leading to death. However, these remain unconnected to the guilt of the accused by way of reliable direct evidence or corroboration. The chain of circumstantial evidence is broken at several vital links absence of proof of fit mental state for dying declarations, material contradictions between the two statements, no independent witness to the occurrence, unreliable motive, separate residence of the victim couple, post-incident conduct of the accused including accused No.4 also suffering burns consistent with rescue attempt, and failure to examine the first police officer at the hospital. In such circumstances, the Sessions Court rightly held that the prosecution has failed to prove the charges beyond reasonable doubt. The medical evidence establishes homicidal death by burns, but the identity of the perpetrators and their role has not been established.

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. The view taken by the learned Sessions Judge that the prosecution has miserably failed to establish the guilt of the accused through reliable dying declarations or unbroken chain of circumstances pointing solely to their guilt is not only a possible view but the only reasonable view on the evidence on record.

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 of 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, reappraise 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.”

12. This Court may also refer to the decision of the Hon’ble Apex Court in the case of **Abhishek Sharma v. State (Govt. of NCT of Delhi), 2023 INSC 924**, wherein it has been reiterated that the primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be made in a fit state of mind.

13. 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 reappraise 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."

14. In the light of the above discussion and the settled legal position, the prosecution has failed to prove the guilt of the respondent-accused persons beyond reasonable doubt. The impugned judgment and order of acquittal dated 02-05-2001 passed by the learned Additional Sessions Judge, Junagadh in the Sessions Case No. 130/1997 does not call for any interference.

15. 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 11/02/2026 12:57:52