(2017) 03 GUJ CK 0225

GUJARAT HIGH COURT

Case No: 563 of 1994

STATE OF GUJARAT		APPELLANT
	Vs	
BHOVANBAI ALIAS BHAGWANBHAI BAVABHAI & ORS.		RESPONDENT

Date of Decision: March 2, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 482, Section 313, Section 232 - Saving of inherent powers of High Court - Power to examine the accused - Acquittal
- Indian Penal Code, 1860, Section 302, Section 144, Section 147, Section 323, Section 148, Section 342, Section 149, Section 143 - Punishment for murder - Joining unlawful assembly armed with deadly weapon - Punishment for rioting - Punishment for voluntarily causing hurt - Rioting, armed with deadly weapon - Punishment for wrongful confinement - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Punishment

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

Bench: Single Bench

Advocate: LR POOJARI, HRIDAY BUCH, BHAUMIK DHOLARIYA

Judgement

1. The present Criminal Appeal is filed by the State against the judgment and order, dated 19.1.1994, passed by the learned Sessions Judge, Valsad at Navsari in Sessions Case No.1 of 1990 whereby, the learned Sessions Judge was pleased to acquit all the respondents accused from the offence punishable under Sections 143, 144, 147, 148, 149, 342, 323 r/w Section 302 of the Indian Penal Code.

2. Brief facts leading to the case of prosecution is that on 25.9.1989 at about 22.00 to 24.00 hours at Gaurishankar Maholla, Patel Faliya of village Jalalpore, the respondents accused, who were armed with weapons, assembled with a common intention, conspired

and attacked one Laljibhai and Kishorbhai Somabhai, who were initially brought to the house of Laljibhai at about 10.00 hours in the night. It is the case of the prosecution that serious injuries have been caused by all the accused persons and their infliction was sufficient enough to cause death and on account of this, Kishorbhai Somabhai succumbed to the injuries, where as out of this incident the injured witness Laljibhai and Savitaben were detained illegally against their wish and thereby, these accused persons in connivance with each other have committed an offence. The complaint further revealed that initially Bhavanbhai Dhirubhai along with two other persons on 25.9.1989 had brought Laljibhai and Kishorbhai at their place in the vehicle of Dhirubhai and at that point of time, it was noticed that situation of Laljibhai and Kishorbhai was serious and were not in a position to speak. Both these persons were shifted with the help on the first floor and the persons then went away. The case has further travelled on the assertion that thereafter, some more 10 persons came to the house in which Dhirubhai and Kalubhai were also noticed, who came around 10.30 to 11.00 hours and had beaten up and threatened of dire consequences. The attacked was made in what manner is described in detail in the complaint in which it has been specifically alleged that accused No.2 - Dhirubhai gave 4 to 5 blows of hockey to Kishorbhai, who died and other accused persons had beaten by giving fist blows. On account of this episode which continued for about 15 to 20 minutes, Kishorbhai was badly injured and thereafter, the persons went away. So much so that after a further period of half an hour, again accused Dhirubhai and Kalubhai both came with other accused persons, namely, accused Nos.4, 5 and 6 in which Dhirubhai was armed with hockey and Kalubhai was having no weapon and again caught Kishorbhai and gave blows on several parts of the body. This again continued for about 10 minutes and then, they went away. Subsequently, on next morning, the injured were taken to the hospital for treatment but, Kishorbhai succumbed to the injuries. Thereafter, in the morning hours at about 5.00 O''clock, police came to the spot which ultimately led to filing of the complaint before the Jalalpore Police Station being C.R.No.107 of 1989 for offence punishable under Sections 302, 147, 149, 342 and 323 of IPC. Initially, one Vitthalbhai Kuvarji gave an application, who is the neighbour of Laljibhai Patel, who is injured and pursuant to which, the complaint appears to be set in motion which application dated 26.9.1989 is produced at Exh.15. Pursuant to this complaint, the Investigating Officer carried out the investigation in detail, drawn panchnama of scene of offence, also drawn the panchnama for arrest of the accused, also prepared the inquest panchnama and conducted all necessary steps to investigate the complaint and after collecting the entire material during the course of investigation, a charge-sheet came to be prepared and the same was submitted to the concerned Judicial Magistrate. Since the incident in question is a serious offence, not triable by the learned Magistrate, the same was committed to the sessions and after committal order, it was registered as Sessions Case No.1 of 1990 before the learned Sessions Judge, Valsad at Navasari. The trial court, after hearing both the sides, framed the charge at Exh.1 which was made to understand to the accused persons. But since the respondents accused denied the offence being committed, the case was then put up for trial. With a view to prove the case, the prosecution has led the evidence in the form of oral as well as documentary

evidence. The prosecution has examined following witnesses to prove the case against the respondents accused. List of those witnesses examined by the prosecution is reproduced hereinafter ;

Sr.No.	Name of witness	Exh. No.
1	Dr.Anilkumar Maganlal Nayak	32
2	Hareshkumar Thakorelal Soni	34
3	Parshottambhai Shambhubhai	36
4	Maganbhai Bhavanbhai	37
5	Somabhai Bamnabhai	38
6	Ganeshbhai Gangaram	39
7	Dalpatbhai Kishorbhai Patel	41
8	Gordhanbhai Vallabhbhai	43
9	Kanubhai Bhimjibhai	45
10	Kalubhai Mohanbhai	46
11	Vijayaben Ganeshbhai	50
12	Govindbhai Shantilal Patel	51
13	Dhansukhbhai Amrutlal	53
14	Dr.Bhimjibhai Vestabhai Savaliya	55
15	Dr.Anil Maganbhai Patel	56
16	Bhimjibhai Ramjibhai - complainant	65
17	Manubhai Keshavbhai	66
18	Vitthalbhai Kuvarjibhai	67
19	Narayan Shankarbhai - Head Constable	68
20	Damjibhai @ Laljibhai Devjibhai	73
21	Jadavbhai Ranchhodbhai Patel	77

