2024 INSC 196

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 250 OF 2016

THAKORE UMEDSING NATHUSING ....Appellant(s)

VERSUS

STATE OF GUJARAT ....Respondent(s)

WITH

CRIMINAL APPEAL NOS. 218-219 OF 2016

CRIMINAL APPEAL NO.1102 OF 2024

JUDGMENT

Mehta, J.

1. These appeals take exception to the common judgment dated 11th December, 2015 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal Nos. 949 of 1994 and 1012 of 1993.

2. The appellants being the original accused Nos. 1, 2, 3 and 5

namely Thakore Laxmansing Halsing (hereinafter being referred to as A1), Thakore Pravinsing Rajsing(hereinafter being referred to as A2), Thakore Umedsing Nathusing (hereinafter being referred to as A3), Thakore Khemsing Halsing(hereinafter being referred to as A5) alongwith original accused No.4, namely, Thakore Prabhatsing Kapursing(hereinafter being referred to as A4), were tried in Sessions Case Nos. 107 and 143 of 1990 respectively by the learned Additional Sessions Judge, District Banaskantha at Palanpur (hereinafter being referred to as 'trial Court'). The accused appellants were convicted by the trial Court for the offence punishable under Section 392 of the Indian Penal Code, 1860 (for short 'IPC') and were sentenced to undergo 10 years' rigorous imprisonment with fine of Rs. 5,000/- and in default, to undergo further three months simple imprisonment. The learned trial Court acquitted accused appellants of the charges under Sections 302 read with Section 34 and Sections 396 and 397 IPC vide the judgment and final order dated 21st August, 1993. The original accused No.4 was acquitted of all the charges.

3. Being aggrieved, the accused appellants preferred Criminal Appeal No. 1012 of 1993 against the judgment and order dated 21st August, 1993 and craving acquittal whereas, the State preferred

Criminal Appeal No. 949 of 1994 seeking to assail the acquittal of the accused appellants for the charged offences, i.e. Sections 302 read with Section 34 and Sections 396 and 397 of IPC.

Brief Case of Prosecution:-

4. One Vithalbhai Kachrabhai Barot PW-1 lodged a complaint dated 1st March, 1990 [Exhibit-21] at Gadh Police Station, Taluka Palanpur, Gujarat alleging *inter alia* that his son Bharatbhai (deceased) who used to drive a Jeep bearing registration No.GJ-08-114 had been murdered and his dead body was found lying in the field of one Nizamkhan at village Dangiya on Dantiwada Road. Based on the said complaint, Criminal Case (FIR) No. 2914 of 1990 came to be registered at Gadh Police Station, Taluka Palanpur, Gujarat and the investigation was commenced.

5. In the early hours of 2nd March, 1990, PSI J.N. Chaudhary (PW-22) of Sardarnagar Police Station saw a jeep being rapidly driven near Charannagar, Ahmedabad. The PSI tried to stop the jeep which was being driven away at a high speed and the same was stopped at some distance. Four persons alighted from the jeep and tried to run away. One of these persons was chased down and was apprehended and he divulged his name to be Laxmansing(A1).

6. It is alleged that A1, upon interrogation by the police disclosed

the names of four co-accused (A2, A3, A4 and A5) and stated that they were the ones who were travelling with him in the jeep.

7. During interrogation, A1 also confessed to the murder of the owner of the jeep and also that the vehicle was looted in the course of the said transaction. He also stated that the persons who had escaped from the spot were also privy to the murder. Since the jeep bore blood stains, it was seized and A1 was taken into custody.

8. The usual investigation was conducted; *panchnama* was prepared; the remaining four accused were apprehended. At the instance of A2, a blood stained knife was recovered which was alleged to be the weapon of offence. This recovery was alleged to be from a *nala*. A3 and A4 were arrested. Blood stained clothes of A3 were recovered. A4 was arrested on 4th April, 1990 and a knife was produced on his information by one Shobhnaben wife of Kanji Chhara. The Investigating Officer concluded that the accused persons had taken the jeep taxi of Bharatbhai (deceased) on hire and thereafter they murdered the victim and looted the jeep.

