IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 823 of 2000

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

and
HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
SHANKARBHAI RUPSINGBHAI DHANUK

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Appearance:
Mr. K.B.ANTANI, APP for the Appellant(s) No. 1
NON BAILABLE WARRANT SERVED for the Opponent(s)/Respondent(s) No. 1
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**
and
HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

Date : 07/08/2026

JUDGMENT
(PER : HONOURABLE MR.JUSTICE MOOL CHAND TYAGI)

1. The present Appeal is filed by the Appellant – State of Gujarat under the provisions of Section 378 (1)(3) of the Code of Criminal Procedure, 1973 (*hereinafter be referred to as Cr.P.C.*) challenging the Judgment dated 23.06.2000 passed

by the learned Additional Sessions Judge, Vadodara, Camp at Chhotaudepur (*hereinafter be referred to as the Ld. Trial Court / Ld.ASJ*) in Sessions Case No.5 of 1999, whereby the Respondent herein was ordered to be acquitted of the charges for the offences punishable under Sections 302 of the Indian Penal Code,1860 (*hereinafter be referred to as "IPC"*) and Section 135 of the Bombay Police Act.

2. The facts and circumstances giving rise to the filing of the present appeal are as follows: The complainant/deceased, Rangalabhai Vaghaliyabhai Dhanuk was residing at Harpalpura, Taluka: Chhota Udepur. Three Mahua (*Mahudo)* trees belonging to the complainant/deceased were situated on the land of the accused-Shankarbhai Rupsingbhai Dhanuk. However, the accused sold one of the said three trees without informing the complainant/deceased-Rangalabhai. In this regard, the complainant/deceased reprimanded the accused. Therefore, on 19.09.1998, at about 19:00 hours, harbouring a grudge against the complainant/deceased and with an intention to kill him, the accused concealed himself in the field of Natiya Chakudiya with a bow and arrow (*Tir-Kamtha*). While the complainant/deceased was returning home after attending the funeral of the daughter of Hurjibhai, the accused shot an arrow from the bow and the said arrow struck the left side of the complainant's/deceased's chest. Due to the injuries sustained in the said incident, the complainant/deceased succumbed to the injuries during the course of treatment.

3. Accordingly, FIR being I.C.R.No. 66 of 1998 was lodged at Rangpur Police Station, District–Vadodara and investigation was carried out and ultimately, charge-sheet came to be filed against the accused under Sections 302 of the IPC and Section 135 of the Bombay Police Act before the Judicial Magistrate. As the case was exclusively triable by the Court of Sessions, learned Magistrate under Section 209 of the Cr.P.C. committed the said case to the Court of Sessions Court, Vadodara, which came to be numbered as Sessions Case No.5/1999.

4. On 23.06.2000, the learned Trial Court framed the charges at Exh. 2 under Sections 302 of the IPC & Section 135 of the Bombay Police Act. Since, the accused did not plead guilty and claimed to be tried, he was tried for the said offences.

5. In order to bring the home the guilty of the accused, the prosecution has led following oral and documentary evidences:-

ORAL EVIDENCE

Sr.No.	P.W.NO.	WITNESS	Exh.
1.	1.	Deposition of Kaliben Ranglabhai	7
2.	2.	Deposition of witness – Dr.Vaishaliben Yashvantrao Shukal	10
3.	3.	Deposition of witness - Kandubhai Mansing Rathava, Executive Magistrate, Chhotaudepur.	13
4.	4.	Deposition of witness –Mojaliben Ranglabhai –	17

		daughter of complainant/deceased Ranglabhai	
5.	5.	Deposition of witness – Eye witness - Mohanbhai Jamsingbhai	18
6.	6.	Deposition of panch witness – Nankabhai Bhayabhai Rathava	19
7.	7.	Deposition of witness-Nayakabhai Bachubhai Rathava	22
8.	8.	Deposition of witness- Dr.Babulal Kalusinh Patidar	24
9.	9.	Deposition of witness- Balvantsinh Dilipsinh Gohil	27
10.	10.	Deposition of witness- Udesinh Ravjibhai Rathava, Deputy Mamlatdar, Chhotaudepur	29
11.	11.	Deposition of witness- Investigating Officer - Mayuddin Sirajuddin Shaikh – P.S.I.	30