22	Vasantbhai Premjibhai	79
23	Muljibhai Dayalbhai	80
24	Savitaben Damjibhai	81
25	PSI - H.K.Rana	83
26	PSI - Narendrasinh J. Jhala	85

2.1 Thereafter, the trial court has framed the issues 5 in number and after closure pursis having been given by the prosecution, a further opportunity was given to the accused in the form of statements recorded under Section 313 of the Cr.P.C. The plea was also recorded prior thereto but, ultimately during the entire course of adjudication of trial, relying upon the evidence led by the prosecution, the trial court in exercise power under Section 232 of the Cr.P.C. was pleased to acquit all the respondents accused vide judgment and order dated 19.1.1994. It is this judgment and order which is made the subject matter of present criminal appeal.

2.2 This criminal appeal was already admitted in February,1996 and it has now come up for final hearing. The Court while taking up the matter finally has heard Mr.L.R.Poojari, learned APP for the appellant - State, Mr.Hridya Buch, learned counsel for respondent No.2 and Mr.Bhaumik R. Dholariya, learned counsel for respondent Nos.1, 3, 4 and 6 to 8. It has been reported that during the course of trial and pendency of appeal, original accused Nos.5 and8 have expired and therefore, qua them, appeal gets abated.

3. Mr.L.R.Poojari, learned APP for the appellant - State has vehemently contended that there is a serious error committed by the trial court in passing the order of acquittal, more particularly when with the aid and assistance of injured witness and other independent witnesses, the prosecution has proved the case beyond the reasonable doubt. Learned APP has, by referring to several evidences forming part of the paper book compilation, contended that there appears to be serious error committed by the trial court which warrants interference of this Court. While contending this, learned APP has drawn our attention to the various evidences in the following manner :

3.1 The complainant Bhimjibhai was examined as PW: 16 at Exh: 65 his evidence is at page 357 to 378. He is the cousin of the injured Lalji Alias Damjibhai PW:20 who is a injured eye witness. He is witness to incident which took place at the resident of Laljibhai on 25.09.1989 between 22 to 24 hours. He had registered F.I.R. and the same of was numbered as I.C.R. No. 107/1989, however the same was not exhibited because the neighbor of Laljibhai, Vitthalbhai Kuvarjibhai PW: 18 had informed to the police before the registration of the said FIR and said information was treated as FIR.

3.2 In his evidence at para 3 to 12 he has clearly narrated how the incident took place and what roles are played by the accused persons. In para 3 he has stated that on 25.09.1989 at about 9:00 PM Bhovanbhai accused No. 1, Dhirubhai accused No. 2 came and left Laljibhai and Kishorbhai at resident of Laljibhai. At that time conditions of Kishorbhai and Laljibhai were very serious and they were not able to talk. Both the accused were taken them up on steps. Laljibhai was made to sleep inside and Kishorbhai was made to sleep outside on the otta. The accused went away. Looking the condition of injured persons he thought that they must have been assaulted. Hence, he asked Bhovanbhai accordingly, in response Bhovanbhai told him that they fell down from the vehicle in a drunkard condition.

3.3 Thereafter about 10 people including accused No. 2 and 3 came there and they started beating Kishorbhai. Dhirubhai tried to open the door so that they could beat Laljibhai. However he did not open the door hence he threatened to kill him. Therefore, he stood in the front of the door. Then one of the accused caught hold of him and pushed him and started beating Kishorbhai. Dhirubhai was holding hockey stick and assaulting Kishorbhai. He assaulted him on shoulder and back. They also gave kick and a fist blows all over the body and kishorbhai was lying unconscious. He was not in a position to speak.

3.4 Thereafter, after lapse of 45 minutes some 4 to 6 persons came again including Kalubhai accused No. 3 and Dhirubhai accused No. 2. Thereafter as stated in his examination in chief he narrated that he went to Surat to call Muljibhai bother-in-law of Lalibhai. He stated that his F.I.R. was registered at about 5:00 PM. In para 11 of his evidence he indentified accused No. 3 Kalubhai and accused No. 4 Bharatkumar Kodabhai Patel. He also identified Kalubhai, Dhirubhai and Bhovanbhai before the magistrate in the identification parade. In his cross examination at page 16 he mentioned he did not know any persons residing nearby. In Para.17, he further stated that he could not go to Police Station because the accused persons were keeping watch or blocked the entry of the society and in night also, they blocked the entry. Since Dhirubhai given him threat he could not go to Police Station. In para 20 he stated that it was not his village, therefore, he could not go to call a Doctor. He was standing in front of the door hence he could not go to call the neighbors. In such grave situation hence, he himself was lost he could not call the people who were residing nearby. In cross examination he stated that they took Kishor out of the otta and therefore his body was lying outside of the otta. In para 24 he stated that at 11:00 Clock he could not go to Police because accused were keeping watch. He registered F.I.R. when Police came to the resident at 5:00 Clock. From his evidence it is clear that the accused persons brought Laljibhai and Kishorbhai in the injured condition. Thereafter they repeatedly the assaulted Kishor. He identified accused No. 1,2, 3 and 4. He is an eye witness to the incident.

3.4.1 It is night hours between 10:00 to 12:00 PM. Scene of offence is a remote village Jalalpur. The house of injured witness was given on rent to him at the instant of accused No.1 eye witness Bhimjibhai and injured witness Damjibhai are the outsiders and new to the place of incident. Therefore naturally in such a situation witness Bhimjibhai would first informed his relative so that he could get helps from them because in the year 1989 telephone are not available as on date. Naturally when so many people assaulted the deceased with the deadly weapons nobody from the neighborhood would come to help in that night hours. Therefore, non examination of any other independent witness could not be fatal to the case of the prosecution, particularly in view of the evidence of this witness and injured witness and other witnesses. Particularly when the accused persons were keeping watch and sitting on the entry of the society. Therefore, he is a natural witness. Trial Court ought not have disbelieved and discarded his evidence. In the cross examination at para 377 a question was put to him about his hand behind the assault of Laljibhai and Kishorbhai. This suggestion put in the cross examination. It is coming for first time during his examination. It is the case of the accused that both the injured and deceased were injured in the accident and as they were not agreeing to sit in the vehicle they had beaten them. Accused person have not filed any discharge application nor a petition under article 482 of Criminal Procedure Code for quashing the F.I.R. pleading their innocent and alleging that there is hand of this witness, behind the assault of the Laljibhai and Kishorbhai. Therefore, impugned Judgment and order passed by the learned Judge relying on such suggestion in the cross examination is not legal, valid and proper, therefore, same deserves to be interfered by this Hon''ble Court and the order of acquittal passed by the trial Court deserves to be quashed and set aside.

3.5 Damjibhai (Laljibhai) Devjibhai was examined as PW: 20 at Exh: 73 page 397. In his examination in Chief he stated that he was to pay Rs. 530/- to Dhirubhai towards the bullet purchased from him and he was to collect the papers. In para 4 he stated that he and Kishor went to Khoda Amba village and from there they were returning on bullet motor cycle to village Navsari, at that time maruti van bearing registration No. CGK / 41 - dashed with their bullet and he received injury on his head. At that time he identified Ratilal Jadavbhai, Lalubhai Mohanbhai, Bhovanbhai Bavabhai accused No.1, Dhirubhai Kanjibhai accused No. 2, Bharatbhai Khodaba accused No. 4 and he also identified accused No. 1, 2 and 4 in the Court. He deposed that time he was conscious. Ratilal told to the accused persons to take them to Hospital and get them treated. Thereafter, they had been taken to the Hospital at Surat. From there taking leave from the Hospital they were taken to a farmhouse in the vehicle. All those people started beating him and Kishorbhai they were not able to walk and talk, however they could identify the people. Accused persons beaten them by hockey and rod. On his right leg caused burn injury. Hockey blow was inflicted on his back. He was not able to say with what weapons injury was cause on his head. However, there was very much pain. Rod blow was given on his right thigh. All of them had beaten in the farmhouse where there was a tin shed. That farmhouse belonged to Bharatbhai Khodabhai accused No. 4. He had visited that place

earlier, therefore, he knew that farmhouse belonged to accused No. 4. After beating at the farmhouse they took them to his residence. In para 6 he stated that since he was badly beaten by all, his condition was very serious, he could not know what happened to Kishorbhai. His wife told him that Bhovanbhai left him and Kishorbhai at his resident. He also stated that every day Kishorbhai used to sleep outside the house. Therefore, he thought that he must be sleeping there. He deposed that they had been confined in the shed for about 10 to 12 hours. In para 10 he is stated that Ratilal came to him to settle and compromise the dispute and asked him to give money to accused, because there was dispute between accused No. 1 and him. Accused No. 1 was demanding money from him. In para 11 he stated that accused persons also looted 108 carat diamond costing about Rs. 4,62,032/-. He could hear the voice of Dhirubhai accused No. 2. A letter written by him to the accused No. 1 was produced at Exh: 74 and also the copy of account book at Exh.75 and Exh: 76. In cross examination at page 19 he deposed that in police statement he stated that maruti was bearing registration No. GCK 41 came from the front and dashed with his bullet and he fell down. He stated when he was admitted in Dr. Savliya Hospital he was half conscious. He could see and understand. However he was not able to speak. He was specifically stated in para 12 of his cross examination that before he was taken to Dr. Savaliya Hospital nobody assaulted him. He received injury on a head because of the accident. He had specifically stated in the cross examination that they had beaten him at the farmhouse. There were 5 persons in assaulting him. He received head injury at the back side because of the assault at the place where they had confined him in the room at the farmhouse. During that period no arrangement for their food was made. He stated that he purchased diamond from Navasri market and record of the same is with him Value of the same was Rs. 4,62,032/-. Chaganbhai Mobarkavala knows about it. In para 25 of the cross examination he stated that at the time when he was taken from the Savaliya Hospital to the farmhouse he had not seen any injury on the body of Kishorbhai. He stated that he could not see the incident which took place at his resident but could hear about it. In cross examination very specifically stated that he heard the voice of Dhirubhai Kanjibhai. It is denied by him that he and Kishorbhai were left near his resident and went on walking. He also denied that he and Kishorbhai had the habit of drinking liquor. He also denied that as he was to pay to the accused No. 1 a false case was registered.

3.5.1 This witness was injured witness. He also stated what is the motive for committing the offence and how the incident took place and he very specifically named accused No. 1 to 4. The same was supported by the witness Bhimjibhai PW: 16. PW: 16 and 20 are the natural witnesses. PW: 20 is injured witness. Both of them identified the accused as stated hereinbefore. It is settle legal position that injured eye witnesses evidence need not be corroborated. It is also settled legal position that evidence of injured eye witness stands in high pedestal.