9. Two separate charge-sheets came to be filed against the accused in the Court of Judicial Magistrate Ist Class (JMFC) concerned for the offences punishable under Sections 302 read with Section 34 and Sections 396 and 397 of the IPC. The offences being

exclusively triable by the Court of Sessions, both sets of charge-sheeted accused were committed to the Sessions Court, Banaskantha, at Palanpur from where the cases were made over to the Court of Additional Sessions Judge, Banaskantha at Palanpur for trial. Charges were framed against A1, A2, A3 and A4 in Sessions Case No. 107 of 1990 for the offences punishable under Section 302 read with Section 34 of the IPC and Sections 396 and 397 of the IPC. Identical charges came to be framed against A5 in Sessions Case No. 143 of 1990. The accused pleaded not guilty and claimed to be tried. Though charges were framed separately, the trial of both sets of accused was conducted jointly.

10. Twenty five (25) witnesses were examined and twenty three(23) documents were exhibited by the prosecution in order to prove its case. Upon being questioned under Section 313 of Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') and when confronted with the circumstances portrayed by the prosecution against the accused, they denied the same and claimed to be innocent.

11. After hearing the arguments advanced by the learned Public Prosecutor and the defence counsel and upon appreciating the evidence available on record, the learned trial Court, proceeded to

acquit accused No. 4 in entirety. While recording acquittal of A1, A2, A3 and A5 from the charges for the offences punishable under Section 302 read with Section 34 and Sections 396 and 397 of the IPC, they were held guilty and convicted for the offence punishable under Section 392 of the IPC and were sentenced to undergo 10 years' rigorous imprisonment and a fine of Rs. 5,000/-, in default to further undergo 3 months simple imprisonment. Being aggrieved by their conviction, the accused A1, A2, A3 and A5 preferred Criminal Appeal No. 1012 of 1993 whereas the State preferred Criminal Appeal No. 949 of 1994 for assailing acquittal of A1, A2, A3 and A5 before the Gujarat High Court.

12. The appeal preferred by the State being Criminal Appeal No. 949 of 1994 was allowed by the Division Bench of the High Court of Gujarat vide judgment dated 11th December, 2015 whereas the appeal preferred by the accused appellants was dismissed. The High Court reversed the acquittal of the accused and convicted them for the offences punishable under Sections 302 and 396 IPC and sentenced them to undergo life imprisonment and the fine and default sentence imposed by learned trial Court was maintained.

13. The aforesaid judgment dated 11th December, 2015 is assailed in these appeals preferred on behalf of the accused appellants.

Submissions on behalf of accused appellants:-

14. Learned counsel for the accused appellants contended that the prosecution did not prove any document whatsoever to establish that the jeep bearing registration No.GJ-08-114 was owned by or was in possession of the deceased. The incriminating articles allegedly recovered at the instance of the accused were never got examined through the Forensic Sciences Laboratories (FSL). Only the blood samples of two accused were sent to the FSL for serological examination.

15. The prosecution miserably failed to prove the fact that A1 was found present in the Jeep bearing registration No.GJ-08-114, when the same was stopped by the PSI J.N. Chaudhary (PW-22) of the Kubernagar Police Station. In this regard, attention of the Court was drawn to the communication i.e. Exhibit-96 forwarded by PSI J.N. Chaudhary (PW-22) to the officer in-charge of the Sardarnagar Police Station wherein the registration number of the jeep is not mentioned. Learned counsel urged that this omission is fatal to the prosecution case.

16. It was thus urged that there is no reliable and tangible evidence establishing guilt of the accused beyond reasonable doubt so as to justify conviction of the accused-appellants as directed by

the Division Bench of the Gujarat High Court while reversing the findings of acquittal recorded by the trial Court.

17. It was further contended that A2, A3 and A5 have been convicted solely on the basis of the confessional statement of A1 recorded by the Police Inspector PW-22. Learned counsel submitted that the said disclosure being in the form of a confession recorded by the Police Officer, is totally inadmissible in evidence as being hit by Sections 25 and 26 of the Indian Evidence Act, 1872(hereinafter being referred to as 'Evidence Act').

