

(2017) 02 GUJ CK 0163

GUJARAT HIGH COURT

Case No: 1604 of 2006

THE STATE OF
GUJARAT

APPELLANT

Vs

PARESH @ PALIYO
GOPALDAS
PATEL(KADAVA) &
ANR.

RESPONDENT

Date of Decision: Feb. 23, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 313, Section 209, Section 235 - Power to examine the accused - Commitment of case to Court of Session when offence is triable exclusively by it - Judgment of acquittal or conviction
- Indian Penal Code, 1860, Section 397, Section 34, Section 188, Section 394 - Robbery or dacoity, with attempt to cause death or grievous hurt - Acts done by several persons in furtherance of common intention - Disobedience to order duly promulgated by public servant - Voluntarily causing hurt in committing robbery

Citation: (2017) 02 GUJ CK 0163

Hon'ble Judges: S R Brahmbhatt, A J Shastri

Bench: Division Bench

Advocate: L R Poojari, Dharitri Pancholi, H L Patel

Judgement

1. The appellant - State has filed the present acquittal appeal against the judgment and order, dated 31.1.2005, passed by the learned Additional Sessions Judge and 10th Fast Track Judge, Rajkot in Sessions Case No.134 of 2004 whereby, the trial court has been pleased to acquit the respondents accused from the charges for which they have been tried.

2. The case of the prosecution, in brief, is summarized as under :

2.1 That on 16.6.2004, the respondents - accused with an intention to commit an offence of loot went to State Bank of Saurashtra, main branch (Jimkhana), Javahar Road, Rajkot. That the respondents - accused, while withdrawing money from the ATM centre, with a common intention came in the ATM room and attacked on the complainant with a knife by pointing on the neck. That the respondent - accused No.2 gave one blow on the neck and on the right side of the stomach and caused severe injuries and ran away with cash amount of Rs.1500/-, golden chain worth Rs.8500/- and one mobile phone worth Rs.2500/-.

2.2 On the basis of this incident in question, a complaint came to be filed by the complainant before the Rajkot "A" Division Police Station, Rajkot and the same was registered as I-C.R.No.233 of 2004. The complaint then was sent for investigation and the Investigating Officer had recorded the statement of relevant witnesses, also drawn panchnama, collected blood samples and sent for further analysis to FSL and also arrested the accused persons and took other steps in the direction of investigation. After collecting adequate materials against the respondents accused, the Investigating Officer filed the charge-sheet before the learned JMFC, Rajkot for the offence under Sections 394, 397, 34 and 188 of the IPC.

2.3 Since the offence which has been alleged are triable by the court of sessions, in exercise of power under Section 209 of the Cr.P.C. the same was transmitted to the court of sessions at Rajkot which came up for consideration before the learned Additional Sessions Judge, Fast Track Court No.10, Rajkot and the case was registered as Sessions Case No.134 of 2004.

2.4 After committal of the case vide Exh.5, the charge came to be framed against the respondents - accused and their plea came to be recorded vide Exh.6 and Exh.7. Since the respondents - accused pleaded not guilty and offered themselves for trial, the prosecution has led the evidence in the form of oral as well as documentary evidence in the following manner:

Sr.No.	PW No.	Name	Exh. No.
1	PW-1	Harunbhai Abdulbhai	11
2	PW-2	Haribhai Virambhai	13
3	PW-3	Idris Ilyasbhai	14

4	PW-4	Kartikbhai Rameshbhai	17
5	PW-5	Bhupatbhai Vallabhbhai	19
6	PW-6	Osamanbhai Umarlal	21
7	PW-7 Dr.J	itendrabhai Jivarambhai	24
8	PW-8	Nandkumar Ramkumar	27
9	PW-9	Kamjibhai Valjibhai	30
10	PW-10	Dr.Premjibhai Bhurabhai	32
11	PW-11	Harsukhlal Dharamshibhai	35
12	PW-12	Rameshbhai Mohanbhai	38
13	PW-13	Prabhashankar @ Bachubhai	39
14	PW-14	Babubhai Virjibhai	41
15	PW-15	Vrajlal Savjibhai	42
16	PW-16	Dinubhai Makubhai	43
17	PW-17	Navinbhai Chhaganbhai	44
18	PW-18	Muljibhai Dharamshibhai	45
19	PW-19	Laljibhai Ukabhai	46
20	PW-20	Tindabhai Panchabhai	47
21	PW-21	Navinchandra Harilal	48
22	PW-22	Gunvantrai Popatlal	49
23	PW-23	Husenbhai Ibrahimbhai	50
24	PW-24	Gelabhai Bijalbhai	55