3.6 Savitaben PW: 24 wife of Damjibhai was examined at Exh: 81 her evidence is at page 453. In her chief examination, she stated that Bhovanbhai came to leave the deceased and Laljibhai at their resident. She deposed that her husband was not able to speak or give reply and he was made to sleep inside the house and Kishorbhai made to sleep at lobby. At that time Kishorbhai was unconscious and she could see injury on his face. She stated that in the night 4 to 6 people beaten Kishorbhai outside. But since house was closed, she could not see the incident. She was declared Hostile to the case of prosecution. After turned hostile she was examined by the learned Public Prosecutor, wherein she deposed that at that time Kalubhai and other persons came there and gave fist and kick blows to Kishorbhai. She could see from window. Thereafter, they returned at about 12:00 PM in the night Dhirubhai accused No. 2 and two other persons came there and after giving kick and fist blows turned his body around. When her brother in law Bhimjibhai PW:16 interfered they pushed him. She could not hear the voice of Kishorbhai and he was unconscious. After one hour Kalubhai came with 4 persons and he locked the back and front door and illegally confined them. She also stated that her husband was doing diamond business with Bhovanbhai, Dhirubhai and Kalubhai in partnership. She identified Bhovanbhai and Dhirubhai.

3.7.1 From the evidence of this witness it is very clear that Bhovanbhai came with Laljibhai and Kishorbhai and to left them at the resident, she identified Bhovanbhai and Dhirubhai accused No. 1 and 2 which supports the evidences of Bhimjibhai PW: 16 and Dhanjibhai PW: 20.

3.8 Dr. Bhimji Vestabhai Savadiya PW: 14 was examine at Exh: 55 his evidence is at page 333. In his evidence in para 1 he very specifically deposed that on 24.09.1989 at about 8:00 PM Damjibhai and Kishorbhai were brought to his Hospital at that time it was stated by relatives (It was accused persons because at the time of accident relatives were not there and as per the story of accused themselves they brought the deceased and injured to the resident of injured after the accident.) that accident in motorcycle took place and the injury was caused. Simple injury was caused on the forehead of Kishorbhai and no other injury was found. His condition was normal. Damjibhai was vomiting and there was injury on his head. He was given medicine and advised Damjibhai to get Hospitalized, since it is case of accident police should be informed. However since they were not from Surat they wanted to get treatment at Navsari, he had given primary treatment and after half an hour they left Hospital.

3.8.1 This evidence of the Doctor supports the case of prosecution that the accused persons took Laljibhai and Kishorbhai to the Hospital and from the Hospital to the farmhouse and there they assaulted them and thereafter took them to the resident of Laljibhai at Jalalpur village as deposed by the injured witness and other witnesses.

3.9 Dr. Anil Patel PW: 15 was examined at Exh: 56 at page 337, who treated Laljibhai. He stated that on 26.09.1989 at about 11 hours patient was brought to his Hospital by his relative. In history it was stated that he was assaulted at Navsari. Patient was not able to speak, clinically he was conscious however he was mentally unconscious. He narrated that injury were found on the patient body. He was taken treatment up to 15.10.1989 and he was discharged, on that day. He produced the medical case papers at Exh: 57. The evidence of medical witnesses also support the case of prosecution.

3.10 The evidence of the injured witness, eye witnesses and the medical witnesses clearly indicate that on 24.09.1989 accused persons dashed, their vehicle with Motorcycle of Laljibhai and caused injury to him and Kishorbhai as they were searching Laljibhai and Kishorbhai for recovery of the due amount. Thereafter they took them to Hospital of Dr. Bhimjibhai. From there they took Laljibhai and Kishorbhai to the farmhouse and assaulted them and thereafter they left them at the resident of Laljibhai on 25.09.1989 at about 10:00 PM and thereafter repeatedly assaulted deceased Kishorbhai and committed is murder as deposed by Bhimjibhai PW:16 and Damjibhai PW:20. These facts also supported by the evidence of Dr. Anilkumar Nayak PW: 01 who is examined at Exh: 32 page 205. He has performed postmortem of deceased Kishorbhai at Jalalpur Government Dispensary on 27.09.1989. He had mentioned about 8 external injuries and 8 internal injuries. He noticed fractures and also strangulation at injury No. 6. In is cross examination a specific question was put to him. In reply para 8 in page 213, he stated that the death of the deceased would have taken place between 4:00 PM on 25.09.1989 till the conduct of postmortem. This evidence of the Dr. fully supported the case of the prosecution.

3.11 It suggests that injury was caused to deceased Kishorbhai and injured Damjibhai more than one person.

3.12 By contending this, learned APP has ultimately requested the Court to dislodge the finding arrived at by the trial court and set aside the order of acquittal and also requested to inflict appropriate punishment for the offence for which the case was made out by the prosecution against the respondents accused.

4. To oppose the stand taken by learned APP, Mr.Bhaumik Dholariya, learned counsel for the respondent Nos.1, 3, 4, 6 to 8 has vehemently contended that in view of settled position of law on the issue of unlawful assembly and in view of applicability of Section 149 of IPC, the evidence on record is not that much cogent which would emerge a plausible different view than what has been taken up by the trial Court. To substantiate this contention, Mr.Dholariya has submitted like this :

4.1 The term "Unlawful assembly" is defined under Section 143 of the Indian Penal Code, 1860. The first and foremost essential to constitute an assembly an "Unlawful Assembly" is that it should consist of five or more persons (AIR 1962 SC 174). Further, it is must for the prosecution to prove presence and participation of each one of accused in an unlawful assembly (AIR 1963 SC 1175).

