NEUTRAL CITATION

2026:GUJHC:66353-DB

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

**R/CRIMINAL APPEAL NO. 1049 of 2002**

**FOR APPROVAL AND SIGNATURE:**

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

**and**
**HONOURABLE MR. JUSTICE R. T. VACHHANI**

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| Approved for Reporting | Yes | No |
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STATE OF GUJARAT
Versus
GOPAL PYARELAL NAYEE

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Appearance:
MR L B DABHI APP for the Appellant(s) No. 1
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1
MS ARCHANA S SAGAR(2525) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
**HONOURABLE MR. JUSTICE R. T. VACHHANI**

**Date : 21/10/2026**

**ORAL JUDGMENT**
**(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. Feeling aggrieved and dissatisfied with the judgment and order dated 04/09/2002 passed by the learned Additional Sessions Judge, Ahmedabad City in Sessions Case No. 68/2001 whereby the learned Judge was pleased to convict the respondent – accused for the offence punishable under Section 323 of the Indian Penal Code and sentenced



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him to undergone one year RI with fine of Rs.1,000/- in default to undergone one month RI, however acquitting the respondent – accused from the charge of offence punishable under Sections 302 of the IPC, the appellant – State has preferred the present appeal against the acquittal of the respondent – accused for the offence punishable under Section 302 of the IPC under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (for short "the Code").

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

2.1. The prosecution case in short is that on 30/12/2000, Pradeep-the adopted son of the complainant, had been to the house of the accused. At that point of time, the accused came from outside and told Pradeep, as to why he was sitting in his house. By saying so, the accused quarreled with Pradeep. The further prosecution case is that in the morning of the day of incident i.e. on 31/12/2000, the complainant's husband and Pradeep were present at their house. The deceased was sitting on the cot kept outside of the house. The accused came out of his house and the deceased told the accused as to why he asked Pradeep not to sit in his house. The deceased rebuked him, there upon the accused lost his temper, caught hold of the deceased and gave three to four fist blows on his chest and abdomen. The son of the deceased intervened along with others and saved the deceased from further beating. The deceased collapsed and foam started coming out of his mouth. He was moved to Shardaben Hospital in the emergency ward and the doctor on duty there declared him dead. On these facts, the complainant filed the complaint with the Police and the Police after due investigation chargesheeted the accused for the aforesaid offences.



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3. In pursuance of the complaint lodged by the complainant, investigating agency recorded statements of the witnesses, collected relevant evidence in form of medical evidence and drawn various Panchnamas and other relevant evidence for the purpose of proving the offence. After having found material against the respondent accused, charge-sheet came to be filed in the Court of learned JMFC, as said Court lacks jurisdiction to try the offence, it committed the case to the Sessions Court provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, learned Sessions Judge framed charge against the respondent accused for the aforesaid offence. The respondent accused pleaded not guilty and claimed to be tried

5. In order to bring home charge, the prosecution has examined various witnesses and also produced various documentary evidence before the learned Sessions Court, more particularly described in the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the Sessions Court put various incriminating circumstances appearing in the evidence to the respondent accused so as to obtain his explanation/answer as provided u/s 313 of the Code. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him. After hearing both the sides and after analysis of evidence adduced by the prosecution, the learned Sessions Judge



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acquitted the respondent accused for the offence punishable under Section 302 of the IPC, for which he was tried, as the prosecution failed to prove the case beyond reasonable doubt.

7. We have heard learned APP for the respondent – State and learned Advocate Ms.Archana S. Sagar, learned Advocate appearing for the respondent – accused and have minutely examined the documentary as well as oral evidence during the course of hearing.

8. Learned APP appearing for the appellant – State would submit that the informant herself is an eye-witness and she is the wife of deceased and has narrated the entire incident and as many as thirteen other witnesses have corroborated her case and the independent witnesses also corroborate her case and it is submitted that considering the said piece of evidence as also the documents on record, the accused ought to have been held guilty of the offences punishable under Section 302 of the IPC. He would further submit that an Expert on the postmortem is examined who also corroborates ocular version and after investigated by the IO, he came to the conclusion that there is a case punishable under Sec.302 of IPC against the accused person and therefore, having regard to the aforesaid evidence on record, the learned Sessions Court ought to have convicted the accused for the offence punishable under Section 302 of the IPC. He would further submit that there is nothing in the cross examination of the witnesses examined by the prosecution to disbelieve their testimony and therefore, they must be believed in their entirety and sentence for the offence punishable under Section 302 of the IPC ought to have been inflicted upon the accused.



