

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 6 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

Sd/-

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Sd/-

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Approved for Reporting	Yes	No
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THE STATE OF GUJARAT
Versus
JIVANBHAI KESHAVBHAI SOLANKI & ORS.
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Appearance:

MR BHARGAV PANDYA, APP for the Appellant(s) No. 1
H B SHETHNA(2436) for the Opponent(s)/Respondent(s) No. 1,2,3
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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 22/01/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Here is the Appeal by the State against the judgment and order of acquittal.
2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Surat, passed in Sessions Case No.239 of 2000, dated 14.10.2004, acquitting the respondents from the offence under Section 307 read with Section 114/34 of the IPC.

3. This Court has heard Mr. Bhargav Pandya, learned Additional Public Prosecutor, learned advocates Mr. H.B. Shethna, for the respective parties.

4. Brief facts giving rise to file the present Appeal are that, the respondents-accused were tried and prosecuted for the charge of attempt to murder punishable under Section 307 IPC. According to prosecution case, the injured Raman Vaghela was assaulted by the respondents-accused with the weapon sticks, as a result, he sustained a fracture injury over his leg and motive was to teach a lesson to the injured, so that in future, he would not maintain relations with the daughter of A1. The FIR of the incident was lodged by Shantilal Vaghela (PW.1) with Kamrej Police Station. The accused-respondents were arrested. The injured was treated and examined by Dr. Chandresh Tailor (PW.10) and after due investigation, the accused were chargesheeted for the offence of attempt to murder. Before the trial court, the prosecution had examined as many as 10 witnesses and exhibited 16 documents.

5. On conclusion of oral evidence, the trial Court recorded further statements of the accused as provided under Section 313 of the Code, wherein, they claimed their innocence.

6. The learned Sessions Judge after appreciating and examining the oral as well as documentary evidence acquitted the accused herein for

the offence punishable under Section 307 read with Section 114/34 of IPC, but, convicted the respondents-accused under Section 324, causing voluntary injury and on the issue of sentence, after hearing the parties, instead of sentencing the accused to imprisonment, they have been released on probation with the condition to keep peace and good behaviour for a period of 2 years.

7. In view of the aforesaid facts and circumstances, this acquittal appeal has been preferred by the State.

8. Mr. Bhargav Pandya, learned Additional Public Prosecutor appearing for the appellant – State, assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material. The version of the eye witnesses are clear about the injuries caused by the respondents-accused and the manner in which the injured was assaulted, the ingredients proving the charge under Section 307 clearly attracted as the bodily injuries being inflicted with such intention to cause death and if the injured would die, then the accused would certainly held guilty for the offence of murder. In such circumstances, it is prayed that, the learned trial court committed an error while extending the benefit of probation and judicial discretion on that count, has not been properly exercised.

9. In such circumstances, as referred above, it has been submitted

that while acquitting the respondent accused, the trial Court has discarded and ignored the truthful, reliable and acceptable evidence and as such, no cogent reasons being assigned while discarding such evidence. Therefore, it is submitted that the conclusion of acquittal recorded by the Trial Court is contrary to the evidence on record and upon erroneous understanding of law. Thus, it is prayed that the prosecution has succeeded in proving the charge against the respondents accused and the judgment and order of acquittal be set aside and accused may be convicted and sentenced for the offence as referred above.

10. Mr. Shethna, learned counsel appearing for the respondents-accused has submitted that the High Court in a case of Appeal against the acquittal, can interfere only when there are compelling substantial reasons for doing so and more particularly, the findings are without reasons and unreasonable and contrary to the evidence. In the facts of the present case, if the evidence led by the prosecution accepted as it is, then also, the ingredients of offence punishable under Section 307 are not attracted. It is further submitted that, pending the appeal, the matter was amicably settled and same has been brought to the notice of this court by the injured in the form of affidavit and therefore, on merits as well as in view of the compromise, the present acquittal appeal deserves to be dismissed.

11. In such circumstances, referred to above, learned counsel appearing for the respondents accused, has submitted that the Trial

Court while discarding the evidence of oral testimonies of the witnesses have assigned cogent and sufficient reasons while acquitting the accused and therefore, the judgment of acquittal passed is well reasoned, legally sustainable and does not suffer any infirmity warranting interference by this Court.

12. Before proceeding to address the rival submissions, we would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. In exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the judgment of acquittal. The Appellate Court should bare in mind the presence of innocence of the accused and further that, the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there are reasons for interference.