18. It was further submitted that the High Court, while reversing the acquittal of the accused as recorded by the trial Court, has not recorded any such finding that the view taken by the trial Court was perverse or two views i.e. one favouring the accused and the other favouring the prosecution were not possible from the evidence as available on record. It was contended that the findings recorded by the High Court in the impugned judgments are not based on any tangible evidence and are drawn sheerly on conjectures and surmises. They, therefore, submitted that the accused are entitled to an acquittal and the impugned judgment deserves to be set aside.

Submissions on behalf of Respondent-State:-

19. *Per contra*, Ms. Archana Pathak Dave, learned senior counsel appearing for the respondent-State vehemently opposed the submissions advanced by the learned counsel representing the accused-appellants. She submitted that the High Court, after thorough and apropos appreciation of the substantial and convincing circumstantial evidence led by the prosecution has recorded unimpeachable findings holding the accused guilty of the offences. She thus implored the Court to dismiss the appeals and affirm the judgment of the High Court.

Discussion:-

20. We have given our thoughtful consideration to the submissions advanced at bar and thoroughly perused the impugned judgment minutely and the evidence available on record.

21. Two fundamental issues are presented for adjudication in these appeals:-

(i) The scope of interference by High Court in an appeal challenging acquittal of the accused by the trial Court;

(ii) The standard of proof required to bring home charges in a case based purely on circumstantial evidence.

22. It is not in dispute that the prosecution did not lead any direct

evidence so as to bring home the charges against the accused and the entire case of prosecution is based on circumstantial evidence.

23. The principles required to bring home the charges in a case based purely on circumstantial evidence have been crystalized by this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra,*** **(1984) 4 SCC 116**. The following five golden rules were laid down in the above judgment: -

> *"(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be", fully established.*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

24. The principles that govern the scope of interference by the High Court in exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378(1)(b) CrPC were reiterated by this Court recently in the case of ***H.D. Sundara and***

***Others v. State of Karnataka*, (2023) 9 SCC 581** as follows:

> *"(a) The acquittal of the accused further strengthens the presumption of innocence;*
>
> *(b) The appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;*
>
> *(c) The appellate Court, while deciding an appeal against acquittal, after re-appreciating 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;*
>
> *(d) 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*
>
> *(e) 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."*

25. Viewed in the light of these well settled legal principles, we now proceed to evaluate the impugned judgment whereby the conviction of the accused has been recorded reversing the acquittal by trial Court. Relevant findings from the impugned judgment dated 11th December 2015 are reproduced hereinbelow for the sake of ready reference: -

> *"[6.1]. At the outset it is required to be noted and it is not in dispute that the dead body of the deceased Bharatbhai was found on 01.03.1990 in the agricultural field of one Nizamkhan at village Dangiya on Dantiwada road within the jurisdiction of the Gadh Police Station, Taluka Palanpur. It is not in dispute that that original accused No. 1 Laxmansingh was apprehended by the PSI Shri.*

Chaudhary of Sardarnagar Police Station on 02.03.1990 in the early morning. That on 02.03.1990, in early morning at Ahmedabad near Chharanagar, PSI of Sardarnagar Police station saw one jeep (muddamal jeep) coming in speed and he tried to stop the same. That four persons other than the original accused No. 1 were successful in running away from jeep, however the original accused No. 1 was arrested and interrogated. That the original accused No. 1 tried to explain his presence in the jeep in his further statement recorded under section 313 of the CrPC. According to original accused No. 1, as he wanted to go to Palanpur from Gitamandir Bus stand and one jeep was taking passengers to Palanpur, he was offered to sit in the same on payment of charges and therefore, he along with other passengers sat in the jeep and on the road near Sardarnagar Police tried to stop the jeep which was stopped at some distance and therefore, the passengers and the driver ran away and when he alighted from the jeep, the police arrested him. However, by giving cogent reasons the learned trial Court has not accepted the defence of the original accused No. 1. It is required to be noted that to go to Palanpur from Gitamandir Bus stand, Chharanagar from where the original accused No. 1 was apprehended from jeep, was not the route at all. To got to Palanpur from Gitamandir Bus stand, one was not required to go to Chharanagar/Sardarnagar at all. Under the circumstances, as such the original accused No. 1 gave the false explanation/defence in his further statement recorded under section 313 of the CrPC. At this stage it is required to be noted that the design of the tyres of the jeep tallies with the tyre marks found at the place of incident from where the dead body of the deceased Bharatbhai was found. Even the design of the slippers of the original accused No. 1 tallies with the design of slipper found at the place of incident.