25	PW-25	Vanrajbhai Raydebhai	56
26	PW-26	Ghanshyamsinh Anopsinh	58
27	PW-27 Ibrahimbhai Hajibhai	62	

Evidence led by prosecution

1	Copy of panchnama of place of incident	15
2	Copy of panchnama	18
3	Copy of panchnama	20
4	Copy of panchnama	22
5	Copy of injury certificate	25
6	Copy of station diary entries	28, 29
7	Copy of notification	31
8	Copy of letter as to taking of blood sample	34
9	Copy of Yadi	36
10	Copy of map	37
11	Xerox copy of register of guest house	40
12	Copy of extract of station diary	57
13	Copy of forwarding letter as to investigation	59
14	Copy of forwarding letters	60, 61
15	Copy of report	64
16	Copy of arrest memo	66
17	Copy of Yadi as to providing of certificate in respect of accused Chetansinh	67

18	Copy of report as to deciding the blood group	68
19	Copy of fax message by I.O. to control room	69, 70
20	Copy of photographs	72
21	Copy of report as to heavy offence	77
22	Copy of receipt of Deep Indane	78
23	Copy of light bill	79
24	Copy of notification	80
25	Copy of crime report	82
26	Copy of Yadi as to blood sample of accused	91,92
27	Copy of letter written by I.O. to FSL	94
28	Copies of receipts given by FSL	95,96
29	Copy of map of place of incident	97
30	Copy of FSL report	99
31	Copy of memorandum by learned advocate for the accused	102

2.5 After the said evidence is being led, a closure pursis came to be given by the prosecution and after recording the statement of the accused persons under Section 313 of the Cr.P.C., the case was put up for trial. The trial court had framed the issues for which adjudication is to take place in sessions case and after considering in detail the evidence led by the prosecution and after considering the further statement, the trial court was pleased to pass an order of acquittal and the respondents accused came to be acquitted from the charges for which they have been tried. It is this judgment and order dated 31.1.2005 is made the subject matter of present criminal appeal by the appellant - State.

3. Mr.L.R.Poojari, learned APP for the appellant - State has contended that the trial court has committed a serious error in exercising jurisdiction under Section 235 of the Cr.P.C. for passing an order of acquittal. It has also been contended by learned APP that looking to the reasons which are assigned by the trial court, the same are not in consonance with the evidence on record, rather it is based upon a wrong reading of the evidence which is

led by the prosecution. Learned APP has further contended that in the present case, looking to the panchnama of scene of offence drawn by the Investigating Officer, it has been empathetically made clear from this piece of evidence that the incident narrated by the complainant had actually occurred and in furtherance of this, it has also been contended by learned APP that the knife which has been recovered from one of the accused is also having the blood stains which the FSL corroborates the blood of the victim and therefore, since this material aspect is emerging from the record, it cannot be said that that the order passed by the trial court is not in consonance with the relevant record. Learned APP has further drawn the attention of the Court that a specific narration has taken place of the entire incident by the complainant and the injuries which have been caused are also sufficiently corroborating the version of the complainant and in actual terms, the blood has been found from the spot i.e. at the scene of offence. It is further contended by learned APP that the clothes of the victim i.e. complainant are also found to have blood stains and the FSL report has analyzed that this blood stains which are found are that of the complainant and therefore, when the material piece of evidence is corroborating the version of the complainant, there is hardly any cogent material which can justify the order of acquittal and therefore, this being a serious error in exercising jurisdiction, the same deserves to be corrected.

