IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 880 of 2001

With
R/CRIMINAL REVISION APPLICATION NO. 550 of 2001

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
HARDEVBHAI CHANDUBHAI VINZUDA & ORS.

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Appearance:
MR J K SHAH, APP for the Appellant(s) No. 1
MR P P MAJMUDAR(5284) for the Opponent(s)/Respondent(s) No. 1,2,3,4

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

Date : 05/03/2026

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

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 17-8-2001 passed by the learned Sessions Judge, Bhavnagar in Sessions Case No. 217/2000 for the offences punishable under Sections 302 read with 34 of the Indian Penal Code and Section 135 of the Bombay Police Act, the appellant – State has preferred the present Criminal Appeal No. 880 of 2001 under Section 378 of the Code of Criminal Procedure, 1973 (“the Code” for short). The victim’s father, Bharatbhai Ranabhai

Makwana, feeling aggrieved and dissatisfied with the same judgment and order of acquittal, has preferred the present Criminal Revision Application no. 550 of 2001.

2. The brief facts leading to the filing of the present appeal and revision application are as under:

2.1. As per the prosecution case, the complainant's son, Shaileshbhai Bharatbhai Makwana, has died. There was enmity between the deceased and the accused No.1 Hardev Chandu on account of the deceased having a love relationship with Hardev Chandu's sister Beni, and the deceased and Beni having taken photographs together, the knowledge of which had come to Hardev Chandu. According to the prosecution, on 31-8-2000, around 7:00 p.m. to 7:30 p.m. near Sai Baba Temple, Bhavnagar, when the deceased Shailesh was proceeding towards the temple for darshan as per his routine on Thursdays, the accused persons Hardev Chandu, Haresh @ Katti Chiman, Haresh @ Hariyo, and Raydan @ Raju, who were lying in wait, assaulted him with sharp weapons. As a result of the assault, Shailesh sustained multiple injuries and fell in a pool of blood near the temple. The accused persons then fled towards Ambika Flat side. Thereafter, the police arrived, removed the injured Shailesh in the Eagle-2 mobile van to the hospital, where he was declared dead.

2.2. Taking all these circumstances into account, the prosecution's case emerged as the four accused persons with common intention and in furtherance thereof, assaulted and caused the death of Shaileshbhai by inflicting injuries with sharp weapons near Sai Baba Temple on the evening of 31-8-2000. They acted in concert and shared the common intention to commit murder.

Accordingly, the prosecution presented its case and framed charges against the accused persons under Sections 302 read with 34 of the IPC and Section 135 of the Bombay Police Act. The B Division Police Station, Bhavnagar completed the investigation of this offence and filed the charge sheet before the Chief Judicial Magistrate, Bhavnagar, from where the case was committed to the Court of Sessions.

3. On conclusion of evidence, the Sessions Court put various incriminating circumstances to the respondents-accused under Section 313 of the Code. The respondents-accused denied all allegations and claimed to be innocent. After hearing both sides and appreciating the oral and documentary evidence, the learned Sessions Judge acquitted all the accused persons by giving them the benefit of doubt, mainly on the ground that the sole eye-witness Bharatbhai Rukhadbhai Dabhi was unreliable, there were material contradictions and unnatural conduct, no independent witnesses were examined despite the incident occurring in a crowded public place in broad daylight, the discovery and recovery of weapons was doubtful and not in strict compliance with Section 27 of the Evidence Act, and the prosecution failed to establish the chain of circumstances beyond reasonable doubt linking the accused with the crime.

4. We have heard learned APP for the State and learned advocate for the applicant as well as the learned advocate for the respondents-accused, and perused the oral and documentary evidence adduced before the learned Sessions Court as well as the impugned judgment.

5. Learned APP and learned advocate for the applicant submits

that the impugned order of acquittal is perverse, contrary to the evidence on record and requires to be set aside and reversed because the evidence of the eye-witness Bharat Dabhi at Exh.30, who is also an close friend of the deceased and who identified the accused persons in Court, fully establishes the presence and overt acts of the accused; the medical evidence post-mortem report and nature of injuries fully corroborates the ocular account of assault with sharp weapons; the recovery of blood-stained weapons and FSL and Serological reports linking the blood group to the deceased support the prosecution case; the motive that enmity on account of love affair with the sister of accused No.1 stands proved through the evidence; the learned sessions court erred in discarding the testimony of the sole eye-witness on flimsy grounds of alleged unnatural conduct and in not appreciating the evidence in its proper perspective.

6. They therefore prayed for allowing the Criminal Appeal preferred by the State, setting aside the acquittal, convicting the respondents under Sections 302 read with 34 IPC and Section 135 BP Act, and awarding appropriate sentence; and for allowing the Criminal Revision Application preferred by the complainant- father of the deceased in similar terms.