[6.2] In the present case there is recovery of the knife used in committing the offence, at the instance of original accused No. 2 Pravinsingh which was recovered from the place which could have been known to the said accused alone i.e. from Nala near Palanpur-Siddhpur Highway road. The recovery of the knife at the instance of the original accused No. 2 has been established and proved by examining the panch witnesses.

[6.3] In the present case even there is a recovery of the knife at the instance of the original accused Nos. 3 and 5 and the knife used in committing the offence was

recovered from the place which was known to the said accused alone. Even the trousers/pant of the original accused Nos. 3 and 5 were recovered at their instance from the house of one Kanjibhai - friend of the said accused. The said pants were having blood stains. The original accused Nos. 3 and 5 have failed to explain the blood stains on their trousers. The recovery of the trouser/pants and the knife at the instance of original accused Nos. 3 and 5 have been established and proved by examining Kanjibhai at Exh.77 and his wife Shobhnaben.

[6.4]. It is further submitted that therefore when there are recoveries of the weapons used in committing the offence and even recovery of trousers/pants of original accused Nos. 3 and 5 having blood stains, at the instance of the original accused Nos. 2, 3 and 5 and when original accused No. 1 was as such found/apprehended/arrested with the muddamal jeep and his defence/explanation is found to be false and when the prosecution has been successful in establishing and/or proving the complete chain of events with respect to the involvement of the jeep which was driven by the original accused No. 1, it cannot be said that the trial Court has committed any error in convicting the accused Nos. 1, 2, 3 and 5 for the offence punishable under section 392 of the IPC. It is required to be noted that even the blood stains were found on the hood of the jeep and even on the knife.

[6.5]. Now, that takes us to the appeal preferred by the State against the impugned judgment and order of acquittal passed by the learned trial Court acquitting the original accused for the offences punishable under sections 302 and 396 of the IPC.

So far as the impugned judgment and order of acquittal passed by the learned trial Court acquitting the accused for the offence punishable under section 396 of the IPC is concerned, it appears that by the impugned judgment and order, the learned trial Court has acquitted the accused for the offence punishable under section 306 of the IPC on the ground that as original accused No. 4 has been acquitted and the number of remaining convicted accused would be only four, the learned trial Court has acquitted the remaining accused for the offence punishable under section 396 of the IPC. However, it is required to be noted that from the very beginning there were allegations of involvement of five persons in committing the offence. It is true that out of five accused, original accused No. 4 has

been acquitted for want of sufficient evidence. However, on that ground alone the remaining accused could not have been acquitted for the offence punishable under section 396 of the IPC. As observed by the Hon'ble Supreme Court in the case of Manoj Giri (Supra), in a given case it may happen that there can be five or more persons and the factum of five or more persons either is not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal, observing that thereafter identity is not established, or that otherwise there is insufficient evidence to convict them, in such case there can be a conviction of less than five persons or even one for dacoity. Similar is the view taken by the Hon'ble Supreme Court in the case of Saktu (Supra). Under the circumstances and in the facts and circumstances of the case, learned trial Court has materially erred in acquitting the remaining original accused Nos. 1, 2, 3 and 5 for the offences punishable under section 396 of the IPC.

[6.6] Similarly, the learned trial Court has committed grave error in acquitting the original accused for the offence punishable under section 302 of the IPC. From the findings recorded by the learned trial Court as such the learned trial Court has specifically observed and given a finding that original accused Nos. 1, 2, 3 and 5 have committed the murder/loot and dacoity and there is ample material / evidence against them connecting them with respect to the murder of the deceased Bharatbhai. Therefore, as such the learned trial Court has already convicted the accused for the offence punishable under section 392 of the IPC. As observed hereinabove, original accused Nos. 1, 2, 3 and 5 are also held to be guilty for the offence punishable under section 396 of the IPC. Once the accused are convicted for the offence punishable under section 396 of the IPC i.e. dacoity with murder and the death of the deceased Bharatbhai was homicidal death, the learned trial Court ought to have convicted the accused for the offence punishable under section 302 of the IPC also. As observed hereinabove, the prosecution has been successful in proving and establishing the complete chain of events by leading cogent evidence and therefore, accused persons were liable to be convicted for the offence punishable under section 302 of the IPC.

