

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL NO. 359 of 1997**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE ILESH J. VORA**

**and**

**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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STATE OF GUJARAT  
Versus  
JIVAN PUNABHAI MAKWANA & ORS.

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**Appearance:**

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

ABATED for the Opponent(s)/Respondent(s) No. 2

BAILABLE WARRANT SERVED for the Opponent(s)/Respondent(s) No. 1,3

DHRUVIN P BHUPTANI(8295) for the Opponent(s)/Respondent(s) No. 1

MR YOGESH S LAKHANI(419) for the Opponent(s)/Respondent(s) No. 1,3

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 3

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**CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**

**and**

**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

**Date : 13/05/2024**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE NIRAL R. MEHTA)**

**1.** This appeal under Section 378 of the Code of Criminal Procedure, 1973 at the instance of the State, is directed against the judgment and order dated 21<sup>st</sup> February, 1997 passed by learned Additional Sessions Judge, Rajkot in Sessions Case No.211 of 1994, whereby the accused persons were acquitted from the offence punishable under Sections 302 read with Section 114 of the Indian Penal Code and Sections 37(1) and 135 of the Bombay Police Act.

**2.** The brief facts of the prosecution case are as under.

**2.1** On 02<sup>nd</sup> November, 1994 P.S.I. Kedarnath Avadhvasi of Rajkot City B Division Police Station, while on duty doing patrolling in his jeep car, received an information that one dead body is lying near Thorala Main Road, near Khijda Chowk.

**2.2** Having received such information, said

P.S.I. reached to the place where the dead body was lying and upon inquiry, he was informed that the said dead body is of Premji Devji and accused herein have, by using sharp weapon, murdered said Premji Devji.

**2.3** In furtherance thereto, telephonic information was given to Rajkot City B Division from the house of Homanbhai. The said information was reduced in police station diary being Entry No.18/94. Inquest Panchnama was prepared and body was sent to the government hospital for further examination. At that time, P.I. Shaikh arrived at the place and he taken charge of the investigation.

**2.4** Subsequently, complaint came to be registered at the instance of complainant Mahesh Premji - son of the deceased. Translated version of the said complaint can be extracted as under.

*"As per the facts of the complaint given by complainant Mahesh Premji,*

the case of the Prosecution is that he is residing near Nava Throrala Khijda with his family consisting his parents, grandmother and brothers and their second house is situated at Street No. 4, Harijanvas, Sorathiya Plot and that two tenants stay over there. Earlier, the complainant and his family members were residing in that house. On 01/11/94, the daughter of the maternal uncle of his father died due to immolation at her in-law's house and as her parents used to reside at Sorathiya Plot, following the customs of their community, the complainant and his parents had gone to pay homage during the afternoon time. He and his parents took food along from their house to the house of Bhalabhai - father of the deceased lady and stayed over there till five o'clock in the evening. During that time, the brother of tenants staying in their house situated at Sorathiya Plot, had informed his father that Bharat Bachu and Accused No. 1 Jivan Puna, residing in that area, gather boys and they gamble over there for

the whole day near their house and they consume liquor and if anyone tells him anything, he does not listen and retaliates. At that time, Bharat Bachu and accused no. 1 were gambling with other boys in the afternoon. Hence, the Premjibhai - father of the complainant called both of them and rebuked and asked them not to sit over there. Therefore, both of them retaliated on that point, started abusing the father of the complainant and started to quarrel. As the people of the area intervened, Bharat Bachu and Accused No.1 went away from there. Thereafter, at about 5.30 o'clock in the evening, the complainant and his parents, three of them left in the rickshaw and reached near Nava Thorala. When they all were present at home, the father of the complainant went at seven o'clock in the evening to collect the money which he had to recover from an acquaintance for pending rickshaw fare. At that time, the uncle of the complainant named Rajesh Devjibhai was seen parking his rickshaw near their house and rush