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8.1 Learned APP would further submit that the evidence of the witnesses examined before the Court have specifically deposed as to how and in what manner the entire incident took place and narrated the actual event prior to commission of offence and described the role of the accused and the manner in which the assault was made which resulted into death of the deceased. Learned APP would further submit that though the scientific evidence in the form of postmortem report is available on record and there is no reasons to disbelieve the scientific evidence which would link the accused with the crime. However the learned Sessions Court has not considered this piece of evidence and has acquitted the accused for the offence punishable under Section 302 of the IPC.

8.2 By making the above submissions, learned APP would submit to allow the present appeal and to quash and set aside the judgment and order of acquittal and to sentence the respondents – accused.

9. Learned Advocate appearing for the respondents-accused while supporting the impugned judgment and order of acquittal qua offence punishable under Section 302 of the IPC would submit that the learned Sessions Court after threadbare examination of the witnesses examined before the Court has recorded the finding of acquittal. He would further submit that the learned Sessions Court has found that the prosecution has failed to examine the Doctor who performed the postmortem on the body of the deceased and thus the so-called injuries are not proved and thereby rightly disbelieved the case of the prosecution and therefore this Court may not interfere with the said finding of acquittal.



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10. Having heard the learned Advocates appearing for the respective parties and examining the facts of the case, at the outset, let us refer to the complaint (Exh.27) given by the PW No.1. It appears from the complaint that an FIR came to be lodged against the accused on 31.12.2000 alleging that on 30.12.2000, Pradeep i.e. the adopted son of the informant had been to the house, of his neighbour Gopal Pyarelal Nayee i.e. the accused herein and at that point of time, Gopal Pyarelal Nayee came from outside and told Pradeep as to why he is sitting in his house and had a quarrel with him and therefore, the informant told Gopal that he also comes and sits in her house and therefore, Pradeep also goes and sits in his house, and thereafter there was a quarrel. It is further stated in the FIR that in the morning of the day of incident i.e. 31.12.2000, the complainant's husband and Pradeep were present at their house and the informant had come out and was drying clothes and at that point of time, her husband was sitting on the cot outside the house and at that point of time, when her neighbour Gopal Pyarelal Nayee came out of his house, the informant's husband told him as to why he asked Pradeep not to sit in his house and thus reprimanded him and thereupon Gopal lost his temper and caught hold of the complainant's husband and gave three to four fist blows on his chest as also in his abdomen. At that point of time, the informant's son and other persons namely Viru Brajmohan, Vinod Nyalsing, Vinod Kanaiyalal and Paresh Niranjan who were residing in the chawl where the informant resided, separated the two. The other persons of the chawl had also gathered there and Gopal fled the scene and the informant's husband collapsed and foam started coming out of his mouth and when she tried to give water to him, the water could not enter his mouth and he fainted and



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was brought to the Shardaben Hospital in the emergency ward and the doctor on duty there declared him dead.

11. Now, in light of the aforesaid facts emerging from the FIR, what appears from the record that whether the alleged acts of accused if taken at the face value, attracts the offences punishable under Sec.302 of IPC and for such purpose, it would be apt to refer to Sections 299 and 300 of IPC.

> *"299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*"

Sec.299 defines culpable homicide. According to this provision, person causing death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act cause to death is said to have committed culpable homicide. Thus, the intentions of causing death or intention of causing bodily injury which is likely to cause death or the knowledge that the act is likely to cause death are material for the purpose of for constituting culpable homicide.

Section 300 of the IPC reads thus:

> *"300. Murder.—*
>
> *Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the*



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*intention of causing death, or—*

*(Secondly)— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—*

*(Thirdly)— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—*

*(Fourthly)— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."*

For the offence under Section 300 of IPC, culpable homicide is murder subject to exceptions narrated in the section. If the act causing death is done with the intention of causing death or with the intention of causing such bodily injury to the knowledge of the offender that it is likely to cause death of a person to whom the harm is caused or is done with the intention of causing such bodily injury to any person which bodily injury is sufficient in the ordinary course of nature to cause death or if the person committing the act, knows that it is so eminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act without any excuse incurring the risk of causing the death or such injury. Thus, here again the emphasis laid down under this section is the doing of the act with intention to cause death or bodily injury to the knowledge the accused that it would cause death or of causing the bodily injury which is sufficient in the ordinary course of nature to cause death or that the accused knows that the act is eminently dangerous that it must in all probabilities cause death or bodily injuries which is likely to death.