[6.7]. Now, so far as the reliance placed upon the decisions of the Hon'ble Supreme Court in the cases of Rakesh

(Supra); Vijay Kumar (Supra) and Kanhaiyalal (Supra) relied upon by the learned advocate appearing on behalf of the original accused is concerned, it is required to be noted that on facts and the findings recorded by this Court, none of the aforesaid decisions shall be applicable and/or of any assistance to the accused.

[6.8]. Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of Rakesh (Supra) by the learned advocate appearing on behalf of the accused is concerned, it is required to be noted that in the present case there is recovery of knife/s at the instance of original accused No. 2 and original accused Nos. 3 and 5 and that there is discovery of clothes of original accused Nos. 3 and 4 with blood stains which are not explained by the original accused Nos. 2, 3 and 5. Similarly, in the case before the Hon'ble Supreme Court in the case of Kanhaiyalal (Supra), except last seen together, there was no other evidence connecting the accused. Under the circumstances, none of the aforesaid decisions shall be applicable to the facts of the case on hand and/or shall be of any assistance to the accused.

[7.0]. In view of the above and for the reasons stated above, Criminal Appeal No. 1012/1993 preferred by the original accused against their conviction for the offence punishable under section 392 of the IPC is hereby dismissed."

26. On going through the record, we find that the prosecution relied upon the circumstantial evidence comprising of disclosures, recoveries and discoveries for bringing home the guilt of the accused.

27. The most important recovery is alleged to be of the jeep bearing registration No.GJ-08-114.

28. We may note that the said recovery is attributed to A1, who was allegedly apprehended by PSI J.N. Chaudhary (PW-22) on 02nd

March, 1990. He forwarded a report/communication (Exhibit-96) dated 2nd March, 1990 to the officer in-charge of the Sardarnagar Police Station wherein, the confession made by the A1 implicating himself and the other accused is recorded.

29. It is trite that confession of an accused in custody recorded by a police officer is inadmissible in evidence as the same would be hit by Section 25 of the Evidence Act. Thus, that part of the statement of A1 as recorded in the report/communication (Exhibit-96), wherein he allegedly confessed to the crime of murder of the jeep driver and looting the jeep and named the other accused persons as *particeps criminis* is totally inadmissible and cannot be read in evidence except to the extent provided under Section 27 of the Evidence Act.

30. After A1 had been apprehended, PSI J.N. Chaudhary (PW-22) prepared two *panchnamas* i.e. Exhibit-88 and Exhibit-89. The *panchnama* (Exhibit-89) was prepared at 08:30 hours on 2nd March, 1990 wherein, there is no mention that A1 had disclosed the names of the other accused. This omission is very striking and goes to the root of the matter. It creates a grave doubt on the truthfulness of the evidence of PSI J.N. Choudhary (PW-22). As a consequence, the so called disclosure statement made by A1(Exhibit-96) on which the

prosecution banked upon and the High Court relied upon by treating it to be an incriminating circumstance against the accused persons is totally inadmissible and unworthy of reliance.

31. One of the *panch* witnesses Pratap Tolaram Makhija was examined as PW-21 and in his deposition, he did not utter a single word regarding the accused having made any confessional/disclosure statement to PSI J.N. Choudhary(PW-22) when the memos (Exhibits-88 and 89) were prepared.

32. When PSI J.N. Chaudhary (PW-22) was examined, the prosecution did not even make an attempt to prove the confessional part of the communication (Exhibit-96) and rightly so in our opinion.

33. Even if it is assumed for the sake of arguments that A1 was present in the jeep owned by Bharatbhai (deceased), this fact in isolation cannot lead to an inference about culpability of the said accused for the offences of murder and dacoity. As per the admitted case of the prosecution, more than one person was present in the jeep, when the same was flagged down by PSI J.N. Chaudhary (PW-22). Thus, the possibility of the A1 (Laxmansing) travelling in the jeep as an innocent passenger cannot be ruled out. No other circumstance except for presence in the jeep was portrayed in the

prosecution case so as to bring home the guilt of A1.