6.1 The learned advocate for the appellant has relied upon the various judgments of the Hon'ble Supreme Court in ***Jarnail Singh & Ors. vs. State of Punjab [(2009) 9 SCC 719]***, ***State through Central Bureau of Investigation vs. Parmeshwaran Subramani and Another***, ***Sachchey Lal Tiwari vs. State of U.P.***, ***State of A.P. vs. K. Srinivasulu Reddy and Another*** and ***Lalli alias Jagdeep Singh vs. State of Rajasthan***. However, these judgments are not helpful in the facts and circumstances of

the present case.

7. The sole eye-witness examined by the prosecution is Bharatbhai Rukhadbhai Dabhi at Exh.30, who claims to be a close friend of the deceased Shailesh for about 7–8 years. According to his deposition, he met the deceased accidentally near Don Chowk while proceeding to Sai Baba Temple for darshan on the evening of 31-8-2000. The deceased allegedly confided in him for the first time that he had a love relationship with Rekha (sister of accused No.1 Hardev Chandu) and that they had taken photographs together two days earlier, and that Hardev had come to know about it. Bharat claims that while they were walking together, a cow came in between, made him to stop and lag 8–10 feet behind the deceased. He then allegedly saw the four accused persons Hardev Chandu armed with a talwar and the other three with chharis lying in wait near the J.E.B. sub-station close to Sai Baba Temple, surround the deceased, and assault him with the said weapons, causing him to fall in a pool of blood on the road. Bharat further deposed that the accused fled towards Ambika Flat with their weapons, that police arrived in minutes in the Eagle-2 van, removed the injured Shailesh, and that he immediately went to inform the complainant-father of the deceased, then went home, took his cycle, and reached the hospital much later around 10:00 p.m., where he claims to have met the complainant.

7.1 The conduct of this sole eye-witness Bharat Dabhi is unnatural and raises serious doubts about his presence at the scene and the truthfulness of his account. Being admittedly a very close friend of the deceased, having known him for several years and frequently meeting him though he claims not daily, it is highly improbable and against normal human conduct that he would stand

8–10 feet away, witness the brutal assault with sharp weapons on his friend in broad daylight, see his friend fall bleeding profusely, yet do absolutely nothing and not even raise an alarm, try to intervene, chase the assailants, or go near the injured person to render help or ascertain his condition. Instead, he claims he got frightened because “police were beating the public” though all police witnesses have denied any lathi-charge or beating of public at the spot, ran away without informing anyone at the scene, went straight to the complainant’s house to narrate the incident, then went home, and only much later went to the hospital. He did not accompany the complainant to the hospital, did not stay with the grieving family, and did not even go to the spot again with the complainant or police. This conduct is inconsistent with that of a genuine eye-witness and close friend. Whether he is a chance witness as claimed - accidental meeting or planted, his deposition requires the closest scrutiny and does not inspire confidence. The learned sessions court rightly appreciated these circumstances and found his testimony unreliable.

8. The complainant Bharatbhai Ranabhai Makwana at Exh.21, father of the deceased, is a hearsay witness who had no personal knowledge of the incident. He deposed that Bharat Dabhi came to his house around 8:00–8:30 p.m. on 31-8-2000 and narrated the entire story the alleged love affair between Shailesh and Rekha (Beni), the photographs, Hardev Chandu learning about it, the four accused assaulting Shailesh with sharp weapons near Sai Baba Temple, Shailesh falling in a pool of blood, and police taking him to hospital. Acting on this information, the complainant fetched his wife from her brother’s house and then went to Sir T. Hospital, where he learned of his son’s death and lodged the FIR at Exh.22 at 9:00 p.m. based solely on what Bharat Dabhi had told him. His

testimony adds no independent value to the prosecution case. In cross-examination, he admitted that he had no prior knowledge of the love affair, photographs, or any enmity with the accused; he did not know the accused by name or face before the incident; all details came only from Bharat Dabhi on the day of occurrence; and he had no direct information about the assault. These factors render his evidence wholly dependent on the unreliable testimony of Bharat Dabhi and incapable of providing any independent corroboration. The learned sessions court correctly treated it as hearsay and insufficient to prove the guilt of the accused beyond reasonable doubt.

9. No independent witness neither any passer-by, nor any devotee going to or coming from Sai Baba Temple, nor any shopkeeper, vegetable vendor, security person, or person selling prasad, flowers, near the temple has come forward to support the prosecution case or to depose about seeing the assault or the accused persons at or near the scene. The incident is alleged to have occurred in a busy public place, near a popular temple on a Thursday evening a day when large numbers visit for darshan, at a four-road junction with parking, and residential buildings around. Despite this, the prosecution examined only one eye-witness the friend of the deceased and failed to produce any independent or neutral witness from the locality or the crowd. This complete absence of corroboration from independent sources in a crowded, public, daylight incident further weakens the prosecution case and supports the learned Sessions court’s finding that the story appears unnatural and concocted.

