IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 796 of 1999

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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STATE OF GUJARAT
Versus
MANGALBHAI JETHABHAI PATEL & ORS.

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Appearance:
MR. MANAN MEHTA, ADDL. PUBLIC PROSECUTOR for the Appellant(s) No. 1
MR BOMI H SETHNA(5864) for the Opponent(s)/Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 21/05/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE NIRZAR S. DESAI)

1. Feeling aggrieved and dissatisfied with the judgment and order

of acquittal dated 30.03.1999 passed by the learned Sessions Judge, Panchmahals at Godhra in Sessions Case No. 270 of 1998, whereby the respondent accused came to be acquitted for the offences punishable under section 302 read with section 34 and 201 of the Indian Penal Code by giving them benefit of doubt, the appellant – State has preferred this appeal.

2. It was informed by learned APP Mr. Manan Mehta on the basis of a police report dated 01.02.2024 by P.S.I., Kothamba Police Station that the accused respondent no. 1 – Mangalbhai has expired on 30.10.2019 and accused no. 2 Dilipbhai @ Kalubhai Mangalbhai Patel has expired on 30.01.2024. The report is accompanied by photocopy of death certificates of both the accused which are taken on record and hence, this appeal would abate qua the accused respondents no. 1 and 2 and would survive only qua the accused respondent no. 3.

3. Brief facts of the case are stated as under:-

3.1. On 16.07.1998, at around 11:45 in the morning, the First Informant – Parvatbhai Hathibhai registered FIR wherein he has

stated that at around 03:00 a.m. in the early morning accused no. 2 Kalubhai Mangalbhai Patel resident of Charan Gam and accused no. 3 Rayjibhai Bhagabhai resident of Motipura Gam had come to his residence and woke him up and told that the brother of the first informant Hirabhai Titabhai Chavda has met with an accident near Charan gam and has broken his legs and hence, he was to take to hospital. Accordingly, the first informant called the other persons and they all went to Charan Gam at around 03:30 in the early morning and there, in the bus stand, his cousin brother Hirabhai Titabhai was found slept and by that time, he was found dead.

3.2. Upon inquiring, the accused no. 2 and 3 shown him the spot of accident and accused no. 1 and one Ramanbhai told him that by lodging a complaint, dead body will get spoiled and hence, asked him to take the dead body at home. Accordingly, the first informant and others took the dead body at home and upon reaching home, they found that there were injury marks on the dead body of left thigh and left elbows and hence, FIR was registered.

3.3. Thereafter, the investigation was carried out and upon postmortem, it was found that there are no evidence of accident and as prima facie it was found that the injury marks on the body could not be said to be injury sustained due to accident and therefore, upon investigation, it was found that the accused no. 2 and 3 had given wrong information and in fact on the previous night there was dinner at the residence of Sarpanch of Village Jashibhai and thereafter, the accused persons took the victim to some undisclosed place and gave him poison and made him unconscious and gave him blows of sharpedged weapon and thereafter, tried to project the incident as accident.

3.4. Accordingly, all the three accused persons were arrested on 21.07.1998.

3.5. Upon investigation, it was found that on the date of incident at around 09:00 in the night, witness Kanubhai, Arvindbhai and accused no. 2 – Dilip @ Kalabhai Patel and accused no. 3 Rayjibhai Bhagabhai Bariya took their meal at the residence of accused no. 1 Mangalbhai and thereafter, accused no. 2 Dilip,

Arvindbhai and Kanubhai started playing cards whereas accused no. 3 Rayjibhai was sleepping in bed. At around 10:15 at night Arjunbhai and Hirabhai brought English liquor and Jashibhai, Hirabhai and Mangalbhai consumed liquor. At around 11;15 deceased - Hirabhai and accused no. 1 - Mangalbhai started abusing to each other and started shouting at each other and after the persons who were playing cards went off to sleep deceased Hirabhai came out of the house and went behind the house and behind him accused no. 1 Mangalbhai also followed him with an axe. Accused no. 2 – Dilipbhai was also woke up and carried out with iron rod and battery towards the well and the screams of Hirabhai were heard. Therefore, prosecution Witness Kanubhai and Rayjibhai went out and found the accused no. 1 – Mangalbhai carrying an axe and accused no. 2 Dilip told that the deceased Hirabhai fell into well. Accused no. 1 Mangalbhai was carrying axe having blood stains and as Hirabhai was drunk and he fell into well, ultimately Hirabhai pulled up by well but by that time, he was died.

3.6. According to the case of the prosecution, though Hirabhai

had died, the accused no. 3 Rayjibhai told the accused no. 1 Mangalbhai that he is alive but he is not required to be taken to dispensary as he was drunk. Ultimately, the deceased was carried and was put on road near turn and thereafter the accused no. 1 and accused no. 3 Rayjibhai and Mangalbhai had come and Mangalbhai threatened that if anyone talks about this incident to anyone, he will be killed. He also asked the people to tell that they may tell the people that the tempo came from Balasinor side and had met with an accident with Hirabhai and it has ran away and thereafter, accused no.1 - Mangalbhai asked the people to put the deadbody of Hirabhai on Charan Gam Bus-stand.