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Therefore, for the purpose of holding the accused guilty of the of fence punishable under Sec. 302, which to the spells out the punishment for murder, the proof aforesaid extent is necessary.

12. In light of the above legal matrix reverting back to the facts of the case, the allegations made against the accused are that after few heated exchanges between him and deceased, the accused gave four to six fist blows on the chest, abdomen and other parts of he appears the body of the deceased. The incident had occurred on the spur of the moment. While the accused was going out after coming out of his house have been stopped by the deceased. Thus, It is not the case of the prosecution that the accused had come to the deceased with a premeditation. He had no intention to cause any Injury to the preparedness beforehand deceased but the act has been committed by him after the act deceased stopped him and questioned him as aforesaid and there was a heated exchange of words and then the quarrel and ultimately giving of four to six fist blows by the accused on his chest and in the abdomen.

13. Considering the aforesaid facts, it is not possible to infer that the accused giving fist blows was with an intention to cause death of the deceased or was with an intention to cause such bodily injuries which are likely to cause death or was with the knowledge that by such act he is likely to cause death. No such intention or knowledge can be attributed to the accused having regard to the nature of the incident and the manner in which it took place. No knowledge to the accused can be attributed to an effect that he knew that his such acts were eminently dangerous that his such act in all probability is likely to cause death or such bodily injury as



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cause death of the deceased. No such injuries are found on the person of the deceased.

14. According to the PM report at Exh.24. the cause of death of the deceased depends upon hystopathological report and after such report, the cause of death is cardio-respiratory arrest due to chest injury and internal heart injury. The prosecution has not been able to examine the doctor who performed the PM on the body of the deceased, as according to the Prosecution, the doctor is not available. The Prosecution has however. examined Dr.Jayantilal Virjibhai Satapara who also performed PM and was the Medical Officer in the Civil Hospital. It is rightly appreciated by the learned Sessions Court that the injuries noted in PM report, have not been successfully proved by the prosecution since the prosecution was unable to examine the doctor who had personal knowledge of the injuries on the person of the deceased. The examination of another doctor on the aspect is just an explanation with regard to the injuries noted in the PM report but that does not mean that the injuries are proved and opinion given by the said Doctor remained a mere opinion based on the statements made in the PM report. It would be relevant to note that making a statement in the postmortem report in regards to the injuries on the person of the deceased is not found on the personal knowledge when the said Doctor had not performed the postmortem on the body of the deceased and thus the said evidence loses its significance in the eye of law and the learned Sessions Court has rightly do so. Through the post-mortem report, the manner and method in which the injuries are caused with which weapon used in commission of the crime can be proved; but in absence of examination of the Doctor who performed the actual post-



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mortem, it would not be possible to prove the injuries caused to the deceased. Under such circumstances, it is rightly held by the learned Sessions Court that in absence of proof of effect of injuries upon the person of the deceased, the accused cannot be convicted the offence punishable under Sec.302 of IPC. Furthermore, the intention or knowledge to kill or to cause injuries which may have killed the deceased, or his knowledge that such injuries would kill the deceased if inflicted, cannot be inferred on the basis of the facts emerging from the record of the case.

15. At this juncture, it is apt to refer the judgment of the Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67***, the relevant paragraphs of which read as under:

> *"29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable 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. Further, 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. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:*
>
> *(a) whether the judgment of acquittal suffers from patent perversity,*
>
> *(b) whether the judgment is based on misreading/omission to consider the material evidence on record,*
>
> *(c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.'*
>
> *(d) 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,*



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*(e) 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*

*(f) 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.*

16. Thus, as observed by the Hon'ble Supreme Court in catena of decisions, while dealing with the judgment of acquittal, unless reasoning by the learned Sessions Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned Sessions Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

17. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, the present appeal fails and is accordingly dismissed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

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

**(R. T. VACHHANI, J)**

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