IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1085 of 2003

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
RAJESHKUMAR KANTILAL PATEL & ORS.

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Appearance:
MS DIVYANGNA ZALA APP for the Appellant(s) No. 1
HL PATEL ADVOCATES(2034) for the Opponent/Respondent No. 1,2,3,4,5

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CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 27/02/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

At the outset, it is required to be noted that, during pendency of the appeal, original accused No.3 – Mukeshbhai @ Chuchiyo Gandabhai Vaghari and original accused No.5 – Rasikbhai Ranchhodbhai Patel expired and to that effect the PI, Dhansura Police Station has submitted a report through the learned APP annexing therewith the copy of their death certificates which are ordered to be taken on record. Accordingly,

the present appeal stands abated qua original accused No.3 and 5.

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 10/06/2003 passed by the learned Additional Sessions Judge, (Fast Track Court) Sabarkantha at Modasa in Sessions Case No.163 of 2002 acquitting the respondents – accused for the offences punishable under Sections 143, 147, 148, 149, 435, 436, 295 (a), 302 and 325 of the Indian Penal Code and under Section 135 of the Bombay Police Act, the appellant – State has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short).

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

2.1. The prosecution case in brief is that the complainant is a resident of Umarbhai's Chali in village Dhansura. He was working as a motor mechanic and thereby was earning his livelihood. There were in all 11 houses in Umarbhai's Chali, out of which there were 9 residential houses, one flour mill and one provision store. That on 28/2/2002 at about 3:00 p.m. the complainant alongwith his family members was present at his house. At that time a crowd of 700 Hindu people, shouting "Maro Kapo" came to the said Chali. That the said crowd torched the house of the complainant, flour mill and provision store. That almost all the houses were burnt. On account of the fire, the whole houses and household articles were also burnt. That thereafter, the said crowd came to the market of Dhansura, where they set ablaze the shops and houses of Muslim community and also mosque viz. Ahmedsha. That the said crowd proceeded to Jantanagar and there also they caused damages. The burning and damaging of the houses continued up to 5:30 p.m. The Police

came and lobbed teargas shell and also resorted to firing. That by the burning of the houses and household things, almost all houses and household articles were reduced to ashes. The said crowd caused injuries to Maulavi Yunus Ali and three other Muslims. That the injured Maulavi - Yunus Ali succumbed to the injuries and therefore, the Police added the offence under Section 302 of the Indian Penal Code to the original F.I.R. was filed with the Dhansura Police Station for the offences punishable under Sections 143, 147, 148, 149, 436, 435, 295(a) and 325 of Indian Penal Code. It is the further prosecution case that the said incident was a result of the Godhara Carnage, which took place on 28/2/2002. The Police thereafter, after due investigation charge sheeted the accused for the aforesaid offences.

2.2. After investigation, chargesheet was filed before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section 302 IPC, the case was committed to the Sessions Court and it was registered as Sessions Case No.163 of 2002 for trial. On conclusion of evidence on the part of the prosecution, the Sessions Judge put various incriminating circumstances appearing in the evidence to the respondent-accused so as to obtain explanation/answer as provided under Section 313 of the Code. In the further statement, the respondent-accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and a false case has been filed against them. After examining the evidence, witness testimonies and submissions from both sides, the learned Sessions Court below recorded the finding in favour of the respondent-accused acquitting them of the charges levelled against them.

3. We have heard learned APP for the appellant – State and minutely examined oral and documentary evidence adduced and produced before

the learned Sessions Court concerned.

