

## State of Gujarat Versus Vs Patel Maheshkumar Prabhudas & Ors.

**Court:** Gujarat High Court

**Date of Decision:** Jan. 17, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 207, 209, 313, 378(1)(3)

Indian Penal Code, 1860 â€” Section 114, 323, 504, 506(2)

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3(1)(10)

**Hon'ble Judges:** S.V. Pinto, J

**Bench:** Single Bench

**Advocate:** Bhargav Pandya

**Final Decision:** Dismissed

### Judgement

Sr. No.,Particulars,Exh.

1.,X-ray & Case papers,11

2.,Medical certificate,12

3.,Dying declaration,13

4.,Medical certificate,14

5.,Complaint,16

6.,Report to P.I. Visnagar,21

7.,Panchnama,22

8.,Caste Certificate,25

9.,Permission letter for filing charge sheet,26

10.,Arrest Panchanama,27

3. Being aggrieved and dissatisfied with the said judgement and order of acquittal, the appellant - State has filed the present appeal mainly stating that",,

the impugned judgement and order of acquittal passed by the learned Trial Court is contrary to law and evidence on record and the learned Trial Court,,

has not appreciated the fact that all the witnesses have supported the case of the prosecution and during cross-examination, nothing adverse has been",,

elicited in favour of the respondent. The case has been proved beyond reasonable doubts and the prosecution has successfully established the case,,

against the respondent and the judgement and order of acquittal is unwarranted, illegal and without any basis in the eyes of law and the reasons stated",,

while acquitting the respondent are improper, perverse and bad in law. Hence the impugned judgment and order passed by the learned Trial Court",,,

deserves to be quashed and set aside.,,,

4. Heard learned APP Mr. Bhargav Pandya, for the appellant State. Though served the respondents, none has appeared either in person or through an",,,

advocate. Perused the impugned judgement and order of acquittal and have reappreciated the entire evidence of the prosecution on record of the,,

case.,,,

5. Learned APP Mr. Bhargav Pandya has taken this Court through the entire evidence of the prosecution on record of the case and submitted that the,,

judgment and order of acquittal is contrary to law and evidence on record and the learned trial Court has not appreciated direct and indirect evidence,,

in the case. That the complainant has supported the case of the prosecution, which is corroborated by the deposition of the medical officer and the",,,

witnesses have identified the accused before the learned trial Court. The prosecution has fully prove the case beyond reasonable doubts but the,,

learned trial Court has relied on minor contradictions and has given undue weightage with regard to the place of incident. That the order passed by the,,

learned trial Court is illegal, improper and perverse and is required to be quashed and set aside and the appeal of the appellant must be allowed.",,

6. At the outset, before dissecting the facts of the present case, it would be appropriate to refer to the observations of the Apex Court in the case of",,,

Chandrappa and Others versus State of Karnataka reported in 2007(4) SCC 415 the Apex Court has observed as under:,,

Recently, in Kallu v. State of M.P., (2006) 10 SCC 313 :AIR 2006 SC 831, this Court stated; ""While deciding an appeal against acquittal,",,

the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the",,,

power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an",,,

appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not",,,

reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a,,

presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to,,

interfere, it should assign reasons for differing with the decision of the trial court"". (emphasis supplied)",,,

From the above decisions, in our considered view, the following general principles regarding powers of 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 Code of Criminal Procedure, 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 emphasize 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 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. ,,

6.1 The Apex Court in yet another recent decision in case of Sri Dattatraya Vs. Sharanappa arising out of Criminal Appeal No. 3257 of 2024 (@ SLP ,,

(Crl.) No. 13179 of 2023) observed as under: ,,

31. The instant case pertains to challenge against concurrent findings of fact favouring the acquittal of the respondent, it would be cogent" ,,

to delve into an analysis of the principles underlining the exercise of power to adjudicate a challenge against acquittal bolstered by, ,

concurrent findings. The following broad principles can be culled out after a comprehensive analysis of judicial pronouncements: ,,

i) Criminal jurisprudence emphasizes on the fundamental essence of liberty and presumption of innocence unless proven guilty. This, ,

presumption gets emboldened by virtue of concurrent findings of acquittal. Therefore, this court must be extra cautious while dealing with a" ,,

challenge against acquittal as the said presumption gets reinforced by virtue of a well-reasoned favourable outcome. Consequently, the" ,,

onus on the prosecution side becomes more burdensome pursuant to the said double presumption. ,,

ii) In case of concurrent findings of acquittal, this Court would ordinarily not interfere with such view considering the principle of liberty" ,,

enshrined in Article 21 of the Constitution of India 1950, unless perversity is blatantly forthcoming and there are compelling reasons.",,

iii) Where two views are possible, then this Court would not ordinarily interfere and reverse the concurrent findings of acquittal. However, ,,

where the situation is such that the only conclusion which could be arrived at from a comprehensive appraisal of evidence, shows that there",,

has been a grave miscarriage of justice, then, notwithstanding such concurrent view, this Court would not restrict itself to adopt an",,

opponent view. [Vide State of Uttar Pradesh v. Dan Singh],,

iv) To adjudge whether the concurrent findings of acquittal are perverse, it is to be seen whether there has been failure of justice.,,