4.2 In the present case, the PW-16, Bhimjibhai while giving his complaint (which is not treated as an F..I.R.) named Bhavanbhai (A1), Dhirubhai (A2), Kalubhai (A4) and Dhirubhai having vehicle and he has not named any other persons at the time when his complaint was recorded. During the course of identification parade also he has identified the same aforementioned persons only. However, Dhirubhai having vehicle is not arraigned as accused. In the result, he identified only three accused.

4.3 Whereas, the PW-20 Damjibhai has only identified A1, A2 and A4. PW 24, Savitaben has not identified any accused person.

4.4 The cumulative effect of the evidence of the aforesaid witnesses clearly exonerates accused nos.5 to 9 and clearly establishes their non-involvement in the crime in question. Even otherwise no other evidence on record indicates any sort of involvement and/or identification of accused nos.5 to 9 and in consequence whereof the learned Trial Court has acquitted them from all the charges. In sum and substance, the prosecution has miserably failed to establish presence and participation of five or more persons at a time in crime in question and consequently no offence punishable Section 143, 144, 147, 148 and 149 is proved against the respondents.

4.5 In absence of establishment of unlawful assembly, the individual role of accused nos.1 to 4 is required to be examined in order to connect them with the crime in question. On that count, admittedly none of the witness (including PW 16 and PW 20) has deposed that any of the accused had ever inflicted injury over neck of deceased so as to strangulate him. As per the Post-mortem Report (Exhibit 33 page nos.217 to 227) and the oral evidence of the Doctor Shri Anilkumar Maganlal Nayak, (PW1, Exhibit 32, Page nos.205 to 215), the cause of death is asphyxia due to pressure over trachea and the evidence on record also clearly indicates that death occurred on 26/09/1989 instantly within 2-3 minutes and the death was the result of strangulation. The Doctor has clearly opined that the neck of deceased must have been pressed by winding up anything and as per his opinion death occurred at 4 p.m. on 26/09/1989 (page no.211 & 213). That fact is also getting corroboration from the deposition of PW16 Bhimjibhai as he has deposed that when he left for Surat at 7a.m. in the morning on 26/09/1989 and he arrived on the same day 11 o''clock, deceased Kishor was alive (page no.361). Therefore, it means that the deceased Kishor must have been strangulated in between 11 a.m. to 4 p.m. on

26/09/1989. Admittedly, it is not the case of the prosecution that any of the accused had assaulted the deceased in between 11a.m. to 4p.m. on 26/09/1989. There is no evidence to link the accused with the commission of strangulation over the body of deceased. Without prejudice, it is respectfully submitted that even if the evidence of the so-called eye witnesses is believed to be true as regards to infliction of assault by kick and fist blow than also such injuries are not ascribed as the cause of death of the deceased.

4.6 It is contended the evidence of so-called eye witnesses is not at all reliable as the same suffers from contradictions, improvements and lack of corroboration. The oral evidence of both the eye-witnesses namely Bhimjibhai and Laljibhai alias Damjibhai is also contradictory. The learned Trial Court has rightly observed that the conduct of the eye witnesses is highly unnatural and very doubtful. Further, the evidence of eye witnesses is also not getting corroboration with the medical evidence. The learned Trial Court has exhaustively discussed as to why the oral evidence of the so-called eye witnesses is not reliable and doubtful and therefore the respondents would not like to burden the record by repeating the same. The respondents have submitted their Written Arguments before the learned Sessions Court at Exhibit 90 (page nos.277 to 329 of the R & P) and the same may be considered as part of the Written Submissions herein.

4.7 A reliance is placed on a decision in case of Richard Mounteney, B., Annesley v. Lord Anglesea (1743), 17 How. St. Tr. 1430. Relevant observations of the said decision are as under:

"Witnesses may lie, either be mistaken themselves, or wickedly intend to deceive others . . . but . . . circumstances cannot lie."

4.8 It is also contended that in case where 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 the Hon''ble Apex Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, the Hon''ble Apex 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 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.

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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 mistery 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."

4.9 While submitting this, Mr.Dholariya, learned counsel for the respondent Nos. 1, 3,4, 6 to 8 requested the Court to not to interfere with judgment and order of acquittal and the appeal may be dismissed.

5. Similarly, Mr.Hriday Buch, learned counsel representing respondent No.2 has led the defence version in present criminal appeal and contended that looking to the analysis of evidence on record, no error is committed by the trial court which would require any interference in exercise of appellate jurisdiction. Mr.Hriday Buch has contended that perversity cannot be inferred more particularly when each and every aspect and the evidence is dealt with by the trial court and therefore, simply because another view is plausible, the same cannot be substituted in the absence of any manifest error and the said manifest error is not visualizing from the entire order if read as a whole and therefore, contended that no interference is required. While submitting this, Mr.Hriday Buch has raised following contentions to ultimately requests the Court to dismiss the appeal filed by the State.

5.1 The prosecution has failed to establish that the death of deceased - Kishorbhai Somabhai Chaudhary is the result of the alleged incident. In this context, the prosecution has examined the Doctor Mr.Naik who performed postmortem of the deceased at 10.00 a.m. on 27.9.1989. His evidence has recorded as PW-2 - Exh.32 (page 205) and the postmortem report is Exh.33 (217). The cause of death mentioned in Column No.23 of

the postmortem report is "asphyaxia" due to pressure over trachea and branchus. It also sates in Column No.11 that rigor mortis fully present all over the body. The doctor in his evidence stated that the death would have been caused any time between 10.00 a.m. to 4.00 p.m. on 26.9.1989 (page 209 r/w page 213).