3.1 In addition thereto, learned APP has contended that there are several eye witnesses have been examined by the prosecution to prove the case and in addition to those witnesses, the Investigating Officer has also substantially supported the case of the prosecution and a bare reading of the evidence of the Investigating Officer (PW-24) would clearly indicate that the case has been proved by the prosecution beyond the reasonable doubt and therefore, in this set of circumstance when substantial piece of evidence is supporting the case of the prosecution, it is not correct on the part of the trial court to just grant the acquittal and therefore, simply because some minor contradictions may reflect on the version, the same cannot be cogent enough to substantiate the acquittal passed by the trial court and therefore, considering overall set of circumstance and appreciation of evidence, it clearly emerging that the complainant has put forth the narration which is proved by the prosecution and therefore, ultimately requested the Court to set aside the order of acquittal passed by the trial court.

4. To oppose the stand taken by the learned APP, Ms.Dharitri Pancholi, learned advocate appearing on behalf of HL Patel Advocates for the respondents - accused has vehemently contended that the prosecution has not proved the case beyond the reasonable doubt and therefore, since the prosecution has failed to discharge its duty in proving the case to that standard, the order of acquittal is thoroughly justified in the eye of law. Ms.Dharitri Pancholi has further drawn the attention of the Court that the story put up by the complainant is not probable but, on the contrary, his version is self-contradictory and does not inspire any confidence in the case of prosecution. Learned advocate has

further contended that not only the complainant has not led his deposition in the probable manner but, some of the circumstances which are prevailing on record, are also not justified the case of the prosecution and for that purpose, she has drawn our attention to the charge at Exh.5 which has been framed for trial upon the respondents accused and in correlation to that, she has drawn the attention to first of all the deposition of Dr.Jitendrabhai Jivrambhai (PW-7), who is examined at Exh.24. From this piece of evidence, learned advocate for the respondents - accused submitted that on the contrary, the narration of injuries are not that of the complainant but, are of the accused persons and therefore, this evidence does not support the case of prosecution and on the contrary, it helps and corroborates the stand taken by the defence. Ms.Dharitri Pancholi, learned advocate has vehemently contended that though it is coming in the complaint that after the incident in question, immediately the complainant was taken to the Government hospital but no doctor, who might have treated the complainant, is examined and the prosecution has tried to rely upon the version of another Dr.Premjibhai Bhurabhai (PW-10), who is examined at Exh.32. However, the narration of this deposition would clearly indicate that this doctor is not a treating doctor of the complainant and therefore, the entire case and the version of the complainant being dealt with by the respondents accused, has raised a serious doubt. In addition thereto, learned advocate for the respondents accused has submitted that the blood stains which have been found on the clothes of the complainant as well as the knife which has been nabbed by the police would no doubt indicate the blood group but, the prosecution has not further proved that it is the blood group of the complainant only and therefore, in absence of any specific analysis being coming forth from the evidence, it raises a serious doubt in the case of prosecution.

4.1 Ms.Dharitri Pancholi, learned advocate representing the respondents accused has further drawn the attention of the Court that the panchas have become hostile and have not supported the panchnama at Exh.15 which is a panchnama of scene of offence and therefore, since the panchnama of scene of offence is not supported by independent panch witnesses, the same cannot be relied upon or can be a subject matter of passing an order of acquittal. In addition thereto, Ms.Pancholi has further submitted that a very curious circumstance coming from the record is that one of the accused i.e. accused No.1 - Paresh @ Paliyo Gopaldas Patel has been nabbed by police from Raju Guest House and if the evidence of Investigating Officer as well as the owner of the guest house is to be considered, it is surprising that how before the actual occurrence of the incident, the police was there at a place from where the accused No.1 is nabbed. On the contrary, she has pointed out that the incident in question has occurred at about 6.30 p.m., whereas the police was very much at the guest house and at around 5.30 p.m. i.e. before the occurrence of actual incident and therefore, the entire case of the prosecution raises serious doubt about the narration of the complainant.