DOCUMENTARY EVIDENCE

Sr.No.	EXH	Description
1.	11	Post-mortem Note
2.	12	Police Yadi for performing P.M.
3.	14	Yadi for recording the dying declaration
4.	15	Dying Declaration of comlainant/deceased – Ranglabhai Vaghaliyabhai Dhanuk
5.	16	Wireless message by Rangpur Police to Executive Magistrate for recording the dying declaration.
6.	20	Panchnama of scene of offence
7.	21	Recovery Panchnama of muddamal weapon used in commission of offence
8.	23	Panchnama of clothes of complainant/deceased
9.	25	Injujry Certifiecate of complainant/deceased
10.	26	Yadi for providing treatment to complainant
11.	28	Inquest Panchnama

12.	31	Complaint
13.	32	Police Report
14.	34	Police Report
15.	35	Police Report to Executive Magistrate, Vadodara
16.	37	F.S.L. Report
17.	38	Police Report to Execu Magistrate, Vadodara
18.	39	Map of Scene of offence

6. After recording all the evidence, statement of the accused under Section 313 of Cr.P.C. were recorded and all the incriminatory evidence were put to him. He denied all the incriminatory evidences and took the plea that he has been falsely implicated in the crime. Thereafter, the case was fixed for the evidence of accused, but he had not led any oral and/ or documentary evidence. Thereafter, hearing the arguments on behalf of the prosecution and the defence and having considered the arguments and evaluating the oral as well as documentary evidences, the Ld. ASJ acquitted the accused of all the charges levelled against him by the Judgment dated 23.06.2000.

7. Being aggrieved by and dissatisfied with the judgment dated 23.06.2000 passed by the learned Additional Sessions Judge, Vadodara, Camp at Chhotaudepur, the appellant-State has preferred the present Criminal Appeal.

8. We have heard learned Additional Public Prosecutor for the appellant–State.

9. Mr. K.B.Antani, learned Additional Public Prosecutor for the appellant–State vehemently submitted that the the learned ASJ ought to have convicted the respondent–accused on the basis of the cogent oral as well as documentary evidence available on record. It is submitted that the complaint lodged by the deceased–Ranglabhai at Exh.31 coupled with the testimonies of the eye-witnesses viz. Kaliben Ranglabhai, Mojaliben Ranglabhai and Mohanbhai Jamsingbhai clearly established the involvement of the respondent–accused in the commission of the offence. The said witnesses deposed that there existed prior enmity between the deceased and the respondent–accused regarding a tree situated in the field of the respondent–accused, which had been cut by him and for which the deceased had reprimanded the respondent–accused. It is submitted that Dr. Babulal Kalusinh Patidar, who initially treated the deceased–Ranglabhai categorically deposed that the deceased had sustained injuries caused by an arrow. Reliance was also placed upon the testimony of Dr. Vaishaliben Yashvantrao Shukal, who proved the post-mortem report at Exh.11 and opined that the death of the deceased was a direct consequence of the injuries sustained in the incident.

10. It is submitted that the deceased had also made a dying declaration before Kandubhai Mansing Rathava, Executive Magistrate, Chhota Udepur, whose deposition was recorded at Exh.13. The said witness duly proved the dying declaration at Exh.15. According to the prosecution, both the complaint at

Exh.31 and the dying declaration at Exh.15 unequivocally established that the respondent–accused had inflicted the fatal injury upon the deceased by means of a bow and arrow. He, therefore, submitted that the medical evidence including the testimony of the doctor, who provided first-aid and the doctor who conducted the post-mortem examination conclusively established that the deceased–Ranglabhai succumbed to the injuries caused by the arrow shot by the respondent–accused. In such circumstances, the learned ASJ miserably failed to appreciate the oral as well as documentary evidence led by the prosecution. Therefore, the impugned judgment is liable to be set aside and the respondent-accused may be convicted for the charges levelled against him.

11. No one appeared on behalf of the respondent–accused. Pursuant to the non-bailable warrant issued by this Court, the respondent–accused was produced through the prosecuting agency. Upon being heard, the respondent–accused submitted that the appeal preferred by the State is devoid of merits and deserves to be dismissed and the judgment passed by the learned ASJ does not warrant any interference.

