(2025) 12 GUJ CK 0028

Gujarat High Court

Case No: R/Criminal Appeal No. 782 Of 2003

State Of Gujarat		APPELLANT
	Vs	
Rajendrasinh Prahaladji Parmar & Ors		RESPONDENT

Date of Decision: Dec. 17, 2025

Acts Referred:

- Indian Penal Code, 1860-Section 147, 148, 149, 302, 323, 342, 504, 506(2)
- Bombay Police Act, 1951-Section 135
- Code Of Criminal Procedure, 1973-Section 313, 378

Hon'ble Judges: Ilesh J. Vora, J; R. T. Vachhani, J

Bench: Division Bench

Advocate: Ronak Raval

Final Decision: Dismissed

Judgement

R. T. Vachhani, J

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 20.03.2003 passed by the learned Additional Sessions Judge, Gandhinagar in Sessions Case No.49 of 2001 for the offences punishable under Section 147, 148, 149, 342, 323, 506(2) and 302 of the of Indian Penal Code and under 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. As per the prosecution case, a group of persons went to Dakor on foot from Village Dabhoda which included the deceased, his wife, accused no.1 and others. The said group halted at Lasundra at night. At that time, the complainant Pruthvisinh had seen his wife talking with the accused no.1 Rajendrasinh Parmar in a lonely place. Therefore, the deceased rebuked them. That on 14.3.2000 between

7.30 hrs. and 11 hrs. when the deceased was going for answering the call of nature at the bank of river of Village Salujina Muwada, a quarrel took place between the complainant and accused Rajendrasinh. Thereafter all the accused nos.1 to 8 gathered in the village and accused nos.1, 2 and 8 were saying that " Aje Pruthvine Chhodvano Nathi". Thereafter all the accused gathered in front of the Chowk situated opposite to the house of accused Prahaladji and accused nos.4 and 8 instigated all the accused to find out the deceased, catch him and kill him. Then all the accused went in search of the deceased. That at about 10-00 hrs. accused nos.6 and 7 caught hold of the deceased Pruthvi and took him in front of the house of the complainant-deceased Pruthvi. Thereafter, all the accused dragged Pruthvi to the Ottlo of the Chowk. That accused nos.4 and 8 were shouting that Prithvi be tied with the Nimb Tree. That accused no.8 brought a rope and tied the deceased Prithvi with the Nimb tree. Thereafter, accused no.5 took one iron set of weights and measures from the shop and inflicted blow on the left eye of the deceased. That accused nos. 4 and 8 instigated the other accused to kill the deceased today and don't leave him. That accused no.2 gave one slap to the deceased on his nose and thereupon blood started oozing from the nose. That accused nos.1, 3, 7 and 8 gave fist and kick blows to the deceased. That accused no.8 caught the hair of the deceased and dashed his head with the Nimb Tree. Thereafter, while injured was being taken to the hospital in a rickshaw, accused no.8 stopped the rickshaw and he sat on the chest of the deceased and dashed his head with the ground and thrown him in the rivulets (small street - Vahero).

2.2. Accordingly, FIR being CR No.II - 27/2000 came to be registered with Dabhoda Police Station at the behest of the complainant one Pruthvisinh Andarji Parmar. The Police after investigation charge-sheeted the accused for the aforesaid offences before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section 302 IPC, the case was committed to the Sessions Court. On conclusion of evidence on the part of the prosecution, the learned Sessions Court put various incriminating circumstances appearing in the evidence to the respondents-accused so as to obtain explanation/answer as provided under Section 313 of the Code. In the further statement, the respondents-accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and a false case has been filed against them. After examining the evidence, witness testimonies and submissions from both sides, the learned Sessions Court recorded the finding in favour of the respondents-accused acquitting them of the charges levelled against them.

3. We have heard learned APP Mr.Ronak Raval for the appellant State and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

4. Learned APP Mr.Ronak Raval appearing for the appellant State submits that the impugned order of acquittal is required to be interfered with as the evidence

produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that evidence of PW 3 Gangaben Parmar who was examined at Exh.20 had categorically deposed that accused No.1 had talked with the wife of the deceased and there was quarrel in that regard. It was submitted that no such omission or contradiction in the evidence of the said witness has come on record to discard her evidence. He has further submitted that the prosecution witness has narrated the incident which corroborates with the other supporting material produced by the prosecution and therefore, the order of acquittal deserves to be quashed and set aside.