4.2 In addition thereto, Ms.Dharitri Pancholi, learned advocate representing the respondents accused has further submitted that during the course of proceeding even though the respondents accused were very much in the court on 3.1.2005, undisputedly the present complainant has not identified these accused persons in the court and there is no test identification parade held by the investigating machinery and therefore, in absence of specific identification, it

cannot be said that the respondents accused are the real culprit. Learned advocate has further submitted that a specific stand of accused No.2 in his further statement recorded under Section 313 of the Cr.P.C. is that he has been wrongly roped in and the injuries which are reflected on his body, are on account of beating up by the police and the injury certificate is also the part of the record and therefore, learned advocate for the respondents accused submitted that the further statement which clarifies the stand of the respondents accused would also strengthen the defence case. Learned advocate has further submitted that the prosecution has pressed into service to prove the case the assistance of 4 to 5 eye witnesses in the form of examination of PW-15, PW-16, PW-18, PW-19, PW-20, PW-22, PW-23 and PW-24 but, except PW-24 nobody has supported the case of the prosecution and therefore, learned advocate has submitted that no case is made out by the State to reverse the order of acquittal. Learned advocate for the respondents accused has further contended that from the evidence on record, it is clearly emerging that the names of the respondents accused have not been given by the complainant himself but, the names are surfaced on account of persons, who were passersby to the incident and therefore, when the complainant has not specifically given the name of the respondents accused and when the complainant has not identified the respondents accused in the court though they were present and when the TI Parade has not been held undisputedly by the prosecution, there is hardly anything available on record to connect the respondents accused with the commission of crime and therefore, the trial court has rightly acquitted the respondents accused and no interference is called for in the said order of acquittal.

5. Having heard the learned counsel appearing for the respective parties and having gone through the reasons assigned by the trial court and the conclusion contained therein and having carefully assessed the evidence on record from the stand point of view of contention of both the sides, we are of the considered opinion that the case is hardly strengthened by any cogent material. It is also reflecting from the record that the complainant has not named the accused persons. It is also emerging from the record that the complainant has not identified the accused persons though they were present in the court and undisputedly, the TI Parade has also not been undertaken. It also transpires from the evidence that though the complainant was taken to the Government hospital, the treating doctor has not been examined by the prosecution and therefore, the injuries are also not corroborated and established beyond the reasonable doubt. Apart from this, the blood group which has been found on the knife as well as the clothes, the same is that of complainant himself is not established by the prosecution. It is under this set of circumstance, to rely upon such kind of evidences which are not cogently connecting the respondents accused, we are unable to accept the stand of the learned APP. In furtherance of this, it is also emerging from the record, as pointed out by learned advocate that the Investigating Officer was very much present, before the occurrence of incident, at Raju Guest House, this raises a serious doubt in the case of prosecution and therefore, in view of this chain of events which is not connecting cogently the respondents - accused in commission of crime, the trial court has not appeared to have committed any

error. In addition thereto, the eye witnesses, whose evidences are tried to be pressed into service, none of them have supported the case of the prosecution. Therefore, on totality of the circumstances prevailing on record coupled with the conclusion arrived at by the trial court, we are not in a position to find out any extraordinary circumstances contrary to disturb the finding arrived at by the trial court and therefore, the reasons which are assigned are in consonance with the evidence on record which cannot be said to be perverse or contrary to the evidence on record and therefore, we are not inclined to disturb the finding arrived at by the trial court.

6. We are mindful of the fact that exercise of appellate jurisdiction, more particularly while dealing with the appeal against acquittal, there are certain parameters prescribed by the Apex Court in catena of decisions. Some of them are deserve to be narrated hereinafter :

6.1 In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr., (2006) 6 SCC 39, the Apex Court has narrated the powers of High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

6.2 In another decision delivered by the Supreme Court in case of Sureshkumar V/s. State of Haryana, reported in (2013) 16 SCC 353, it was observed that if two views are possible, the High Court should hold in favour of the accused and should not interfere with an order of acquittal. The relevant observations of the decision are reflected in Para.55, 56 and 57 which read as under :

"55. The second contention is that the High Court ought not to have interfered in the acquittal by the Trial Court. It was submitted that if two views are possible, the High Court should lean in favour of the accused and should not interfere with an acquittal.

56. A few years ago, the law on the subject was culled out from a large number of decisions and summed up in Ghurey Lal v. State of U.P., (2008) 10 SCC 450 : (AIR 2009 SC (Supp) 1318 : 2008 AIR SCW 6598) as follows:

"1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive."