This Court in Babu v. State of Kerala clarified the ambit of the term 'perversity' as,,

"if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/admissible,,

material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies",,

logic as to suffer from the vice of irrationality.",,

v) In situations of concurrent findings favoring accused, interference is required where the trial court adopted an incorrect approach in",,

framing of an issue of fact and the appellate court whilst affirming the view of the trial court, lacked in appreciating the evidence produced",,

by the accused in rebutting a legal presumption. [Vide Rajesh Jain v. Ajay Singh],,

vi) Furthermore, such interference is necessitated to safeguard interests of justice when the acquittal is based on some irrelevant grounds or",,

fallacies in re-appreciation of any fundamental evidentiary material or a manifest error of law or in cases of non-adherence to the,,

principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated,,

adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside. Say in cases where the court severed the",,

connection between accused and criminality committed by him upon a cursory examination of evidences. [Vide State of Punjab v. Gurpreet,,

Singh and Others and Rajesh Prasad v. State of Bihar.],,

7. The law with regard to acquittal appeals is well crystallized and in acquittal appeals, there is presumption of innocence in favour of the accused and",,

it has finally culminated when a case ends in an acquittal. That the learned Trial Court has appreciated all the evidence and when the learned Trial,,

Court has come to a conclusion that the prosecution has not proved the case beyond reasonable doubts, the presumption of innocence in favour of the",,

accused gets strengthened. That there is no inhibition to re appreciate the evidence by the Appellate Court but if after re appreciation, the view taken",,,

by the learned Trial Court was a possible view, there is no reason for the Appellate Court to interfere in the same.",,,

8. In light on the above settled principles on law considering the evidence on the prosecution, the prosecution has examined Prosecution Witness No. 1",,,

Dr. Dipakkumar Vitthalbhai Parmar at Exh.10 and the witness was working as a Medical Officer in the General Hospital, Mahesana in the",,,

emergency department on 11/09/2006. The witness has stated that at around 07:00 pm, patient Pavankumar Bharatkumar Parmar was brought for",,,

treatment with a transfer chit from Visnagar Hospital and in the history, he has stated that Bipinbhai and his parents had given him blows with fist on",,,

his face and stomach and he had complained of pain. The complainant had a swelling of 0.5 cm- 0.5 cm on the outer part of the right eyebrow and no,,,

other external marks of injury were seen on the abdomen. The witness has produced the medical certificate of the complainant at Exh.11 and during,,,

the cross-examination, the witness has stated that injury on the complainant could be a self-inflicted one.",,,

8.1 The prosecution has examined Prosecution Witness No. 2 Dr. Devendran Nathuvan Gauswami at Exh.31 and the witness is the Medical,,

Officer at General Hospital, Visnagar who has stated that while he was on duty at:00 pm at Civil Hospital, Visnagar, Pavankumar Bharatbhai Parmar",,,

was brought for treatment and he had given a history that he was beaten by fist. On examination, tenderness was found on umbilical and left lumbar",,,

region but no external injury marks were seen and tenderness was also found on the forehead but no external marks were seen. The medical officer,,,

has produced the medical certificate at Exh:14 and during the cross examination, the witness has stated that after the primary treatment was given, the",,,

complainant was transferred within half an hour.,,,

8.2 The prosecution has examined Prosecution Witness No. 3 Pavankumar Bharatbhai Parmar at Exh.15 and the witness is the complainant, who has",,,

filed the complaint at Exh.16 and the witness has narrated all the facts as stated in the complaint. During the cross examination by the learned,,,

advocate for the accused, the witness has stated that he was admitted in the hospital at Mahesana and he did not show the place of incident to the",,,

Police who had come in the street on the next day. During the cross examination by the learned advocate for the accused, the witness has also stated",,,

that he had to go to school through Patel Mohalla and at the time of the incident it was recess and there were many people present at that place. The,,,

place of incident is a residential area with many houses and a number of people passed by the place to go home.,,,