4.1 He has further submitted that Dr.Dayabhai Khodidas Patel Medical Officer has been examined at Exh.15 and according to his evidence, death of the deceased was due to head injury. Learned APP has drawn the attention of this Court to the complaint at Exh.42 which was recorded before the death of the deceased and it should have been treated as dying declaration of the deceased. It is submitted that conduct of the accused was not natural as they were not found at their houses after the incident as per the evidence of PW 5 Mohanbhai Bhikhabhai, however the learned Sessions Court has recorded acquittal and committed serious error. Learned APP has further referred to the evidence of the other material witnesses and submitted that from the evidence of the said witnesses, the involvement of the accused in commission of the crime is proved and therefore, this Court may interfere with the said finding and record the conviction. He would therefore submit to allow this appeal.

5. Heard the learned APP for the appellant State and perused the deposition of witnesses as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

6. At the outset, if the main allegation in the aforesaid FIR is to be examined, it is to the effect that a group of persons went to Dakor from Village Dabhoda which included the deceased, his wife, accused no.1 and others. The said group halted at Lasundra at night. At that time, the complainant Pruthvisinh had seen his wife talking with the accused no.1 Rajendrasinh Parmar in a lonely place. Therefore, the deceased rebuked them and thereafter on 14.3.2000 between 7.30 hrs. and 11 hrs. a quarrel took place between the complainant and accused Rajendrasinh. Thereafter accused nos. 1 to 8 gathered in the village and all the accused dragged Pruthvi to the Ottlo of the Chowk. That accused nos. 4 and 8 were shouting that Prithvi be tied with the Nimb Tree. That accused no.8 brought a rope and tied the deceased Prithvi with the Nimb tree. Thereafter, accused no.5 took one iron set of weights and measures from the shop and inflicted blow on the left eye of the deceased. That accused nos. 4 and 8 instigated the other accused to kill the deceased today and don't leave him. That accused no.2 gave one slap to the deceased on his nose and thereupon blood started oozing from the nose. That accused nos. 1. 3, 7 and 8 gave fist and kick blows to the deceased. That accused no.8 caught the hair of the

deceased and dashed his head with the Nimb Tree. Thereafter while injured was being taken to the hospital in a rickshaw, accused no.8 stopped the rickshaw and he sat on the chest of the deceased and dashed his head with the ground and thrown him in the rivulets (small street-Vahero). The investigation initiated pursuant to the aforesaid FIR, the Investigating Officer recorded the statements of various persons. Thus, considering the above stated facts, now the case of the prosecution is required to be examined in consonance with the evidence recorded by the learned Sessions Court.

7. PW 1 Dr.Dayabhai Khodidas Patel who was serving as Medical Officer at Civil Hospital, Gandhinagar at the relevant time and is examined at Exh.15. The witness has deposed in his testimony that the history was given by the father of the injured that there was quarrel and he was lying on the road and the injured Pruthvisinh was brought to the hospital by his father without police yadi. On examination of the injured, it was noticed that the injured was unconcious and the injured was referred to the Civil Hospital, Ahmedabad for further treatment. In his cross examination, the witness has stated that no other history was given.

8. PW 2 Dr.Narendra Gunvantrai Joshi has been examined at Exh.17. This witness has carried out the postmortem of the dead body of the deceased. The witness has deposed that the deceased has died due to shock and sustained head injuries.

9. PW 3 Gangaben Aradji Parmar has been examined at Exh-20. The witness is the mother of deceased Pruthvisinh.

10. PW 4 Varsangji Pratapji has been examined at Exh.-22. The witness is the nephew of deceased Pruthvisinh. The witness has stated that he has not seen the incident and that police has also not interrogated to him.

11. PW 5 Mohanbhai Bhikhabhai has been examined at Exh.41 who was working as ASI at Rakhial Police Station at the relevant time. The witness has recorded the complaint given by Rajendrasinh Prahladji Parmar and his father against deceased Pruthvisinh for the offence under sections 323, 504 of IPC. The witness has also recorded the complaint at Exh.42 which was given by deceased Pruthvisinh.

12. PW 6 Bhavansinh Dhulaji has been examined at Exh.43 who was working as ASI at Mansa Police Station at the relevant time. The witness has taken the signature of deceased Pruthvisinh in the office copy of the vardhi at Exh.44 which was written to the Medical Officer, Dabhoda Primary Health Center.

13. PW 7 Dr.Girishbhai Madhabhai Makwana has been examined at Exh.46. The witness has deposed that complainant Pruthvisinh has not come to the hospital on 14.3.2000 for medical examination.

14. PW 8 Chinubhai Varsangji has been examined at Exh.47. This witness has been declared as hostile witness. Similarly, PW 9 Vaniben Varsangji who has been examined at Exh.48 has also been declared as hostile witness as they have not

supported the case of the prosecution.

15. PW 10 Raiben Pruthvisinh has been examined at Exh.49. The witness is the wife of deceased Pruthvisinh. The witness has stated that she has come to know from the mouth word that her husband has been murdered.

16. PW 11 Kantibhai Karsanbhai Parmar has been examined at Exh.50. The witness is the panch of the panchnama of place of offence. The witness has stated that he has also signed the inquest panchnama as the same was recorded in his presence.

17. Thus, considering the evidence of the prosecution witnesses adduced before the learned Sessions Court and considering the case of the prosecution followed by the evaluation of the evidence by learned Sessions Judge, it can be seen that eye witnesses of the incident have not supported the case of the prosecution. Even, the recovery of rope and iron bat during the course of investigation have not been supported by the depositions of the eye witnesses and therefore, it cannot be believed that the said things have been used in commission of the alleged offence. Exh.42 is the complaint made by the deceased Pruthvisinh and having gone through the same, it cannot be said that injuries have been caused by the said muddamal and that no weapon has been used while inflicting blow. It also appears that M.B.Makwana in his deposition has stated that he has recorded the complaint of Pruthvisinh and after recording the complaint, he has given the said complaint to make entry in the register, but on careful scrutiny of the complaint at Exh.42, it can be seen that except making signature, Mr.Makwana has not written anything in his own handwriting in view of the fact that the contents of complaint as well as the contents of Dabhoda Police Station are different and that signature of M.B.Makwana is also having different character. Therefore, it is the contention of the learned advocate for the defence is that M.B.Makwana has not recorded the complaint of Pruthvisinh but the same is recorded by some other person and after reducing the said complaint in writing, M.B.Makwana has done only signature in the space between the words before me and Investigating A.S.I., Dabhoda Police Station and hence, the deposition of Shri Makwana cannot be believed. After recording of the complaint, deceased received yadi for medical treatment from another police personnel Bhavansinh Dhulaji and therefore, the signature of Pruthvisinh on Exh.42 and the signature of Pruthvisinh before Bhavansinh in the yadi at Exh.44 are different and thus, the complaint does not contain the signature of Pruthvisinh. Further, if the complaint is given by Pruthvisinh, then there are three panchnamas which were not required to be carried out by the prosecution in view of the fact that the complainant could have mentioned the said three places in the complaint but the same has not been done. The inflicting of blow has not been mentioned in the compliant and when the place of incident has not been mentioned in the complaint, then it can be inferred that the complaint has not been given by the complainant.

18. It can also be noticed that no evidence has come on record that the Investigating Officer has carried out the investigation in respect of the complaint at Exh.42. Even,

the injured has not mentioned the names of any witnesses in the complaint. It is also required to be noted that none of the witnesses have supported the complaint at Exh.42. If the Exh.44 is considered as FIR, in that event, the complaint at Exh.44 is not correct and hence, Exh.44 is got up evidence and hence, there appears no complaint and when there is no complaint, in that event, depositions of the witnesses and investigation does not have any corroboration. It appears that if the clothes recovered and the clothes sent for FSL are compared, it can be seen that baniyan and pant recovered at the time of inquest have not been sent for FSL in view of the fact that panchnama for recovery of baniyan shows it is full sleeves baniyan whereas what is sent to FSL is half sleeves baniyan. Similarly, on the pant recovered, no marks of stain have been shown, whereas the pant sent to FSL shows the marks of stain. Thus, material muddamal has also been changed and hence, no reliance can be placed on the same. If other injuries have been found on the body of the deceased other than the injuries mentioned in the inquest panchnama, the same are required to be explained by the prosecution. Even, the prosecution has not produced any corroborative piece of evidence for sending Pruthvisinh for medical treatment from Gandhinagar to Ahmedabad Civil Hospital. Thus, the prosecution has failed to prove its case beyond reasonable doubt as to where and when deceased Pruthvisinh has died.