4. Ms. Zala, learned APP appearing for the appellant – State submits that the impugned order of acquittal is required to be interfered with as the evidence produced on record proves the involvement of the accused in the commission of crime in question. She has further submitted that though the complainant has not supported the case of prosecution; but the wife and children of the complainant who has been examined at Exh.36, 37 and 39 have supported the case of the prosecution by naming the accused persons with the weapons they had armed with at the time of commission of offence. She has further submitted that merely because the complainant was declared hostile is no ground to discard the case of prosecution; but rest of the witnesses have deposed to prove the involvement of the accused in commission of the crime. Learned APP has further referred the evidence of the other material witnesses and submitted that from the evidence of the said witnesses, the involvement of the accused in commission of the crime is proved and therefore, this Court may interfere with the said finding and record the conviction. She would therefore submit to allow this appeal.

5. Heard the learned APP for the appellant – State and perused the deposition of witnesses as also documentary evidence placed on record as well as the order passed by the learned Sessions Court. We have also perused the deposition of the material witnesses who have supported the case of the prosecution.

6. The complainant – Nisar Ahmed is examined at Exh.18 who has deposed in his testimony that he was residing at Dhansura Umarbhai's Chali whereas the injured and deceased was residing at Jantanagar. This witness has deposed that having come to know about the incident, he

went to the Police Station where he stayed upto 10:30 p.m. where-from he was sent to Modasa. This witness has deposed that he came to know about commission of murder of one Unusali Maulavi at Jantanagar and this witness has given the complaint about the house being ablazed and to that effect complaint at Exh.19 was given. This witness is unable to identify any of the person present in the mob which consists of young person; neither name of any person is given by this witness. This witness has further deposed that the person present in the mob can be identified by him through their face. This witness having seen the four accused present in the Court has deposed that none of these persons are the person who were present in the mob. Thus, the evidence of this witness does not indicate any of the facts against the accused and therefore evidence of this witness does not support the case of the prosecution.

7. PW No.6 – Latifbhai has been examined at Exh.22 who is stated to be eye-witness as per the case of the prosecution who prior to two days of the incident went to Dhuliya Village and returned to home after twelve days of the incident and came to know about injuries to his son but did not know as to who had caused the said injury. However, since the witness has not supported the case of prosecution; he was declared hostile.

8. PW No.10 – Khursidbhai has been examined at Exh.35 who has deposed in his testimony that on account of the Gujarat Bandh given on 28/02/2002; at that time, a mob armed with weapons came and ablazed the house, as also the mosque. Witness is unable to identify any of the person present in the mob and at the time of incident he was living at Umarbhai's Chali. However, since the witness has not supported the case of prosecution; he was declared hostile.

9. PW No.13 – Altafahmed has been examined at Exh.38. However, since the witness has not supported the case of prosecution; he was declared hostile.

10. PW – Mehrajibibi Taherali – wife of the deceased has been examined at Exh.36. This witness has deposed in her testimony that at the time of incident she was living at Jantanagar alongwith two children. Prior to one year, the incident took place at the agricultural field opposite to her home. At the time incident, having seen the mob, the witness alongwith her husband and children started running and about five persons encircled her husband who were having armed with axe, Dhariya, stick and other weapons. This witness has deposed that these persons after killing her husband had left away and witness became unconscious and thereafter she being taken to the hospital. The husband of the witness was taken to Modasa Dispensary where he died during the treatment. This witness has deposed that she had seen the persons from quite away and present accused were the persons who killed her husband. Witness has identified the accused before the Court and since they were residing nearby to them and therefore she identified them by their face and not by name. This witness has identified the weapons which were armed with by them. This witness has been cross-examined by the other side wherein she has stated that at the time of incident a mob of persons came who chased to kill her husband children and therefore she became scared and fell on the ground. This witness has stated that since the mob came she alongwith her children ran away and they were not beaten by the mob. Initially, the children ran away and thereafter husband of the witness had gone away whereas this witness ran away in opposite direction with other women.

The statement of this witness was recorded after four months of the

incident. Thus, from the evidence of this witness the identity of the accused is not clear as to who were with which weapon armed with and in what manner they killed her husband since this witness having seen the mob got scared and fell on the ground and when she gained consciousness she was at the hospital. Furthermore, when they started running, this witness had gone in opposite direction with other women and therefore fact of she having seen the incident also became doubtful.