5.2 Thus, the prosecution has not been able to establish that the death of the deceased is caused because of the incident that allegedly took place on 25.9.1989. Hence, foundational fact is not established and therefore, the appeal may kindly be dismissed on this ground.

5.3 The incident allegedly happened in two parts as per the prosecution. The first part of the incident took place on 25.9.1989 in the evening when the deceased along with witness - Laljibhai alias Damjibhai was travelling on a motorcycle. At that time, some of the accused persons tried to knock them down in a white coloured Maruti van. Thereafter, both of them are brought to the house of Laljibhai at about 9.00 p.m. by the very accused persons. Thereafter, as per the case of the prosecution, twice the accused persons attacked the deceased in the house of Laljibhai at about 10.30 p.m. and 12.00 a.m. on the said night, i.e. on 25.9.1989. The deceased is severely beaten. However, witness - Bhimjibhai, though present, is not touched. There is no credible evidence to show as to which accused person came and inflicted injury with which weapon. The evidence of witness - Bhimjibhai, witness - Laljibhai and witness - Savitaben contradict on material aspects. Hence, it is not established by the prosecution that the incident, as alleged, happened at 10.30 p.m. and 12.00 a.m. on 25.9.1989. More so, neighbours - independent witnesses like Ganeshbhai - PW-6 - Exh.39 (page 269) and his wife - Vijayaben - PW-11 - Exh.50 (page 317) have not supported the case of the prosecution. These witnesses specifically state that they could have heard any shouts on the night of 25.9.1989. Thus, the case of the prosecution about occurrence of the incident on 25.9.1989 is also falsified.

5.4 Furthermore, the allegation about the running over by Maruti van over the deceased and witness - Laljibhai is also falsified as the said incident did not take place in the evening on 25.9.1989, as alleged. From the evidence of Dr.Bhimjibhai Savaliya, PW-14, Exh.55 (page 339), it is established that he treated Damjibhai and Kishorbhai on 24.9.1989 at 8.00 p.m. and treated them with a history of an accident.

5.4.1 Thus, the prosecution has not been able to establish that the incident took place in two parts on 25.9.1989.

5.5 Father of the deceased - Somabhai Bamnabhai, PW-5, Exh.38 (page 263) has not supported the prosecution. Similarly, the wife of the injured witness Damjibhai - Savitaben

Damjibhai examined as PW-24, Exh.81 (page 453) has also not supported the prosecution. On the contrary, from the evidence of witness Savitaben, it is revealed that the deceased was alive till 12.00 noon on 26.9.1989. She also admits that she has not witness the incident of beating the deceased Kishorbhai on the night of 25.9.1989. Again the evidence of neighbours - Ganeshbhai and Vijayaben does not support the prosecution. Hence, the prosecution has completely failed to establish its case beyond reasonable doubt.

5.6 The learned Sessions Court has assigned detailed reasons in paras 33 and 36 to 40 to disbelieve witness Bhimjibhai Ramjibhai, PW-16, Exh.65 (page 357) on account of following glaring aspects:

(I) Bhimjibhai could identify only accused No.5 in the test identification parade during the course of investigation, whereas in the evidence, he implicated all the accused persons.

(II) Though the incident of beating took place on two occasions on the night of 25.9.1989, neither does he try to intervene nor does he raise shouts. Even after the accused persons allegedly leave the place, he does not do anything.

(III) In the morning on 26.9.1989, instead of informing the police, he goes to Surat to inform the brother-in-law of Damjibhai - Muljibhai, PW-23, Exh.80 (page 443). Even at that time, Bhimjibhai does not inform anything to Muljibhai and he coms back to Jalalpor from Surat.

(IV) After his arrival at 12.00 noon on 26.9.1989 to Jalalpor, he does not do anything until the police arrived at about 5.00 p.m., pursuant to the FIR given by Viththalbhai at about 4.00 p.m.

(V) He gave false evidence about locking of the rooms and the house where witness Laljibhai, wife - Savitaben and children were residing. He does not explain about his conduct of not raising shouts and/or calling police and/or even calling the doctor.

(VI) He admits that he does not know as to why the accused persons attacked the deceased - Kishorbhai and Laljibhai.

(VII) He himself as an accused in a case of murder at Palitana and his entire evidence raises serious doubt about his own conduct in commission of the alleged offences.

5.7 The learned Sessions Court has rightly disbelieved the evidence of witness Damjibhai alias Laljibhai, PW-20, Exh.73 (Page 397). Detailed reasons are assigned from paras 41 to 45 of the judgment. His evidence has been full of improvement and he even contradicts witness Bhimjibhai on material aspects. His evidence is rightly discarded considering the following aspects:

(i) The entire place of incident changes is an evidence. He allegedly stated that the accused persons had abducted him and Kishorbhai and were detained in a Vadi where they were severally beaten up.

(ii) He stated in his evidence that the accused persons had taken away a packet containing gold amounting to Rs.4,62,063/-. However, no charge of robbery is alleged and it is for the first time on an inference that he stated in the evidence.

(ii) At the time when the accused persons allegedly had beaten up Kishorbhai, he did not realize that he had slept.

(iii) He does not state about alleged beating at Vadi to his own wife when he was brought home at 9.00 p.m. On 26.9.1989.

(iv) He is admitted in the hospital of Dr.Anil N. Patel from 26.9.1989 at 11.00 a.m. and remained as an indoor patient upto 15.10.1989. However, in his evidence, he stated that he was discharged in 3-4 days. The injury certificate, Exh.57 (page 343) does not corroborate the story of excessive beating as alleged by him in his evidence.