57. Learned counsel for Suresh Kumar referred to S. Anil Kumar v. State of Karnataka, (2013) 7 SCC 219 : (2013 AIR SCW 6180) particularly paragraph 14 of the Report wherein reliance was placed on Rohtash v. State of Haryana, (2012) 6 SCC 589 : (AIR 2012 SC 2297 : 2012 AIR SCW 3318) to conclude that it is "only in exceptional cases where there are compelling circumstances and where the judgment in appeal is found to be perverse, can the High Court interfere with the order of acquittal." In Rohtash it was further observed:

"The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide State of Rajasthan v. Talevar, (2011) 11 SCC 666 : (AIR 2011 SC 2271 : 2011 AIR SCW 3889) Govindaraju v. State (2012) 4 SCC 722 : (AIR 2012 SC 1292 : 2012 AIR SCW 1994)."

6.3 In yet another decision in the case of Ramaiah @ Rama Vs. State of Karnataka, 2014(9) SCC 365, it has been held by Hon"ble Apex Court that if two views are possible on the evidence adduced and the one favourable to the accused has been taken by the trial court, it should not be disturbed. It has been observed in paragraph Nos.30 and 31 as under:

"30. This very principle of law was formulated by the Court in M. Madhusudhan Rao (supra) in the following manner:

"13. There is no embargo on the appellate court to review, reappraise or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is not interfered with because the presumption of innocence, which is otherwise available to an accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and strengthened by his acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed. Nevertheless, where the approach of the lower court in considering the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere.

14. All these principles have been succinctly culled out by one of us (C.K. Thakker, J.) in *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415 : (AIR 2007 SC (Supp) 111 : 2007 AIR SCW 1850)".

31. In *Chandrappa* (supra), which was followed in the aforesaid case, the Court had observed:

"44. In our view, if in the light of above circumstances, the trial court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of the appellate court are as wide as that of the trial court and it can review, reappraise and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court. In this case, a possible view on the evidence of prosecution had been taken by the trial court which ought not to have been disturbed by the appellate court. The decision of the appellate court (the High Court), therefore, is liable to be set aside".

6.4 In the case of *Upendra Pradhan Vs. State of Orissa*, 2015(5) Scale 634, it has been held by Hon"ble Apex Court that when there are two views culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. Paragraph No.10 of the said decision reads thus:

"10. Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In *Narendra Singh and another v. State of M.P.*, (2004) 10 SCC 699 : (AIR 2004 SC 3249), this Court has recognized presumption of innocence as a human right and has gone on to say that: "30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between "may be" and "must be".

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such

presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court.

Xxx xxx xxx xxx xxx

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld."

6.5 The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, reported in (2003) 8 SCC 180 : (AIR 2003 SC 3601), wherein this Court observed thus:

"7. Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see *Bhagwan Singh v. State of M.P.*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

(Emphasis Supplied).

16. Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be considered and we discard the opposite view which indicates

his guilt.

17. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in *Bindeshwari Prasad Singh v. State of Bihar*, (2002) 6 SCC 650 : (AIR 2002 SC 2907), "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs. to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.

18. The Second ground pleaded before us by the counsel for the accused appellant, that the testimonies of P.W. 1 and P.W.7 should not have been considered, as they were interested witnesses, holds no teeth. We are of the opinion that the testimonies of interested witnesses are of great importance and weightage. No man would be willing to spare the real culprit and frame an innocent person. This view has been supplemented by the decision of this Court in *Mohd. Ishaque v. State of West Bengal*, (2013) 14 SCC 581.

* * *

22. Therefore, in the light of the above discussion, we allow this appeal and set aside the impugned judgment and order passed by the High Court. The appellant has been released on bail vide this Court's order dated 15.04.2014. His bail bonds are discharged."

7. From the aforesaid position prevailing on record and upon due consideration to the evidence as a whole and looking to the proposition of law on the issue, we are of the considered opinion that the appeal filed by the appellant - State has no merit which can permit us to interfere with the finding of the trial court and accordingly, the appeal being meritless deserves to be dismissed.

8. In view of the above, the present appeal is dismissed. The judgment and order, dated 31.1.2005, passed in Sessions Case No.134 of 2004, by the learned Additional Sessions Judge and 10th Fast Track Judge, Rajkot, is hereby confirmed. Bail bonds shall stand discharged. Record and Proceedings be sent back to the trial Court concerned, forthwith.