11. PW – Taherali has been examined at Exh.37 who has deposed in his testimony that at the time of incident his age was 16 years. He has deposed that on 28/02/2002 they were living at Jantanagar and at about 5:30 p.m., in the 4th line of his house, a mob came and started to assault their house and Rahimbhai came and asked to leave the place and at that time his father was offering prayer and thereafter all four having locked their home came out and since the mob came, they went towards the agricultural field and while they were running, his father was caught hold by four person wherein Kanubha inflicted an axe blow on chick and he therefore fell down, as also Kanubhai inflicted handle of axe on the head of his father whereas others have given stick blow. Witness had run away and his mother was with his father whereas his brother was with him and confronted with the mob. This witness has deposed that his father was taken to Dhansura where he was died in the night. This witness has identified Kanubhai Motibhai and Chuchiyabhai and Mineshbhai and Rasikbhai and out of other persons he identified these four persons before the Court. This witness has deposed that he had not seen the weapon. This witness has been cross-examined wherein he has stated that he was at the first place while they were running and he had seen the back after his father having injured. This witness knew the accused prior to incident and after four months of the incident, his statement was recorded. This witness has stated that he does not remember as to whether Kanubhai

inflicted an axe blow or not, as also he does not know as to which weapon was armed with by which accused. This witness has also stated that he does not remember the fact as to which weapon was inflicted by which accused.

The statement of this witness was recorded after four months of the incident. Thus, from the evidence of this witness the identity of the accused is not clear as to who were with which weapon armed with and as to in what manner they inflicted a blow since this witness having seen the mob started running towards the agricultural field and therefore fact of he having seen the incident also became doubtful.

12. PW No.14 – Sabirbhai, son of the deceased, has been examined at Exh.39. This witness has deposed in his testimony that on 28/02/2002 at about 5:30 O'clock, several persons having armed with axe, stick and iron rod came and therefore this witness alongwith his father and brother started running towards the agricultural field where his father was encircled by five persons and this witness identified them before the Court. This witness has deposed that accused No.1 inflicted an axe blow whereas accused No.3 and 5 caught hold of his father's hand and accused No.2 inflicted an iron rod on back side of head of his father and since they were about to beat this witness, they ran away and complaint of his father having died was given. This witness has been cross-examined wherein he has stated that all four had run away and this witness was with his mother and he does not know as to which weapon was armed by which accused. His statement was not recorded. After two days of the incident, witness went to Anjar where also nothing was done. The fact of accused No.3 and 5 having caught hold of his father is not stated by him in his police statement, as also the fact of accused No.1 inflicted axe blow was not stated in the police statement. Police never came after the

incident. All the accused are living at Jantagar and therefore he identified them by their face.

Thus, from the evidence of this witness, the fact of he having seen the accused having armed with which weapon and causing such injury to his father to commit the murder is not proved and witness has specifically stated in the cross-examination that police had not recorded his statement and he had not stated anything in his police statement. Thus, the evidence of this witness does not inspire any confidence to prove the case of prosecution.

13. All the Panch witnesses to the Panchnama drawn by the IO has also been turned hostile and has not supported the case of prosecution.

14. Upon examining the evidence of the material witnesses, it appears that prosecution witnesses viz., Taherali and Sabirali have both stated that they personally witnessed the incident. However, a careful scrutiny of their depositions reveals material inconsistencies on significant aspects. As per the testimony of witness Tahermali, accused Kanu Bhai inflicted a blow with an axe upon the father of the witness; accused No. 2 – Kanu Bhai – struck the father of the witness on the cheek and also delivered a blow with the reverse side of the axe on his back, while other accused persons assaulted him with sticks. On the other hand, witness Sabirbhai has stated in his deposition that accused No. 1 – Rajeshbhai – inflicted a blow with an axe on the head of his father; accused Nos. 3 and 5 – Mukeshbhai and Vineshbhai caught hold of his father, and accused Kanu Bhai inflicted his father on the rear portion of the head with a pipe. Thus, there are contradictory versions between the two witnesses as to whether accused No. 2 was armed with a pipe or an axe. PW No.12 - Tahermali does not attribute any overt act to accused No. 1, whereas, according to