13. In the present case the issue falls for our consideration as to whether the trial Court was justified in acquitting the accused?

14. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court. In the facts of the present case, the respondents-accused have not challenged their conviction under Section 324 of the IPC and in that view of the matter, we do not deem it fit to refer the oral evidence of the witnesses. We have examined the medical evidence and the

manner in which the injured was assaulted. In order to prove the charge of attempt to murder, the prosecution is obliged to prove the essential ingredients of the offence, which are:

- (i) that the death of a human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of the act of the accused and
- (iii) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injury as:
 - (a) the accused knew to be likely to cause death or
 - (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury. The first part makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years. The second part makes such an act punishable with imprisonment for life if hurt is caused thereby. Thus even if the act does not cause any injury it is punishable with imprisonment up to 10 years. If it does cause an injury and therefore hurt, it is punishable with imprisonment for life.

A bare reading of the provision would provide that to justify the conviction under Section 307, it is necessary to prove that the act was done with such intention or knowledge and under such circumstances that, if he or she by that act cause death. In the case of **Hari Singh Vs. Sukhbir Singh (1988 (4) SCC 551)**, the Supreme Court held that while examining whether a case of commission of offence under Section 307 is made out, the Court is required to see whether the act,

irrespective of its result, was done with the intention or knowledge or under circumstances mentioned in the section. It is also settled that, the proof of grievous or life threatening hurt is not sine-qua-none. The intention of the accused can be gathered from the actual injury, nature of the weapon used, manner in which the incident took place, motive for the crime, severity of the blow, the part of body where the injuries inflicted. In addition to that, for the conviction under Section 307, more important has been given to mens-rea.

15. In **AIR 1982 SC 2013, Kundan Singh Vs. State of Punjab**, the Hon'ble Apex Court has observed as under:- "We are of the view that having regard to the facts and circumstances of the present case and particularly in view of the fact that P.W. 6 and P.W. 7 were in the courtyard of their house when the appellant fired gun shots and he could not, therefore, have intended to injure them, the conviction of the appellant under Section 307, I.P.C. was not justified. We think that the conviction of the appellant could be maintained only under Section 324 of the I.P.C. since P.W. 6 and P.W. 7 received simple injuries. We accordingly allow the appeal and alter the conviction of the appellant to one under Section 324 of the I.P.C. for causing simple injuries to P.W. 6 and P.W. 7 and since the appellant has already suffered imprisonment for about 16 months, we direct that the sentence imposed on the appellant be reduced to that already undergone by him and that he may be set at liberty forthwith.

16. The Apex Court in **AIR 1996 SC 3236, Merambhai Punjabhai**

Khachar and others vs. State of Gujarat, wherein in an attempt to commit murder by fire-arm, victim has suffered a pallet injury, the Apex Court held that Section 307 I.P.C. cannot be held to have been satisfied and the conviction was altered to Section 324 of IPC.

17. In **Ramesh vs. State of U.P.**, AIR 1992 SC 664, wherein the injury was found on the back of the injured. Accused was tried along with two other was convicted under Section 307/34 I.P.C. and sentenced to undergo rigorous imprisonment for four years, while the two others were acquitted. The Apex Court altered from section 307 of IPC into Section 324 of I.P.C. and sentence was reduced to the period already undergone with fine of Rs. 3000/-, which was to be paid to the complainant as compensation.”

18. The facts of this case are to be considered on the touchstone of the law, which has been laid down by the Supreme Court. In the case on hand, the injuries as referred is not life threatening and admittedly, no any repeated blow being inflicted on the body of the injured by the accused. The injured himself by way of compromise affidavit, admitted about the nature of the injury. In such circumstances, in our opinion, the ingredients of Section 307 in the facts of the present case, are not satisfied. Thus, the evidence of the prosecution accepted as it is, the case against the respondents-accused does not travel beyond Section 324 of the IPC.

19. The next contention raised is about the benefit of probation

granted by the trial court. We have examined the statutory provisions on the aspect of probation and the relations of the parties. The matter has been amicably settled and therefore, the issue of probation does not require to be interfered with.

20. With the observations as aforesaid, the appeal is accordingly **dismissed**. The Registry is directed to send back the R & P to the Trial Court. Bail bonds are cancelled, if any, and surety is discharged.

Sd/-

(ILESH J. VORA,J)

TAUSIF SAIYED

Sd/-

(R. T. VACHHANI, J)