towards the Chowk. Therefore, the complainant and his mother went towards the Chowk. At that time, deceased Premjibhai Devjibhai - father of the complainant was seen lying on the ground in the Chowk and one rickshaw went towards the village in speed. On asking to Rajeshbhai - uncle of the complainant, it was stated that Jivan Puna, Bharat Bachu and Raju Bachu - three of them got together and stabbed knife to his father - deceased Premji Devji. Accused No. 1 Jivan Puna was armed with a knife and Accused No. 2 Bharat Bachu and Accused No. 3 Raju Bachu had caught hold of the deceased and Accused No. 1 inflicted a knife blow to the deceased at the side of the chest and all three of them escaped in the rickshaw parked over there. At that time, deceased Premjibhai was mumbling and he tried to speak something, but could not say anything and people had gathered over there. One of them had called the ambulance, but his father died before the ambulance arrived and therefore, the ambulance went back. Thereafter,

the owner of the factory which is located nearby on 80 Feet Road informed the Police Control and Police Van arrived within some time. As stated by the complainant, his father - deceased Premjibhai had rebuked the accused persons at Harijan Vas near Sorathiya Plot and as altercation and exchange of abuse took place, keeping vengeance regarding the quarrel, the accused persons caused injuries to his father and have run away."

**2.5** Pursuant to the said complaint, the investigation was carried out and after completion of the investigation, chargesheet against the accused persons came to be filed by the investigating agency for the offences punishable under Sections 302 read with Section 114 of the Indian Penal Code and Sections 37(1) and 135 of the Bombay Police Act before the concerned Magistrate court.

**2.6** Since the case was exclusively triable by the Court of Sessions, learned Judicial

Magistrate First Class committed the case to the Sessions Court, Rajkot and the same was numbered as Sessions Case No.211 of 1994.

**2.7** Learned Sessions Judge framed charge against the accused at Exh.1 for the offences punishable under Sections 302 read with Section 114 of the Indian Penal Code and Sections 37(1) and 135 of the Bombay Police Act. The accused pleaded not guilty and therefore, they came to be tried by the Sessions Court accordingly.

**2.8** In order to prove the case against the accused, prosecution has examined following witnesses and brought on record documentary evidence in support thereof. List of the oral evidence and the documentary evidence can be stated as under in tabular form.

#### **ORAL EVIDENCE**

Sr. No.	Exh. No.	Name of Witness
1	11	Dr. Arunbhai Premjibhai Lathiya, Medical Officer.

2	17	Dr. Jayantilal Gordhanbhai, Medical Officer
3	22	Mr. Rameshbhai Bhagwanjibhai Pandya, Circle Inspector
4	26	Mr. Mahesh Prajapati, Complainant
5	28	Mr. Rajesh Devjibhai, Witness
6	32	Puriben Gorabhai, Witness
7	33	Ujiben Mangabhai, Witness
8	34	Kedarnath Ramlal Avadhvasi, PSI
9	36	Jethabhai Rambhai, Panch Witness
10	37	Pravinbhai Bavjibhai, Panch Witness
11	38	Suresh Natha, Police Head Constable
12	43	Ravji Rana, Panch Wintness
13	44	Bahadursinh Ravubha Jadeja, Police Constable
14	45	Baluben Mohanbhai, Witness
15	46	Nanjibhai Hamirbhai Chavda, Panch Witness
16	47	Abdulgani Abdulkadar Shaikh, PI, Investigating Officer

### **Documentary Evidence**

Sr No	Exh. No.	Particulars
1	12	Note for Postmortem of deceased Premji Devji
2	14	List for examination of body of deceased
3	13	Post Mortem Report of deceased
4	15	List from the medical officer to the police inspector to collect the muddamal from the hospital to take the muddamal to the forensic

		science laboratory.
5	16	Letter from the Medical Officer to take the blood sample.
6	17	Injury certificate of accused No.1
7	19	Letter to medical officer for medical examination of accused No.1.
8	20 & 21	Letter from the Medical Officer to Police Inspector to take the blood sample of accused from hospital.
9	23	Map of place of incident.
10	24	Letter of Police Inspector to Circle Inspector for preparing map of place of incident.
11	Mark 25/1	Letter from Medical Officer to the Police Inspector.
12	Mark 25/2	Entry of Logsheet of Control Room.
13	Mark 25/3	Entry of Station Diary of Rajkot City Control Room.
14	27	Complaint of Mahesh Premji
15	35	Inqust panchnama of body of deceased.
16	39 & 40	Copy of Station Diary of "B" Division Police Station.
17	41	Panchnama of clothes of deceased.
18	48	Panchnama of local place
19	49	Panchnama of taking possession of muddamal knife.
20	50	Panchnama of seizure of the muddamal autorickshaw being No. GJ-3T-4767.
21	51	List of muddamal prepared by the police to FSL Junagadh for

		investigation along with the despatch letter
22	52	List of Seal on the muddamal.
23	53	Certificate of authorization for part and pieces of the muddamal
24	54	Receipt given by FSL, Junagadh for receiving muddamal.
25	55	Forwarding letter regarding muddamal sent for investigation.
26	56-60	FSL Report
27	61	Statement of accused before the Police.

**2.9** At the end of the trial, after recording statement of the accused under Section 313 and after having heard the arguments of the prosecution and the defence, learned trial Judge acquitted that the respondents herein – original accused from the charges levelled against them under Sections 302 read with Section 114 of the Indian Penal Code and Sections 37(1) and 135 of the Bombay Police Act by judgment and order dated 21<sup>st</sup> February, 1997.

**3.** Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the

learned trial Judge, appellant - State is before this Court by way of the present appeal.

**4.** We have heard learned Additional Public Prosecutor Mr.L.B. Dabhi for the appellant - State.

**5.** Learned Additional Public Prosecutor Mr.Dabhi for the appellant - State has vehemently submitted that the judgment and order of the trial court is against the provisions of law and that the trial court has not properly considered the evidence laid by the prosecution in its true perspective and that has resulted into serious miscarriage of justice.

**5.1** Learned Additional Public Prosecutor has submitted that the findings and the reasoning recorded by the trial court is perverse in nature being contrary to the evidence brought on record. Mr.Dabhi further submitted that looking to the evidence laid by the prosecution and looking to

the provisions of law, it is established that the prosecution has proved all the ingredients of offence under Section 302, IPC against the present respondents, therefore, learned Additional Public Prosecutor requested this Court to allow the present appeal by quashing and setting aside the impugned acquittal order and to convict the accused under Section 302, IPC, in the interest of justice.

**6.** We have considered the oral submissions canvassed by learned Additional Public Prosecutor, judgment of acquittal recorded by the learned Sessions Judge and the entire evidence recorded by the trial court during the course of the trial.

**7.** At the outset, it is pertinent to note that the present appeal is against the acquittal recorded by the trial court, therefore, in our considered opinion, it would be apt to take note of certain decisions of the Apex Court wherein

law and parameters discussed while exercising powers under Section 378 of the Code. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions.

**7.1** In the case of **M.S. NARAYANA MENON @ MANI v. STATE OF KERALA** reported in **(2006) 6 S.C.C. 39**, the Apex Court has narrated the powers of the 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."*

**7.2** It is thus settled provision that while exercising appellate powers even if two reasonable views/conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal recorded by the trial court.

**7.2.1** Further, in the case of **CHANDRAPPA v. STATE OF KARNATAKA** reported in **(2007) 4 S.C.C. 415**, the Apex Court laid down the following principles;

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge;

[1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of

*acquittal is founded.*

*[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

*[3] Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

*[4] An appellate Court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of*

*innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.*

*[5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."*

**7.3** Even in the case of **STATE OF GOA v. SANJAY THAKRAN** reported in **(2007) 3 S.C.C. 75**, the Apex Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under;

*"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not*

ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

**7.4** Similar principle has been laid down by the Apex Court in cases of **STATE OF UTTAR PRADESH**

**v. RAM VEER SINGH** reported in **2007 A.I.R. S.C.W.**

**5553** and in case of **GIRJA PRASAD (DEAD) BY L.R.s**

**v. STATE OF MP** reported in **2007 A.I.R. S.C.W.**

**5589.** Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

**7.5** In the case of **LUNA RAM v. BHUPAT SINGH** reported in **(2009) SCC 749**, the Apex Court in para 10 and 11 has held as under;

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence.”