Sabirbhai, accused No.1 was armed with an axe. Further, Sabirbhai states that accused Nos. 3 and 5 had caught hold of his father, whereas Tahermali makes no such assertion. Therefore, there are material contradictions in the testimonies of Sabirbhai and Tahermali with respect to crucial aspects of the alleged assault.

15. Similarly, having examined the deposition of PW 11- Meherajbibi, she has stated that she saw five persons, of whom one was armed with an axe and others were carrying a Dhariya, sticks and other weapons. She further stated that those five persons assaulted her husband and thereafter fled from the scene. She has identified the accused persons before the Court as being those five individuals. However, she has not specified which accused inflicted which blow, nor has she clearly stated which accused was armed with which specific weapon. In ordinary circumstances, particularly where the assailants are not previously known to the witness, it would be difficult to accurately remember and narrate with precision which accused was carrying which weapon. Such omissions and inconsistencies further weaken the evidentiary value of her testimony.

16. As per the case of the prosecution, the statements of the witnesses were recorded approximately three months after the occurrence of the incident and no such complaint was lodged for a considerable period of time, nor has any satisfactory explanation been offered for such delay in filing the complaint. Furthermore, there exist clear contradictions and material improvements between the police statements and the depositions recorded before Court. Ordinarily, minor inconsistencies in testimony do not by themselves render the prosecution case doubtful, nor do they necessarily cause prejudice. However, where material contradictions appear in the important aspects of the prosecution version, particularly in

relation to the account of alleged eyewitnesses, such testimony becomes doubtful and unsafe to rely upon. It would be apt to refer to the decision of Hon'ble Supreme Court in case of ***Punimati & Anr. Versus The State Of Chhattisgarh & Ors 2025 Livelaw (Sc) 1224*** wherein it has been held that discrepancies in the testimony of the sole interested eyewitness rendered it unreliable, and that a conviction could not be sustained solely on such evidence in the absence of corroboration.

17. Thus, from the evidence so adduced by the prosecution the fact emerges that the complainant claims to have witnessed the incident personally; however, neither he nor the other witnesses possess any knowledge as to whether the alleged prior dispute or incident had in fact occurred. Despite this, no complaint was lodged at the concerned police station nor were the names of the alleged assailants were disclosed. When a serious offence of such nature is committed, immediate information would ordinarily be provided to the police authorities. However, in the present case, although it is alleged that the incident was witnessed directly, no immediate report was made to the concerned police station. In such circumstances, reliance cannot safely be placed upon the testimonies of the alleged eyewitnesses. Furthermore, the said witnesses are interested witnesses and their depositions as eyewitnesses are therefore not worthy and cannot be accepted as reliable piece of evidence.

18. At this stage, it would be apt to note that as per the decision of the Apex Court's in the matter of ***Prabhakar Tewari V/s State of UP & Anr.", Criminal Appeal No.153/2020***, wherein it was categorically held that if statements of witnesses is delayed by substantial time, particularly when the witnesses were available with the police, then it casts a doubt upon the prosecution story. Thus, in the present case also when the witnesses were very well available to record their statements; their

statements had been recorded after considerable long period i.e. about after three months which creates doubt as to the credence their evidence.

19. This Court may also 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]*
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> *"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."

20. 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."

21. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned trial Court, the present appeal fails and is accordingly dismissed while confirming the judgment and order rendered by the learned Sessions Court concerned. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(VAIBHAVI D. NANAVATI,J)

(R. T. VACHHANI, J)

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