(v) His evidence is full of improvement and he contradicts own his wife - Savitaben and brother-in-law - Muljibhai. Thus, even this evidence is rightly disbelieved.

5.8 Under the circumstances, the learned Sessions Court is fully justified in recording acquittal. This Hon''ble Court may, therefore, not interfere in the acquittal appeal. In a recent decision of the Hon''ble Supreme Court in case of Mahavirsinh vs. State of Madhya Pradesh, reported in (2016) 10 SCC 220, it is held that once the trial Court by a cogent reasoning acquits the accused, the re-affirmation of his innocence places more burden on the appellate Court while dealing with the appeal. The Court has to be very conscious to interfere with the appeal, unless there are compelling and substantial grounds to interfere with the order of acquittal. It also lays down a proposition that while appreciating medical evidence vis-?-vis ocular evidence, when the medical evidence makes the ocular testimony improbable, the same becomes a relevant factor in the

process of evaluation of evidence. Where the medical evidence goes so far that it completely rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.

5.8.1 The ratio laid down in the aforesaid judgment clearly applies to the facts of present case. The medical evidence completely rules down that the death of the deceased took place on the night of 25.9.1989 due to excessive beating and the injuries sustained by the deceased. Thus, this Hon''ble Court may not interfere.

5.8.2 In yet another decision, the Hon''ble Supreme Court in case of Selvaraj vs. State of Karnataka, reported in (2015) 10 SCC 230, held that even if two views are possible on the facts, one taken by the trial Court shall not be disturbed, especially in appeal against acquittal.

5.9 The incident allegedly took place on 25.9.1989. The accused persons stood trial for 4 years from 1990 - 1994. Thereafter, the appeal is pending before this Hon''ble Court since 1994. 28 years have passed in the mean time. The accused persons are living their livelihood peacefully. Hence, even on this ground, the appeal may kindly be dismissed. No other submissions advanced by learned advocates for the respondents accused.

6. Having heard the learned counsel representing the respective sides and having gone through the detailed judgment and order passed by the trial court and having corelated the findings with the evidence on record, we find no distinguishable extraordinary circumstance which may permit us to dislodge the finding arrived at by the trial court and reverse the order of acquittal looking to the well defined scope of appellate jurisdiction. Be that as it may, following are the circumstances which cannot be unnoticed and are established on record which ultimately led the trial court to pass an order of acquittal.

(1) The incident in question reported to have occurred on 25.9.1989 for which an FIR came to be lodged on the next day i.e. on 25.9.1989 by one Mr.Vitthalbhai Kuvarji Patel. In that FIR, the name of the deceased was not mentioned as well as the names of the accused persons were also not mentioned.

(2) The prosecution has made an attempt to prove the case by examining as many as 26 witnesses and by producing several documentary evidence. By referring to the evidence for proving the death of the deceased Kishorbhai Somabhai is on account of alleged incident and for that purpose, the medical evidence is adduced in the form of examination of PW-1 - Dr. Anilkumar Naik who is examined at Exh.32, who performed the postmortem

of the deceased on 27.9.1989. The postmortem report which is reflecting on Page-217 of paperbook compilation at Exh.33 wherein, the cause of death which has been mentioned in Column No.23 is ''Asphyaxiadue to pressure over trachea and branchus'' and Column No.11 of the said report reflects that rigor mortis was fully present allover the body and therefore, doctor''s evidence suggests that death would have occurred at any time on 26.9.1989 between 10.00 a.m. And 4.00 p.m. On the basis of this medical evidence, the foundational fact is not established as observed by the trial court.

(3) It is emerging from the record that incident as alleged is in two parts which is the case of prosecution. The first incident alleged to have occurred on 25.9.1989 in the evening when the deceased with Laljibhai @ Damjibhai were travelling on a motorcycle wherein, it is alleged that with a white coloured Maruti Van, an attempt is made to knock down and thereafter, the case of the prosecution travelled further wherein, they were brought to the hospital and second part which appears to be the root cause for the main case of prosecution that on that very day evening, the accused persons have attacked the deceased in the house of Laljibhai on 25.9.1989 twice; one at 10.30 p.m. And another around 12.00 a.m.. It is noteworthy that on account of such beating episode which is alleged, witness Bhimjibhai was not touched.

(4) This incident which is alleged to have taken place at the house of Laljibhai, the independent witnesses i.e. neighbours such as Ganeshbhai, his wife Vijayaben are not supporting the case of the prosecution. Despite the aforesaid gravity of attack as projected, these witnesses,who are examined as PW- 6 and PW-11 respectively have deposed that they have heard any shout in the night and therefore, the case of prosecution is not getting substantiated by any other independent witnesses.

(5) Yet from the evidence of PW-14 - Dr.Bhimjibhai Savaliya, who is examined at Exh.55, who treated Damjibhai as well as Kishorbhai on 24.9.1989 at about 8.00 p.m. with respect to first episode as alleged, this witness weakens the case of prosecution as nothing substantially has come out from the evidence of this witness.

(6) So much so that even PW-5 - Somabhai Bamnabhai, who is examined at Exh.38, who happened to be the father of the deceased, has also not supported the case of prosecution. On the contrary, the evidence of Savitaben w/o Damjibhai suggests that the deceased was alive till 12.00 O''clock noon on 26.9.1989 and she has categorically admitted that she has not witnessed the incident of beating Kishorbhai i.e. deceased on the night of 25.9.1989.