34. The prosecution pinned the identity of A2, A3, and A5 as the assailants on the basis of the disclosure statement (Exhibit-96) of A1. They were primarily convicted on the basis of the recoveries of knives and clothes. On going through the entire record, we find that these so called incriminating articles allegedly recovered at the instance of the accused were never sent to the Serology expert for comparison of the blood groups existing thereupon with the blood group of the deceased.

35. We have gone through the evidence of the concerned police officials associated with the recoveries and find their testimonies to be highly doubtful. The knife which was recovered at the instance of A3 was found from a *nala* which is a place open and accessible to all. The knife attributed to A4 was presented by one Shobhnaben wife of Kanji Chhara and thus it cannot be linked to A4. Thus, these recoveries in no manner can be treated to be incriminating in nature. In the case of ***Mustkeem alias Sirajudeen v. State of Rajasthan,*** reported in **(2011) 11 SCC 724**, this Court held that the solitary circumstance of recovery of blood-stained weapons cannot constitute such evidence which can be considered sufficient to convict an accused for the charge of murder. We thus find the

recoveries to be highly doubtful and tainted. Even if it is assumed for a moment that such recoveries were effected, the same did not lead to any conclusive circumstance in form of Serological report establishing the presence of the same blood group as that of the deceased and hence they do not further the cause of prosecution. In addition thereto, we find that the prosecution failed to lead the link evidence mandatorily required to establish the factum of safe keeping of the *muddamal* articles and hence, the recoveries became irrelevant.

36. At the cost of repetition, it may be noted that the veracity of disclosure statement of A1 as recorded by PW-22 has already been doubted by us. In addition thereto, it is manifest that the disclosure statement of A1 cannot be read in evidence against the other accused i.e. A2, A3 and A5. The evidentiary value of the confession of one co-accused against the other was considered by this Court in the case of ***Haricharan Kurmi v. State of Bihar*** reported in **AIR 1964 SC 1184** and it was held that such statement is not a substantive piece of evidence. The said case dealt with a judicial confession made by an accused and it was held that even such confession cannot be treated as a substantive evidence against other co-accused persons. In the case at hand, the situation is even

worse because the High Court has relied upon the interrogation note of A1 (Exhibit-96) so as to hold A2, A3 and A5 guilty of the offence. The interrogation note of A1 being hit by Section 25 of the Evidence Act cannot be read in evidence for any purpose whatsoever.

37. From a thorough appreciation of the evidence available on record, we find that the prosecution miserably failed to lead reliable, tangible and convincing links forming a complete chain of incriminating circumstances so as to bring home the guilt of the accused for the charge of murder punishable under Section 302 IPC.

38. We may note from the quoted portions of the impugned judgment that while reversing the acquittal of the accused recorded by the trial Court for the charges under Sections 302 read with Section 34 and Sections 396 and 397 IPC, the High Court did not record any such finding that the view taken by the trial Court, based on appreciation of evidence was either perverse or it was not one of the permissible views favouring the acquittal of the accused. In this background, the impugned judgment rendered by the High Court falls short of the satisfaction mandatorily required to be recorded for reversing a judgment of acquittal and converting it to

one of conviction.

39. We are rather compelled to hold that the judgment of the High Court is based sheerly on conjectures and surmises rather than being based on any substantive or reliable circumstantial evidence pointing exclusively to the guilt of the accused. Insofar as the conviction of the accused as recorded by the trial Court for the offence under Section 392 is concerned, the same is also based on the same set of inadmissible and unreliable links of circumstantial evidence which we have discarded in the preceding discussion.

Conclusion: -

40. As a consequence of the above discussion, the impugned judgment dated 11th December, 2015 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 1012 of 1993 and Criminal Appeal No. 949 of 1994 does not stand to scrutiny and is hereby quashed and set aside. Further, the judgment dated 21st August, 1993 passed by the trial Court convicting and sentencing the accused for the offences punishable under Section 392 IPC is also unsustainable on the face of the record. Both the judgments are thus, quashed and set aside.

41. Resultantly, the appeals are allowed. The appellants are acquitted of the charges and are directed to be set at liberty

forthwith, if not required in any other case.

42. Pending application(s), if any, stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

New Delhi;
February 22, 2024