3.7. Accordingly, as stated earlier the accused persons were arrested and charge was filed.

4. In pursuance of the complaint lodged by the complainant with the Kothamba Police Station for the offence under sections 379, 304 (a) of the Indian Penal Code and section 177, 184 and 134 of the Motor Vehicles Act, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of

offence, discovery and recovery of weapons and obtained FSL report for the purpose of proving the offence. After having found sufficient material against the respondent accused, charge-sheet came to be filed in the Court of learned JMFC, Lunavada. As said Court lacks jurisdiction to try the offence, it committed the case to the Sessions Court, Panchmahal at Godhara as provided under section 209 of the Code.

5. Upon committal of the case to the Sessions Court, Panchmahal at Godhra, learned Sessions Judge framed charge at Exh.2 on 01.12.1998 against the respondent accused for the aforesaid offences. The respondent accused pleaded not guilty and claimed o be tried.

6. In order to bring home charge, the prosecution has examined 18 witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in paragraph no. 7 of the impugned judgment and order.

7. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in

the evidence to the respondent accused so as to obtain 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.

8. We have heard learned APP Mr. Manan Mehta for the appellant – State and minutely examined oral and documentary evidence adduced before the learned Trial Court.

9. Learned APP Mr. Manan Mehta made following submissions:-

9.1. Learned APP Mr. Manan Mehta submitted that in view of the fact that the accused no. 1 and 2 have already expired. The present appeal would survive only qua the accused respondent no. 3 against whom the charges of abatement in the crime and is about destroying the evidence is there.

9.2. It was submitted by learned APP Mr. Mehta that the accused respondent no. 3 was instrumental in destroying the

evidence as though as per the case of the prosecution, the deceased was assaulted by the accused respondents no. 1 and 2, it was accused respondent no. 3 who has also played equally significant role as the record indicates that the accused respondent no. 3 was not only accompanying the accused no. 1 and 2 at the time when the incident took place but accused no. 3 also gave wrong information to the first informant that the deceased person has met with an accident. Further it was accused respondent no. 3 who tried to help the accused no. 1 and 2 in destroying the evidence.

9.3. It was submitted by learned APP Mr. Mehta that considering the fact that the present accused respondent no. 3 had played active role in the offence in question, charge against him qua sections 34 and 201 of the Indian Penal Code would be proved on the basis of the material on record and therefore, though this appeal would abate qua the accused no. 1 and 2, the impugned judgment and order is required to be quashed and set aside qua the accused respondent no. 3.

10. We have heard the learned APP Mr. Manan Mehta for the State and perused the record. On perusal of record, we found that there are no allegations against the accused respondent no. 3 to the effect that he has assaulted the deceased Hirabhai and that he was carrying any weapons. The only role attributed to the only surviving the respondent no. 3 Rayjibhai that he was present at the scene of the offence and he has tried to destroy the evidence by projecting the murder of the deceased as an accident and provided the wrong information to the first informant.

10.1. On perusal of the documents, We found that the learned Sessions Judge has discussed the evidence in detail and has not believed the fact that it was a case of murder. In fact while granting the benefit of doubt to the accused persons in paragraph no. 13 of the judgment, the learned Judge has categorically observed that the charge against the accused person is that though Hirabhai was killed and the aforesaid fact was known to the accused persons, just to ensure that he may not be tried for an offence as dead body was taken to the bus-stand and accused persons tried to project that he sustained injuries due to accident

and hence, he died and accused persons tried to destroy the original evidence. While taking note of the aforesaid allegation, learned Judge has categorically observed that when prosecution has failed to establish that the deceased Hirabhai was murdered by the accused – Mangalbhai and when no case against the accused Mangalbhai could be establish, even prosecution could not establish, the fact that the offence has taken place and hence, in absence of there being any evidence to establish beyond reasonable doubt that it was a case of murder, the offence was committed and the same was committed by Mangalbhai, there is no question of any case being made out to convict any of the accused under section 201.

10.2. Further when the persons against whom there were allegations that they were carrying weapons and they were instrumental in committing murder of the deceased Hirabhai i.e. accused no. 1 and 2, when no case could be made out against them and only accused person i.e. accused respondent no. 3 is facing the charge under sections 34 and 201 of the Indian Penal Code. In absence of there being any credible material against the

accused no. 1 and 2 who have already expired, I do not see any reason to take a different view or to interfere with the judgment passed by the learned Sessions Judge, Panchmahal at Godhara and therefore, in view of material on record, I do not see any error committed by learned Sessions Judge, Panchmahal at Godhara while acquitting the accused person.

11. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. ***(Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225).*** In the instant case, the learned APP for the applicant has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

12. In the case of ***Ram Kumar v. State of Haryana,*** reported in ***AIR***

1995 SC 280, Supreme Court has held as under:

> *"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."*

13. As observed by the Hon'ble Supreme Court in the case of ***Rajesh Singh & Others vs. State of Uttar Pradesh*** reported in ***(2011) 11 SCC 444*** and in the case of ***Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh*** reported in ***(2011) 6 SCC 394,*** while dealing with the judgment of acquittal, unless reasoning by the learned trial 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 trial 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.

14. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

15. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed.

16. Registry is directed to return back the record and proceedings to the concerned Court.

(NIRZAR S. DESAI,J)

(HASMUKH D. SUTHAR,J)

VARSHA DESAI