(7) On reading of the entire evidence, the trial court had a benefit of seeing the demur on witness as analyzed and concluded that prosecution has not proved the case beyond the reasonable doubt and for that purpose, detailed reasons have been assigned for coming to this conclusion.

(8) The trial court has disbelieved the evidence of PW-16 - Bhimjibhai Ramjibhai, who is examined at Exh.65 on the ground that Bhimjibhai could identify only accused No.5 in TI Parade during the course of investigation, whereas surprisingly he has implicated all the accused persons. For disbelieving this witness, the trial court has also analyzed his evidence by mentioning that though the incident of beating took place on two occasions on the night of 25.9.1989. This witness has not only chosen not to intervene and not to raise shout and therefore, this unnatural conduct of this witness raises serious doubt in the case of prosecution. This witness has further instead of informing the police in the morning of 26.9.1989, had gone to Surat to inform brother-in-law of Damjibhai i.e. Muljibhai (PW-23) and surprisingly he sent to call him and though he brought him, he has not informed anything and come back from Surat to Jalalpore. It is also reflected that after arrival at about 12.00 in the noon on 26.9.1989 till police arrived at about 5.00 p.m. not at his instance but at the instance of Vitthalbhai, till 5.00 p.m. he has not done anything. He, on the contrary, has given a false evidence about locking of room and pleaded ignorance about the reason for which the attack was made on the deceased and therefore, this witness has not significantly supported the case of the prosecution as found by the trial court.

(9) It appears from the reading of the order passed by the trial court, even for disbelieving PW-20 - Damjibhai @ Laljibhai, who is examined at Exh.23 and to analyze this, the detailed reasons have been assigned by the trial court which are referred to in Para.41 onwards. The trial court, while passing the order which is impugned, has dealt with evidence of this important witness of prosecution, who, according to the trial court, has changed the entire place of incident. This witness has deposed in his deposition that accused persons had taken away the bag containing diamonds worth Rs.4,62,063/- but, no charge of robbery is framed and for the first time, during his deposition he has raised an inference. This witness has also not shared the information and attribution about cheating at Wadi to his wife when he was brought at home at about 9.00 p.m., though after severe beating the very accused was brought at home. He was also admitted for treatment in the hospital of Dr.Amit N. Patel and remained there as an indoor patient upto 15.10.1989. However, in the evidence it is reflected that he was discharged within a period of 3 to 4 days only and his injury certificate which is at Exh.57 does not corroborate the case of excessive bleeding as stated in the evidence. The trial court, upon analyzing the evidence of this witness, has found that there are lots of improvements and contradictions than that of his own wife and brother-in-law and therefore, the trial court has disbelieved this material piece of evidence as is clearly

visible from the order.

(10) Yet another circumstance which cannot be ignored is that not only the prosecution has not established the case beyond the reasonable doubt as found by the trial court but, at the same time, the incident in question has occurred on 25.9.1989 and all the accused persons were on trial for a period of 4 years right from 1990 to 1994 and thereafter, before this Court they are in appeal since 1994 and therefore, there appears to be a long lapse of almost 28 years of time passed on till the Court heard finally the present appeal. Even if time may not be a consideration to examine the evidence and other aspects of the matter but, still, it is one of the relevant considerations when the case of the prosecution rests on such kind of weak piece of evidence.

(11) The cumulative effect of the evidence has got the effect of not only acquitting the respondents accused Nos. 5 to 9 but, has established that prosecution has miserably failed to prove the case beyond the reasonable doubt. The cause of death, the injury certificates, the medical evidence and the conclusion arrived at by the trial court appears to be not in co-relation with the case put up by the prosecution and the narration of attack on that fateful day and therefore, especially when the main witnesses have not been able to substantiate the case of the prosecution, the Court while dealing with an acquittal appeal presented by the State, has to put this caution to substitute the finding.

7. After having gone through the entire evidence on record and also having gone through the reasoning assigned by the trial court and also after comparing and co-relating the reasons with the gist of evidence on record, we found it improper to take a different view even if plausible from the record. It is not even the case of the State that the trial court has not dealt with any material evidence and it is not further the case that the trial court has not examined any of the material piece of evidence and therefore, upon detailed examination of the evidence on record, a particular finding upon subjective satisfaction is arrived at by the trial court in which a conclusion is derived that the prosecution has failed to establish the case beyond the reasonable doubt. We are unable to find any infirmity in exercise of jurisdiction by the trial court. The scope of exercise of appellate jurisdiction is well defined by serious decisions by now and the perversity also must be reflected of vital importance which is completely lacking in the present case and again while going through the evidence as a whole, we have not found anything extraordinary which may permit us to take a different view than that of the view taken by the trial court and there is no unimpeachable material which has lost the sight by the trial court which can permit us to hold contrary. Sitting in an appellate jurisdiction, we cannot review the conclusion derived by the trial court but, upon independent analysis of evidence as a whole also, we are of the considered opinion that no error is committed by the trial court which can call for any interference.

8. For this conclusion, we have an advantage to refer to some of the decisions delivered by the Apex Court. We deem it proper to rest ourselves for assistance on these decisions which are reproduced hereinafter.

8.1 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."

8.2 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 reappreciate 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)."

8.3 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, reappreciate 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 the 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, reappreciate 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"."

8.4 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.

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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 mistery 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."

8.5 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."

9. 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 appellate - 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.

10. In view of above, the present appeal is dismissed. The judgment and order, dated 19.1.1994, passed in Sessions Case No.1 of 1990, by the learned Sessions Judge, Valsad, is hereby confirmed. Bail bonds, if any, shall stand discharged. Record and Proceedings be sent back to the trial Court concerned, forthwith.