10. The panch witnesses examined for various panchnamas have either turned hostile in part, given inconsistent versions, or failed

to inspire confidence. Importantly, the panch for the discovery panchnama of the weapons at Exh.35 Dineshkumar Ramaniklal deposed that all four accused were kept together at the police station, were shown to him as the accused persons, and then taken in a jeep one by one to an open place near Cassent Circle, under a babool tree, where all four weapons were allegedly recovered from the same open, accessible spot. He admitted that the place was open to public movement, 50 feet from huts, and that panch signatures were taken at the police station itself. No conversation with the accused was allowed in his presence, and he further admitted that he had appeared as a panch in previous sessions cases and other matters. Thus, the so-called discovery or recovery is joint, from an open public place accessible to all, not from exclusive possession of any accused, and does not satisfy the strict requirements of Section 27 of the Evidence Act for admissibility as a discovery statement. The panch witnesses appeared over-enthusiastic or tutored, with material contradictions between their versions and the police witnesses.

11. A significant weakness in the prosecution case is the failure to conclusively connect the recovered weapons and blood stains to the crime. Though FSL and serological reports at Exh.53 and 55 were produced showing “B” group blood on some weapons and clothes matching the deceased’s blood group, the chain remains incomplete because: (i) the place of recovery was open and public, (ii) joint recovery from one spot does not implicate any individual accused exclusively, (iii) no independent witness saw the accused with weapons at the time of assault, and (iv) the sole eye-witness’s testimony being unreliable, there is no credible link. No last seen together evidence exists showing the deceased in the company of the accused prior to the incident. The motive love affair with sister

of accused No.1 is spoken of only by the unreliable eye-witness and the complainant who admitted he had no personal knowledge and learned only from Bharat Dabhi on the day of incident.

12. Thus, the only circumstances sought to be proved are the testimony of one unreliable eye-witness, a doubtful joint recovery from an open public place, and blood group matching which is not conclusive without further corroboration. The chain of circumstantial evidence is broken at several vital links, absence of independent ocular or corroborative evidence, unnatural conduct of the sole eye-witness, failure to examine any temple-goer or passer by despite crowded locality, unreliable panch witnesses, and non-compliance with Section 27 Evidence Act requirements.

12.1 As held by the Hon'ble Supreme Court in ***State of Rajasthan vs. Hanuman 2025 SC 691***, mere recovery of a blood-stained weapon matching the deceased's blood group is not, by itself, sufficient to sustain a conviction under Section 302 IPC in the absence of a complete chain of circumstantial evidence proving the guilt of the accused beyond reasonable doubt.

12.2 In such circumstances, the learned Sessions Court rightly held that the prosecution has failed to prove the charges beyond reasonable doubt. The medical evidence, post-mortem establishes homicidal death by sharp weapon injuries, but the identity of the perpetrators and their role has not been established.

13. It is settled law that in an appeal against acquittal and similarly in revision challenging acquittal, there is a double presumption in favour of the accused. Unless the findings of the learned Sessions

Court are shown to be perverse or based on no evidence, the Court will not interfere merely because another view is possible. The view taken by the learned Sessions Judge that the prosecution has miserably failed to establish the guilt of the accused persons beyond reasonable doubt due to unreliable sole eye-witness, lack of independent corroboration, unnatural conduct, and doubtful recovery is not only a possible view but the only reasonable and correct view on the evidence on record.

14. At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of ***Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

> *"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]*
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> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
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> *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Criminal Procedure Code, 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 emphasise 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 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.

(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."

15. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]*** the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"8.1. The acquittal of the accused further strengthens the presumption of innocence;
8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;
8.3. 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;
8.4. 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
8.5. 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. In the light of the above discussion, the detailed appreciation of evidence by the learned sessions court, and the settled legal position regarding appeal against acquittal double presumption in favour of the accused, interference only if the view taken is perverse or impossible on the evidence, the prosecution has miserably failed to prove the guilt of the respondent-accused beyond reasonable doubt. The sole eye-witness Bharat Dabhi's

testimony is unreliable due to unnatural conduct, material contradictions, and lack of corroboration; the complainant's evidence is purely hearsay and dependent on the same unreliable source; no independent witness from the crowded public place has been examined; the joint discovery or recovery of weapons from an open, accessible public spot does not satisfy Section 27 of the Evidence Act or inspire confidence; and the chain of circumstances remains broken at vital links. The impugned judgment and order of acquittal dated 17-8-2001 passed by the learned Sessions Judge, Bhavnagar in the Sessions Case No. 217 of 2000is well-reasoned, based on proper appreciation of evidence, and does not call for any interference by this Court.

17. The Criminal Appeal preferred by the State and the Criminal Revision Application preferred by the complainant-father of the deceased are devoid of merit and are accordingly dismissed. The judgment and order of acquittal is confirmed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: KAUSHAL MAHESHBHAI RATHOD(HCD0078), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 05/03/2026 12:43:27