12. Having considered the submissions made by learned APP appearing for the appellant-State and the respondent-accused and also considering the record, it is noted that the present appeal has been preferred by the State challenging the impugned judgment, whereby the learned ASJ acquitted the respondent–accused of the charges levelled against him. In

order to appreciate the rival submissions and examine the correctness of the impugned judgment, it would be apposite to consider the oral as well as documentary evidence adduced by the prosecution to establish the guilt of the respondent–accused. The record reveals that, with a view to bringing home the guilt of the respondent–accused, the prosecution examined as many as 11 witnesses and produced 18 documentary exhibits in support of its case.

13. The prosecution examined Kaliben Ranglabhai as P.W.1 at Exh.7. She is the widow of the deceased–Ranglabhai. In her deposition, she stated that at the time of the incident, she was at her residence. According to her, while her husband was returning home after attending the funeral ceremony of a girl, the respondent–accused inflicted an injury upon him by means of a bow and arrow. She further deposed that when she was proceeding ahead of her husband, the respondent–accused shot an arrow at him, as a result of which he fell near a Mahuda (Mahuva) tree. Thereafter, Retlabhai and Dhuliyabhai arrived at the scene of offence and took her husband to the hospital at Chhota-Udepur for medical treatment. She further stated that her husband was subsequently referred to Baroda for further treatment. However, upon reaching the hospital at Baroda, her husband succumbed to the injuries sustained by him, and thereafter the dead body was handed over to her. In her cross-examination, she stated that after sustaining the injury, her husband had become unconscious. She further deposed that she first brought her husband home and

thereafter took him to Rangpur Police Station. According to her, the police officials at Rangpur Police Station examined her husband and found him to be alive, whereupon his complaint was recorded. She also admitted that the complaint was lodged in the presence of herself, Retlabhai and Dhuliyabhai. They narrated the incident to the police, who recorded the complaint, and thereafter, the thumb impression of her husband was obtained on the complaint.

14. The prosecution also examined Dr.Vaishaliben Yashvantrao Shukal as P.W.2 at Exh.10. She deposed that she had conducted the post-mortem examination of the deceased–Ranglabhai and proved the post-mortem report at Exh.11. In her testimony, she stated that the deceased had died on account of haemorrhage and injuries sustained to the vital organs of the body. The medical evidence adduced through the said witness thus established the cause of death of the deceased is homicidal. The prosecution further examined Kandubhai Mansing Rathava, Executive Magistrate as P.W.3 at Exh.13. He deposed that upon receipt of the Yadi at Exh.14, he proceeded to the hospital at Chhota-Udepur where the deceased–Ranglabhai was undergoing treatment. According to him, he commenced recording the dying declaration at about 4:11 a.m. and completed the same at about 4:30 a.m. He proved the dying declaration on record at Exh.15. As per the contents of the dying declaration, the deceased–Ranglabhai stated that the respondent–accused had inflicted the injury by the shot of bow-and-arrow at his home. However, in his cross-

examination, the witness admitted that he had not obtained any endorsement from the attending doctor certifying the mental fitness and consciousness of the deceased at the time of recording the dying declaration.

15. The prosecution also examined Mojaliben Ranglabhai as P.W.4 at Exh.17. In her examination-in-chief, she deposed that at the time of the incident, her father was returning home and that she was accompanying with him. According to her, while they were passing through the paddy field, the respondent–accused inflicted an injury upon her father by shooting an arrow from a bow. However, in her cross-examination, she admitted that at the time of the incident, she was playing at her residence and upon hearing shouts from the vicinity, rushed to the place of occurrence. She further stated that her father was brought home by Mohan Jamsingbhai. Thus, her testimony in cross-examination materially contradicted her version given in the examination-in-chief regarding her presence at the scene of offence at the time of the incident.