**7.6** Yet in another decision in the case of **MOOKKIAH v. STATE, REP. BY THE INSPECTOR OF POLICE, TAMIL NADU** reported in **AIR 2013 SC 321**, the Apex Court in para 4 has held as under:

“4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and

power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]"

**7.7** It is also a settled legal position that in acquittal appeals, the appellate Court is not

required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of **STATE OF KARNATAKA VS. HEMAREDDY** reported in **AIR 1981, SC 1417**, wherein it is held as under;

*"...This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary (1967) 1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the Appellate Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."*

**7.8** In another decision, the Hon'ble Apex Court in **SHIVASHARANAPPA v. STATE OF KARNATAKA** reported in **JT 2013(7) SC 66** has held as under;

*"That appellate Court is empowered to*

*reappreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."*

**7.9** Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

**7.10** In a very recent decision in case of **Babu Sahebagouda Rudragoudar v. State of Karnataka** reported in **2024 SCC OnLine SC 561**, the Apex Court has reiterated the principles governing the appeal against acquittal recorded by the trial court, which can be quoted as under.

(a) *That the judgment of acquittal suffers from patent perversity;*

(b) *That the same is based on a misreading/omission to consider material evidence on record;*

(c) *That no two reasonable views are*

*possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

**8.** Keeping in mind the aforesaid principles laid down by the Apex Court while deciding the appeal against acquittal recorded by the trial court, we are not much impressed by the arguments put-forth by learned Additional Public Prosecutor that judgment is *ex facie* perverse in nature. We say so because having considered the evidence in totality, we find that the complainant viz. Maheshbhai Premjibhai, as per his examination-in-chief, stated that accused No.1 Jeevan Puna was present at the place of offence with knife. However in his cross-examination, he has admitted that he has not seen the incident. He has further stated in his cross-examination that he has not given statement at at the seen of offence he has seen Jeevan Puna holding knife. During the course of cross-examination, it also appears from his

evidence that one Rajesh Devji - brother of the deceased has seen the offence. Accordingly, the complainant is not the eye-witness.

**8.1** Now, considering the evidence of Rajesh Devji - P.W. No.5, Exh.28, it appears that the said witness is a chance witness and he has also not seen the incident personally. He has admitted that he has not given statement that Jeevan Puna has inflicted knife blow while Bharat Bachu and Raju Bachu had caught hold the deceased. According to his evidence, this narration was recorded by the investigating officer on his own.

**8.2** If the evidence of Rajiben Mayabhai wd/o. Deceased at Exh.33 is examined, it also appears that she is not the eye-witness. Lastly, deposition of investigating officer Shri Shaikh at Exh.47 is considered, it appears that at the time when the said witness has come to the place of incident, P.S.I. Kedarnath Avadhvasi was preparing inquest Panchnama and the entire F.I.R.

appears to have been lodged after inquest Panchnama was over and accordingly, at a time the F.I.R. was registered.

**9.** Keeping in mind the aforesaid evidence, we are of the considered opinion that finding of facts recorded by the learned trial Judge based on evidence cannot be said to be faulty. We do not find any infirmity with the order passed by the learned trial Judge in this case. The judgment and order to acquit the respondents is just and proper. Evidence on record will not permit this Court to take a different view than that taken by the learned trial Judge. Even in the present appeal, nothing is produced to rebut the conclusion of the trial court. Looking to the evidence on record, ingredients for the offence under Section 302, IPC, persuaded this Court not to take a different view than that taken by the learned trial court in view of the catena of decisions of the Apex Court. Thus, from the

evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

**9.1** In view of the above, we are of the opinion that the trial court was justified in acquitting the accused - respondents herein from the charges levelled against them under Section 302, IPC. It cannot be said that the learned trial court has committed any error in acquitting the accused. We find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial court and hence, no reasons to interfere with the same.

**10.** In the result, the present appeal is hereby dismissed. The impugned judgment and order dated 21<sup>st</sup> February, 1997 passed by learned

Additional Sessions Judge, Rajkot in Sessions Case No.211 of 1994 is confirmed. Record & Proceedings to be sent back to the trial court concerned. Bail and bail bond, if any, stands cancelled. Surety also, if any, given, stands discharged.

**(ILESH J. VORA, J)**

**(NIRAL R. MEHTA, J)**

ANUP