8.3 The prosecution has examined Prosecution Witness No. 3 Piyushkumar Bhagwanbhai Parmar at Exh.17 and the witness is the friend of the,,,

complainant, who was along with the complainant, at the time of the incident. The witness has supported the case of the prosecution and has stated",,

that at the time of the incident, the accused came out and hit the complainant and used the caste-slurs saying that "they have to speak in a soft-",,

voice. The witness has not supported the case of the prosecution and has been declared hostile and has been cross examined by the learned,,

advocate for the accused and during the cross examination by the learned advocate for the accused, the witness has stated that at the time of the",,

incident there were many people on the road.,,

8.4 The prosecution has examined Prosecution Witness No. 5 Pushpaben Bharatbhai Parmar at Exh.19 and the witness is the mother of the,,

complainant, who has supported the case of the prosecution but during the cross examination by the learned advocate for the accused, the witness has",,

stated that no caste abusive words were stated in her statement before the police and the place of incident is a public road where a number of people,,

moved by.,,

8.5 The prosecution has examined Prosecution Witness No. 6 Babusinh P Chavda at Exh. 20 and the witness is the Police Sub Inspector, who has",,

recorded the complaint of the complainant.,,

8.6 The prosecution has examined Prosecution Witness No. 7 Mayanksinh Ajitsinh Chavda at Exh.23 and the witness is the Investigating Officer, who",,

has narrated in detail the procedure undertaken by him for investigation of the offence. During the cross examination by the learned advocate for the,,

accused, the witness has stated that the place of incident is a residential area and he had not recorded the statement of any persons residing nearby.".,,

That, in the complaint, the complainant has not stated that the accused No. 1 used caste abuse and told him that he has to live as per his say.".,,

Moreover, the complainant had not stated that Bipin took the complainant in the street while beating him and that Bipin had used a caste-slur and told",,

him that he had to speak in a soft-voice. The mother of the complainant also did not state in her statement before the police that the accused No. 1,,

had used any caste abusive words to the complainant.,,

9. On minute appreciation of the entire evidence of the prosecution, it has emerged on record that the incident has occurred on a public road while the",,

complainant, his friend and his brother were returning home and the complainant or the witness have not clearly stated the exact words that were used",,

by the accused. From the evidence it has emerged that there was a fight between the children at around 1:45 pm regarding grasshoppers that were,,

being played with by Bipin and at that time many people were present but no independent witnesses have been examined. The only evidence is that,,

the evidence of the complainant, his mother and his friend but there are major contradictions in the deposition of all three witnesses. Admittedly,",,

mother of the complainant has not seen the incident and she has stated that she came to know about the incident after she called her son into the,,

house whereas the complainant has stated that his mother, father and cousin came and saved him. The mother of the complainant does not say that",,,

she went and released her son from the hold of the accused No. 1 and there is no medical certificate to corroborate the say of the complainant and,,

both the medical officers have stated that there were no marks of external injury on the body of the complainant. Moreover, there are major",,,

contradictions in the actual words stated by the witnesses that were alleged to have been used by the accused at the time of incident. The learned,,

Trial Court has discussed all the oral as well as documentary evidences in detail and has concluded that the contradictory evidence of the complainant,,

and the witnesses cannot be relied upon and it cannot be said that the prosecution has proved their case beyond reasonable doubts. Moreover, the",,,

view taken by the learned Trial Court in acquitting the accused is fairly possible and there is no illegality and perversity in the impugned judgment and,,

order of acquittal.,,,

10. In view of the settled position of law in the decisions of Chandrappa (Supra) and Sri Dattatraya (supra), the learned trial Court has appreciated the",,,

entire evidence in proper perspective and there does not appear to be any infirmity and illegality in the impugned judgment and order of acquittal. The,,

learned Trial Court has appreciated all the evidence and this Court is of the considered opinion that the learned Trial Court was completely justified in,,

extending benefit of doubt and acquitting the accused of the charges leveled against him. The findings recorded by the learned Trial Court are,,

absolutely just and proper and no illegality or infirmity has been committed by the learned trial Court and this Court is in complete agreement with the,,

findings, ultimate conclusion and the resultant order of extending benefit of doubt and acquittal recorded by the learned Trial Court. This Court finds no",,,

reason to interfere with the impugned judgment and order and the present appeal is devoid of merits and resultantly, the same is dismissed.",,,

11. The impugned judgement and order of acquittal passed by the learned Special Judge and Presiding Officer, (Fast Track Court No.1), Mahesana, in",,,

Special Case (ATRO) No. 32 of 2007 on 31.08.2007, is hereby confirmed.",,,

12. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.,,