16. The prosecution also examined Mohan Jamsingbhai as P.W.5 at Exh.18. In his examination-in-chief, he deposed that on the day of the incident, the deceased–Ranglabhai was returning home after attending a funeral ceremony. According to the witness, he was walking ahead of the deceased when the respondent–accused inflicted an injury upon Ranglabhai by shooting an arrow from a bow. He further stated that he noticed the respondent–accused approaching from behind

carrying a bow and arrow. Upon learning that the deceased had sustained injuries, he immediately rushed to the place of occurrence, and thereafter, brought the injured Ranglabhai to his residence. He also deposed that the wife of the deceased was present at that time. According to the witness, he subsequently took Ranglabhai to the hospital at Chhota-Udepur for treatment, from where he was referred to Baroda for further medical treatment. However, during the course of treatment at Baroda Hospital, Ranglabhai succumbed to the injuries sustained by him. In his cross-examination, the witness admitted that he had not stated before the Investigating Officer that the deceased–Ranglabhai was walking ahead of him at the relevant time or that he had seen the respondent–accused coming from behind carrying a bow and arrow.

17. The prosecution also examined Nankabhai Bhayabhai Rathava as P.W.6 at Exh.19. He was examined as a panch witness to the recovery panchnama as well as the panchnama of the scene of offence. However, the witness did not support the prosecution case and failed to corroborate the contents of the panchnamas at Exhs.20 and 21. He was accordingly declared hostile. In view of the fact that the witness has not supported the prosecution version with regard to the said panchnamas, no further detailed reference to his testimony is considered necessary.

18. The prosecution examined Nayakabhai Bachubhai Rathava as P.W.7 at Exh.22. He was examined as a panch witness to the seizure panchnama pertaining to the clothes of the deceased. In his examination-in-chief, he supported the execution of the said panchnama. However, in his cross-examination, the witness admitted that whenever the police required a panch witness, he used to act as such, as he was serving in the Police Department. He further admitted that he had acted as a panch witness in about 20 to 24 panchnamas. Thus, the witness appears to be a regular or stock panch witness frequently associated with police proceedings, a circumstance which is required to be borne in mind while appreciating the evidentiary value of his testimony.

19. The prosecution also examined Balvantsinh Dilipsinh Gohil as P.W.9 at Exh.27. He was examined as a panch witness to the inquest panchnama. However, the said witness did not support the case of the prosecution and was declared hostile. Therefore, in view of the fact that he has not supported the contents of the inquest panchnama, no further reference to his testimony is required.

20. The prosecution also examined Dr. Babulal Kalusinh Patidar as P.W.8 at Exh.24. He deposed that he had provided medical treatment to the deceased–Ranglabhai at Chhota-Udepur Hospital. He further stated that, upon examination, he found that the deceased had sustained injuries caused by a bow and arrow. Thus, the said witness proved the nature of

injuries sustained by the deceased. In his cross-examination, the witness admitted that the deceased–Ranglabhai had not disclosed the name of the person who had inflicted the injuries upon him.

21. The prosecution also examined Udesinh Ravjibhai Rathava, Deputy Mamlatdar, Chhota Udepur, as P.W.10 at Exh.29. He deposed that he had prepared the map of the place of occurrence. His testimony was limited to proving the preparation of the said map.

22. The prosecution also examined the Investigating Officer, Mayuddin Sirajuddin Shaikh, P.S.I., as P.W.11 at Exh.30. He deposed that he had carried out the investigation of the offence and upon completion of the investigation, finding sufficient material against the respondent–accused, he filed the charge-sheet before the competent Court.

23. Now, in light of the oral as well as documentary evidence brought on record, the question that arises for consideration is as to whether the acquittal recorded by the learned ASJ in favour of the respondent–accused is sustainable or not. In order to examine the correctness of the impugned judgment and order, the entire evidence led by the prosecution requires careful and minute scrutiny. P.W.1, Kaliben Ranglabhai, in her examination-in-chief, stated that at the time of occurrence of the incident, she was at her residence. However, she further deposed that at the relevant

time, her deceased husband was proceeding ahead of her and that she had witnessed the incident. If, according to her own version, she was present at her house at the time of the occurrence, it creates a serious doubt as to how she could have witnessed the incident. Further, P.W.1 deposed that after the incident, she along with Retlabhai and Dhuliyabhai, brought her husband to their house. However, P.W.4–Mojaliben Ranglabhai, daughter of the deceased, deposed that after the incident, her father was brought home by Mohanbhai Jamsingbhai (P.W.5). Thus, there appears to be a material contradiction in the depositions of P.W.1, P.W.4 and P.W.5 with regard to the manner in which the deceased was brought home after sustaining injuries. It is also required to be noted that though P.W.1, P.W.4 and P.W.5 have projected themselves to be present at or near the place of occurrence, their own statements during cross-examination create serious doubt regarding their presence at the scene of offence. P.W.1 admitted that she was at home at the time of the incident. P.W.4–Mojaliben Ranglabhai, daughter of the deceased, admitted that she was playing at her residence and, upon hearing the shouts, she reached the place of incident. Similarly, P.W.5 admitted that he reached the place of occurrence only after the incident had taken place. Therefore, their presence at the time of the actual occurrence becomes doubtful. The prosecution has also relied upon the dying declaration recorded by P.W.3–Kandubhai Mansing Rathava. As per the said dying declaration at Exh.15, the deceased–Ranglabhai stated that the respondent–accused had inflicted

the injury upon him by shooting an arrow from a bow at his house. Thus, according to the deceased himself, the incident had occurred at his residence. However, P.W.1, P.W.4 and P.W.5 have deposed that the incident took place in the paddy field of Natiya Chakudiya. Further, P.W.10, who prepared the map of the place of occurrence, has shown a different place as the scene of offence and the said place does not correspond with the place stated by the eye-witnesses. The Investigating Officer–P.W.11 has also supported the version of P.W.10 regarding the place of occurrence. Therefore, there are material inconsistencies regarding the exact place where the incident had taken place. P.W.1 deposed that the incident occurred near a Mahuda (Mahuva) tree, whereas the map prepared by P.W.10 indicates a different place of occurrence. Moreover, the Investigating Officer collected the blood samples and controlled mud from a different location, whereas the dying declaration records the place of incident as the house of the deceased. Thus, considering the aforesaid contradictions, inconsistencies and discrepancies in the evidence of the prosecution witnesses regarding the presence of the alleged eye-witnesses and the actual place of occurrence, the prosecution has failed to establish beyond reasonable doubt the exact place where the incident took place.

24. So far as the complaint at Exh.31 is concerned, P.W.11–Investigating Officer deposed that he had recorded the complaint on the basis of the statement made by the

deceased–Ranglabhai before P.W.1. However, P.W.1, widow of the deceased–Ranglabhai deposed that she, Retlabhai and Dhuliyabhai narrated the incident to P.W.11, who noted down the complaint, and thereafter, the thumb impression of the deceased was obtained on the said complaint. The aforesaid discrepancy regarding the manner in which the complaint came to be recorded itself creates a doubt regarding the prosecution version. It is true that P.W.2–Dr. Vaishaliben Yashvantrao Shukal, who conducted the post-mortem examination, proved that the injuries sustained by the deceased were ante-mortem in nature and that the deceased–Ranglabhai died due to the said injuries. However, the prosecution has failed to establish beyond reasonable doubt that the said injuries were caused by the respondent–accused. The learned Additional Sessions Judge has rightly disbelieved the version of the prosecution witnesses in view of the material contradictions appearing on record with regard to the place of occurrence, the presence of P.W.1, P.W.4 and P.W.5 at the scene of offence, the person who brought the injured deceased to his home, and the person who took him to the hospital. The discrepancy regarding the place of occurrence has also been brought on record through the deposition of the Investigating Officer.

25. It has been vehemently argued by the learned APP that the learned ASJ ought to have relied upon the dying declaration recorded by P.W.3–Executive Magistrate. So far as the said contention is concerned, P.W.3, who recorded the

dying declaration, has proved the same at Exh.15. On perusal of dying declaration (Exh.15), it appears that the deceased–Ranglabhai stated that the injury was inflicted by the respondent–accused by means of an arrow shot at his house. However, P.W.1, P.W.4 and P.W.5 have deposed before the Court that the incident had occurred in the field of Natiya Chakudiya. Thus, there is a material contradiction regarding the place of occurrence. Further, the panchnama of the scene of offence as well as the map of the place of incident indicate a different location, which creates a serious doubt regarding the actual place of occurrence. Moreover, P.W.3–Executive Magistrate, in his cross-examination, has admitted that he had not obtained any endorsement from the attending doctor regarding the mental fitness and consciousness of the deceased prior to recording the dying declaration. It has also come on record through the deposition of P.W.1, in her cross-examination, that after sustaining the injury, deceased–Ranglabhai had become unconscious. In view of the said evidence and the attending circumstances, a doubt arises as to whether the deceased was in a fit state of mind and conscious condition at the time of making the dying declaration. Furthermore, there are material discrepancies in the evidence of the prosecution witnesses regarding the place of occurrence. The alleged recovery of the bow and arrow has also not been satisfactorily proved by the prosecution. Therefore, considering the cumulative effect of all the aforesaid circumstances, the dying declaration at Exh.15 does not inspire confidence and cannot be relied upon beyond

reasonable doubt. It is a settled proposition of law that a conviction can be based solely on the basis of a dying declaration provided that the same is proved to be voluntary, truthful and inspires confidence of the Court. However, when the dying declaration suffers from material inconsistencies and doubts arise regarding the mental fitness of the declarant, the same cannot be made the basis for recording conviction.

26. In case of **Paniben (Smt.) versus State of Gujarat** reported in **(1992) 2 SCC 474**, the Hon'ble Apex Court laid down the following principles governing the dying declaration:-

> *"18. ..... (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P.17)*
>
> *(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav18 ; Ramawati Devi v. State of Bihar19).*
>
> *(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor20) .*
>
> *(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P.21)*
>
> *(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M. P.22)*
>
> *(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P.23) 16 (1992) 2 SCC 474 17 (1976) 3 SCC 104 18*

(1985) 1 SCC 552 19 (1983) 1 SCC 211 20 (1976) 3 SCC 618 21 (1974) 4 SCC 264 22 1981 Suppl. SCC 25 23 (1981) 2 SCC 654 Criminal Appeal No.485 of 2012

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu24)

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar25).

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P.26).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan27)."

27. Further, in case of **Irfan @ Naka versus The State o Uttar Pradesh** reported in **2023 LiveLaw (SC) 698**, in Paragraph No.62, the Hon'ble Apex Court has observed as under:-

"62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?"

28. Now, adverting to the facts of the case on hand, the dying declaration is not beyond shadow of doubt. Considering the dying declaration in all attending circumstances, it does not inspire the faith of the Court. Thus, applying the principle of law enunciated by the Hon'ble Apex Court in the case of **Paniben** (supra) and **Irfan @ Naka** (supra), the learned ASJ

has not committed any error in disbelieving the dying declaration.

29. Furthermore, the prosecution has failed to prove on record the notification issued by the Collector under the provisions of the Bombay Police Act. In view of the aforesaid contradictions, omissions and deficiencies in the prosecution evidence, this Court is of the opinion that the learned ASJ has rightly extended the benefit of doubt to the respondent–accused and acquitted him of all the charges levelled against him.

30. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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.

31. Further, 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

32. In the instance case, learned APP failed to point out any cogent and incriminating evidence against the accused persons, which may connect the accused persons with the commission of the offence beyond reasonable doubt. At this stage, it would be profitable to refer to the judgment of Apex Court in the case of *Chandrappa & Ors. Vs. State of Karnataka* reported in *2007 (4) SCC 415*. The relevant observations made in the said judgment are as under:-

> "..... (1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order

of acquittal is founded; (2) The Code of Criminal Procedure, 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 emphasize 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 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."

33. Applying the aforesaid principle as laid down by the Apex Court in the case of Chandrappa (*supra),* it is apparent on record that no credible evidence had been produced by the prosecution, which may connect the accused persons in the

alleged crime. The prosecution has miserably failed to prove the guilt of the accused persons beyond reasonable doubt. Thus, the Trial Court has not committed any error in appreciating the evidence on record and in acquitting the accused persons from the challenges levelled against them.

34. In these facts and circumstances, we are of the considered opinion that the learned Trial Judge committed no error in passing the impugned judgment and order. Hence, the present appeal deserves to be dismissed.

35. In the result, the appeal fails and is ***dismissed***. The judgment and order of the Trial Court dated 23.06.2000 stands confirmed. If the respondent-accused has been taken into custody in execution of non-bailable warrant, he be released forthwith. Bail and bail bonds of the accused, if any, stands discharged. R & P be sent back to the concerned Trial Court, forthwith. No order as to costs.

(HEMANT M. PRACHCHHAK,J)

(MOOL CHAND TYAGI, J)

GIRISH

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PARMAR GIRISH KANTILAL(HC00954), Principal Pvt Secretary, at High Court of Gujarat on 07/08/2026 17:24:22