19. It is the case of the prosecution that the complaint at Exh.42 is the dying declaration of the deceased, but the same cannot be considered as dying declaration in view of the fact that the complaint at Exh.42 is not proved beyond reasonable doubt. That the oral statement made by the deceased though seems to be in the form of description of the incident in question before the Police which subsequently came to be reported as FIR; however the contents thereof before considering the same as dying declaration are required to be corroborated by the other substantial circumstances so as to strengthen the documents as having been made in the fit state of mind, which in the case on hand seems to be lacking. To the contrary, the material on record indicates that the same seems to be tutored at the instance of the prosecution witnesses. Thus, the procedure of recording the statement by the concerned police personnel in the form of complaint; without requisitioning the service of Magistrate which otherwise is required to be acknowledged have not been taken care by the police personnel and therefore, the possibility of the non-appraisal of the contents of the said documents and the thumb impression seems to have been obtained afterwards cannot be ruled out. At this stage, it would be fruitful to refer to the decision of the Honourable Apex Court in the case of Irfan @ Naka Vs The State of Uttar Pradesh reported in 2023 INSC 758, it is observed thus :

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered

to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? Rule of First Opportunity

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying persons imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

20. In view of the proposition of law laid down by the Honble Apex Court in the aforesaid decision Irfan @ Naka (supra) whereby the certain factors are considered to determine the relevancy of the dying declaration and the said factors while equating with the facts of the case on hand, it appears that even the Police personnel have not taken care to verify the said factors as enumerated in the aforesaid decision and thereby seems to have obtained the signature by recording the complaint without the same being read over before the deceased and in absence of acknowledgement of the contents thereof.

21. It is also required to be noted that Gangaben Adarji Parmar has been examined at Exh.20 who is the mother of deceased Pruthvisinh. The said witness in her deposition has stated that accused Rajendrasinh was talking with the wife of deceased Pruthvisinh and thereafter there was quarrel and that time, she was at home. She has deposed that she has not seen that his son Pruthvisinh was beaten by tying with the Neem tree. She has also deposed when they were taking their son in the rickshaw, at that time, no one has beaten to him. Even, in her cross examination also, she does not take case of the prosecution any further. The

prosecution has also examined Varsangji Pratapji at Exh.22 and deceased Pruthvisinh was his nephew and that he was residing beside the house of deceased Pruthvisinh. The witness has not seen the incident. It is also pertinent to note that no other independent witness has supported the case of the prosecution. Learned trial Judge appreciated the evidence of the witnesses in detail and recorded the finding that their testimonies were not inspiring confidence to be relied upon in view of other evidence available on record and therefore, it would be very difficult to link the accused with the crime in question. On that count also, there appears less chance of converting the sentence from acquittal to conviction.

22. Apart from re-appreciation of the evidence as is emerging from the record, it appears that matter in question has been settled between the parties and in consideration thereof the compromise pursis (Exh.23) has been placed on record recording such settlement arrived at between the parties. However, since the offence in question and the charges levelled against the accused seems to be a cognizable and non-compoundable offence, the said compromise pursis (Exh.23) cannot be accepted by giving a complete go-by to the prescribed procedure of law laid down as the burden lies on the prosecution to prove its case beyond all reasonable doubt. It also transpires from the impugned judgment whereby it has been categorically concluded that the material witnesses have not supported the case of the prosecution and even the dying declaration recorded by the police in the form of complaint also seems to be sham and has been recorded without following due procedure of law.

23. It is also pertinent to note that no direct evidence or witness in support of the case of prosecution has come on record and thus the entire case of the prosecution case comes under the shadow of doubt. Therefore, the conclusion arrived at by the learned Sessions Court of acquitting the respondents accused does not warrant any interference in absence of reliable evidence proved beyond reasonable doubt and therefore, the order passed by the learned Sessions Court is just and proper and in our opinion, the same does not require any interference.

24. At this stage, this Court may refer to the decision of the Honble 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.

25. In the case of H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581] the Honble 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.

26. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.

27. In above view of the matter, this Court is of the considered opinion that learned Sessions Court was completely justified in acquitting the respondents of the charges leveled against them. This Court finds that the findings recorded by learned Sessions Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned Sessions Court and hence finds no reasons to interfere with the same.

28. 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 Sessions Court, the present appeal fails and is accordingly dismissed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.