

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 550 of 2001****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No
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STATE OF GUJARAT**Versus****KANAKSINH @ KANUBHAI GANPATSINH PARMAR & ORS.****Appearance:**

MR. KRUTIK PARIKH, APP for the Appellant(s) No. 1

MR. NEEL P. KANABAR(16614) for the Opponent(s)/Respondent(s) No. 1,2,3,4,5,6

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 28/01/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal passed by the learned Additional Sessions Judge, Godhra in the Sessions Case no. 41 of 1994 for the offences punishable under Sections 120B, 302, 201 read with Section 34 of the Indian Penal Code, the appellant - State has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1. As per the prosecution case, the complainant's son, Dolatsinh, has died. Earlier, the father of the accused Kanubhai, Ganpatsinh, was murdered, and there was enmity between the two families (complainant and accused) in that regard. According to the prosecution, on 1/12/1993, the complainant received information that his son had been murdered around 10:00 a.m. near Saiyedpura Patia. He therefore went there. Upon seeing the condition of the body, the post-mortem report by the doctor, etc., and conducting further inquiry, blood stains, drag marks of the body, one chappal (slipper) of the deceased, etc., were found near the road in front of the National Petrochem Factory in the vicinity of Vasedi village, under a grove of Nilgiri trees.

2.2. Taking all these circumstances into account, the prosecution's case emerged as the accused persons had, sometime after 22:30 hours on or about 30/11/1993 and before 10:30 a.m. on 01/12/1993, conspired at a tyre shop near the three roads in Vasaka village to murder Dolatsinh. They hatched an illegal conspiracy with the common intention to commit the murder. In pursuance of that common intention, when the deceased Dolatsinh was going from Halol to Baska, the accused persons assaulted him near Vasedi village, in front of the National Chem Factory, in the Nilgiri grove, using sticks (danda), iron pipes, etc. They strangulated him by tying a rope around his neck, took the body in a rickshaw bearing No. GJ-17-T-1672, dumped it on the road near Saiyedpura Patia, and destroyed evidence to make it appear as if death had occurred due to a motor accident. In committing the said offence, the accused persons assisted and abetted each other. Accordingly, the

prosecution has presented its case and framed charges against the accused persons in this manner. The Halol Police completed the investigation of this offence and filed the charge sheet against the accused persons under Sections 120B, 302, 201 read with Section 34 of the IPC before the Judicial Magistrate First Class Court at Halol.

3. On conclusion of evidence, the Sessions Court put various incriminating circumstances to the respondent-accused under Section 313 of the Code. The respondent-accused denied all allegations and claimed to be innocent. After hearing both sides, the learned Sessions Judge acquitted the respondent-accused.

4. We have heard learned APP for the State and examined the oral and documentary evidence adduced before the Sessions Court.

5. Learned APP submits that the impugned order of acquittal is required to be set aside because the evidence of the injured witness identifies the accused in Court and the medical evidence fully corroborates the ocular account. He therefore prays for allowing the appeal.

6. The incident is said to have occurred between the night of 30/11/1993 after 22:30 hours and the morning of 1/12/1993 before 10:30 a.m. in a grove of Nilgiri trees near Vasedi village. No eyewitness has been examined who claims to have seen the actual assault or the dragging of the body. The prosecution relies entirely on circumstantial evidence, including alleged recovery of weapons at the instance of the accused, blood stained soil and drag marks at the scene, one chappal of the deceased, and certain seizures from the rickshaw. No direct evidence linking the accused to the act of

murder has been produced.

7. The panch witnesses examined for scene of offence panchnama, recovery of blood soaked soil, drag marks, and chappal have either turned hostile in part or failed to inspire confidence. Importantly, the blood samples collected from the scene and sent to the FSL were never proved through any FSL report to be human blood, let alone the blood of the deceased. Similarly, the panchas for recovery of muddamal weapons sticks, iron pipes from the accused persons gave inconsistent versions in examination-in-chief and cross-examination. Some panchas supported the recovery of articles handed over by the accused, but no inculpatory statement or confession by the accused in their presence could be accepted, as cross-examination revealed police presence and contradictions among the panchas themselves. Several panch witnesses appeared over-enthusiastic and unreliable, with one panch supporting while another contradicting on material facts.

8. A significant weakness in the prosecution case is the complete failure to prove that the blood stains found at the scene, on the seized chappal, on clothes of the accused, or in the rickshaw were human blood or belonged to the deceased Dolatsinh. The FSL report, if any, was not proved or placed on record. No last seen together evidence has been established showing the deceased being taken by or with the accused to the grove. No independent witness has corroborated that the accused were present at or near the scene at the relevant time. The panchnama of the house of accused Kanubhai allegedly standing at his house has been rendered doubtful due to contradictions between panch witnesses, the barking of a dog at a certain point, the house being locked, and the name board being visible facts which render the said

panchnama unreliable.

9. Thus, the only circumstances sought to be proved are the recovery of certain articles shown by the accused and the existence of blood stains and drag marks at the scene. However, these remain unconnected to the deceased by way of serological or forensic evidence. The chain of circumstantial evidence is broken at several vital links absence of proof of deceased's blood, unreliable and contradictory panch witnesses, no last seen evidence, no direct or ocular account, and failure to establish conscious possession or exclusive recovery implicating the accused in the murder itself. In such circumstances, the Sessions Court rightly held that the prosecution has failed to prove the charges beyond reasonable doubt. The medical evidence establishes homicidal death, but the identity of the perpetrators and their role has not been established.

10. It is settled law that in an appeal against acquittal there is a double presumption in favour of the accused. Unless the findings of the Sessions Court are shown to be perverse, the appellate Court will not interfere merely because another view is possible. The view taken by the learned Sessions Judge that the prosecution has miserably failed to establish an unbroken chain of circumstances pointing solely to the guilt of the accused is not only a possible view but the only reasonable view on the evidence on record.

11. At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of ***Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

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

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

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

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

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of

the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

12. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [2023] 9 SCC 581*** the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

- "8.1. The acquittal of the accused further strengthens the presumption of innocence;*
- 8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
- 8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
- 8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
- 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."*

13. In the light of the above discussion and the settled legal position, the prosecution has failed to prove the guilt of the respondent-accused beyond reasonable doubt. The impugned judgment and order of acquittal dated 31/03/2001 passed by the learned Additional Sessions Judge, Godhra in Sessions Case No.41/1994 does not call for any interference.

14. The appeal is devoid of merit and is accordingly dismissed. The judgment and order of acquittal is confirmed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod