IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1282 of 2003

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR Sd/-

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/-

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
VIKRAMBHAI SOMABHAI TADVI & ANR.

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Appearance:
MS SHRUTI PATHAK, APP for the Appellant(s) No. 1
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 05/07/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR)

1) This appeal is directed under Section 378 of the Code of Criminal Procedure (hereinafter referred to as "the Code" for short) against the judgment and order of acquittal qua accused No.2 dated 29.07.2003 passed by learned Additional Sessions Judge (Fast Track Court No.1), Vadodara, in Sessions Case No.211/2002, whereby the learned Sessions Judge acquitted the accused No.2 Somabhai

Bhailalbhai Tadvi, for the offence punishable under Sections 302 read with Section 34 of IPC.

2) The following noteworthy facts emerge from the record of the appeal:

2.1) The deceased Hasmukhbhai Kanchanbhai Tadvi and respondents accused are neighbors and they are having adjoined Vada land at village Dharampuri, Taluka Dabhoi. Dispute was going on regarding vada land between them. That on 06.07.2002, while the deceased was going to his Vada, at that time, quarrel took place between the accused and deceased and accused No.2 Somabhai Bhaylalbhai had caught hold of the deceased and accused No.1 Vikrambhai Somabhai Tadvi had inflicted Axe blows on the forehead of the deceased. People gathered at the scene of incident. They took the deceased to Government Hospital where the deceased succumbed to injuries.

2.2) Accordingly, FIR being C.R.No.I-98/2002 was lodged before Dabhoi Police Station, Dist-Vadodara, investigation was carried out and ultimately, charge-sheet came to be filed against the accused persons for the offences punishable under Sections 302 and 34 of IPC before the jurisdictional Magistrate. As the case was exclusively triable by the Court of Sessions, learned Magistrate Court under Section 209 of the Cr.P.C. committed the said case to the Court of learned Additional Sessions Judge, Vadodara, which came to be numbered as Sessions Case No.211/2002. Since, the accused did not plead guilty and claimed to be tried, they were tried for the said offences;

2.3) At the trial, in order to bring home the charges levelled against the accused, the prosecution examined several witnesses and also relied upon the documentary evidence.

2.4) At the end of the trial and after recording the statement of the accused under Section 313 of the Code, and upon hearing the arguments on behalf of the prosecution and the defence, learned Sessions Judge has been pleased to convict the accused No.1 Vikram Tadvi for the offence under Section 304(part I) of Indian Penal Code and sentenced 7 years RI and has been pleased to acquit the accused No.2 Somabhai Bhaylalbhai Tadvi vide impugned judgment and order dated 29.07.2003 in Sessions Case No.211/2002 as mentioned above;

2.5) Being aggrieved by the acquittal of accused No.2, the appellant – State preferred present appeal under Section 378 of the Code of Criminal Procedure, 1973 and requested to quash and set aside the order of the trial Court qua acquittal of accused No.2.

3) Heard learned advocates for the respective parties.

4) Learned APP for the appellant – State has contended that the Trial Court committed an error in extending the benefit of doubt to Accused No.2. During the trial, evidence was recorded, and injured witnesses deposed about the injuries sustained by the deceased on vital parts of the body, inflicted by Accused No.1. It is submitted that Accused Nos.1 and 2 are father and son, and they shared a common intention to kill the deceased. Although Accused No.2 did not inflict the fatal injuries, he actively participated by catching hold of the deceased, thereby facilitating the act of Accused No.1, who inflicted Axe blows on the head of the deceased, leading to his death. In light of these facts, Trial Court erred in acquitting Accused No.2, and in view of Section 34 of the IPC, he ought to have been convicted for having shared the common intention in the commission of the offence. Furthermore, reliance is placed on the deposition of PW-12, an eyewitness, who clearly stated the role played by Accused No.2 in

restraining the deceased during the attack. The Investigating Officer has also corroborated the prosecution's case. Therefore, it is prayed that appropriate conviction and sentence be imposed upon Accused No.2.

On the aforesaid contentions, learned APP submitted that, present appeal may kindly be allowed, as prayed for.

5) Having heard learned APP appearing for the appellant State and going through the evidence produced on record, it appears that, the State has not assailed the order of recording conviction of accused No.1 under Section 304(i) of IPC and assailed the order extending benefit of doubt to accused No.2. Except above, no other or further submissions, contentions and grounds have been made/raised by ld. APP appearing for the Appellant State.

6) As per the case of the prosecution, on 06.07.2002, while the deceased was going to his field, at that time, quarrel took place between the accused and deceased with regard to the Vada land and in the said dispute, accused No.2 Somabhai Tadvi had caught hold the deceased and accused No.1 had inflicted Axe blows on the forehead of the deceased, which is the genesis of the incident.

7) In order to prove the said fact of the complaint, prosecution has also examined 13 witnesses and relied on several documentary evidences. The said witnesses are as under:-

Sr. No.	**Prosecution Witnesses**	**Exhibit**
PW-1	Mansukhbhai Chandubhai Tadvi	9
PW-2	Girishbhai Hasmukhbhai Tadvi	11
PW-3	Gopalbhai Sudansinh	12
PW-4	Rajubhai Ramanbhai Baria	13

PW-5	Sukhabhai Kesurbhai Tadvi	14
PW-6	Dr. Dharmesh P Patel	15
PW-7	Maheshgiri Ramgiri	18
PW-8	Shankarbhai Hirabhai	19
PW-9	Chhitabhai Ranchhodbhai Tadvi	21
PW-10	Chandrakant Vitthalbhai Tadvi	23
PW-11	Dhanpal Chandubhai Shah	21
PW-12	Virendrasinh Gordhanbhai Thakore	27
PW-13	J M Gadhavi, Investigating Officer	30

8) The prosecution has also relied on the documentary evidence such as Complaint at Exh:10, PM Note at Exh:16, FSL report at Exh:37 and other documents which were exhibited at Exhs: 20, 21, 24 and 27.

9) Here, the fact of death is not disputed. Although eyewitnesses and other witnesses have supported the prosecution's case, and on the same set of facts and evidence, Accused No.1 was convicted under Section 304 Part I of the IPC, the learned Sessions Judge, after appreciating the evidence, concluded that the alleged offence does not fall within the category of culpable homicide, a conclusion which the State has not challenged. The only remaining question is that, despite the charge under Section 34 of the IPC, Accused No.2 has been acquitted by giving him a benefit of doubt. Relying on the evidence of the eyewitness, Gopalbhai Sudansinh, who was examined as PW-12, who deposed before the Court that Accused No.1 inflicted the Axe blows, it is noted that he did not state that Accused No.2 caught hold of the deceased at the time of the incident. Further, Accused No.2 neither played any direct nor indirect role in the alleged offence. Merely being the father of Accused No.1 and being present at the place after the incident is not sufficient to hold Accused No.2 guilty. Considering these facts, in the absence of any evidence implicating Accused No.2, he was rightly given the benefit of doubt.

10) Now, coming back to the arguments of the learned APP, the charge was framed under Section 34 of the IPC, yet Accused No.2 was exonerated based on the same set of facts. It is needless to say that Section 34 of the IPC is a principle of liability and does not provide for any substantive punishment on its own. According to Section 34, when a criminal act is done by several persons in furtherance of a common intention, each such person is liable for the act as if it was done by them alone. The essence of liability under Section 34 is the conscious meeting of minds of the accused persons. The question whether there was any common intention on the part of Accused No.2 depends upon the inferences to be drawn from the proved facts and circumstances. Here, there is no iota of evidence leading to the conclusion that Accused No.2 shared the common intention to commit the offence. The prosecution must establish that there was a consensus of mind on the part of Accused No.2 and that he participated in the act with the intention to bring about the particular result, i.e., the death of the deceased. Such consensus must be proved beyond doubt. In the present case, the learned Sessions Judge concluded that in the absence of such intention, the alleged incident took place. When intention is lacking, the question of invoking Section 34 of the IPC does not arise. Moreover, there is insufficient material on record to establish common intention for the commission of the offence. While considering common intention, the totality of circumstances must be taken into account to determine whether the accused persons shared the common intention to commit the offence. In this regard, reference may be made to the decision of **Virender Vs. State of Haryana,** reported in **2020 (2) SCC 700**.

11) So far submissions of learned APP that the accused No.2 was present at the scene of offence is concerned, it is needless to say that in view

of **Vasant @ Girish Akbarasab Sanavale Vs. State of Karnataka, reported in 2025 INSC 221**, mere presence of accused at the time of scene of offence itself does not establish common intention in absence of clear evidence of participation in the act or sharing intention to commit crime. Therefore, in absence of such sterling quality of evidence, argument canvassed by learned APP is not acceptable

12) To fasten vicarious liability under Section 34 of the Indian Penal Code (IPC), the prosecution must establish that the accused had a common intention and, in furtherance of that intention, committed an overt act. Mere participation in forming a common intention is not punishable unless it is accompanied by an overtact in furtherance of the said intention. The burden and standard of proof lie on the prosecution, which is required to produce substantial, concrete, and clear evidence to prove the existence of common intention. Only on the basis of such evidence can the Court infer the presence of common intention. In the present case, upon appreciation of the evidence, the Trial Court concluded that none of the witnesses, including the star witness PW-12, attributed any overtact or participation to accused No.2. In this regard, reference is required to be made on the decisions of **Jasdeep Singh @ Jassu v. State of Punjab, (2022) 2 SCC 545, and Krishnamurthy v. State of Karnataka, (2022) 7 SCC 521**. Accordingly, the prosecution has failed to prove the existence of common intention on the part of Accused No.2.

13) In that view of the matter, in absence of iota of evidence, trial Court has not committed any error in extending the benefit of doubt to accused No.2, more particularly no charge is framed under Section 114 of the IPC. Considering difference between two provisions, no error has been committed by the ld. Sessions Court.

14) Herein, the trial Court has acquitted the accused No.2. Scope and interference by the appellate Court in acquittal appeal is very limited. The Hon'ble Supreme Court has discussed the scope and interference in acquittal appeal in the case of **Sheo Swarup v. King Emperor, AIR 1934 PC 227** and held as under:-

> *"While dealing with an appeal against acquittal, the High Court should and will always give proper weight and consideration to such matters as-*
> *the views of the trial Judge as to the credibility of the witnesses;*
> *the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial;*
> *the right of the accused to the benefit of any doubt; and*
> *the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."*

*14.*1) Further, considering the law laid down in the case of **Babu Sahebagouda Rudragoudar v. State of Karnataka, 2024 SCC OnLine SC 561**, every criminal trial starts with general presumption and one of the cardinal principle of criminal jurisprudence is that, there is a presumption of innocence in favour of the accused, unless proven guilty. Burden of proving the case of the prosecution always rests on the shoulder of the prosecution. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence, which gathers stregnth before the appellate Court.

14.2) It would be further apposite to refer the decision of the Hon'ble Apex Court in case of **Jafarudheen v. State of Kerala, (2022) 8 SCC 440:**

> *"While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that*

ensures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

14.3) Further, it would also be apposite to refer the decision of the Hon'ble Apex Court in case of **Mallappa & Ors. v. State of Karnataka, (2024) 3 SCC 544:**

"Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play 9 AIR 1961 SC 715 while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.

15) In view of above, learned Sessions Judge has not committed any error in recording the acquittal and prosecution failed to prove the case against the accused No.2 beyond all reasonable doubt under Section 304 (I) of the IPC. In absence of any incriminating material and there being no sufficient evidence produced on record, no offence is made out against accused No.2 under sections 304(I) of the IPC and prosecution has failed to prove that the accused.

16) As discussed above, in order to prove the offence under Section 304(I) of the Indian Penal Code, 1860, prosecution ought to have proved that the accused No.2 has used deadly weapon and made an assault to commit murder. Here in the present case, prosecution has failed to prove that the accused no.2 used deadly weapon and there is no iota of evidence to connect the accused with the alleged offence.

17) Considering the cardinal principles of Criminal Jurisprudence until and unless offence is proved by the prosecution against the accused persons beyond all reasonable doubt accused is innocent. It appears that, prosecution is failed to produced or adduced any clinching and material evidence which is of sterling quality, which connect the accused persons with the alleged offence. Even going through the findings of learned trial Court, it appears that the same are just, legal and proper. Further, learned APP has failed to point out any palpable error in the reasons assigned by the learned Sessions Court, which are manifestly erroneous or unsustainable.

18) In view of the above and in backdrop of the evidence adduced/produced by the prosecution, material contradictions which goes to the root of the case of the prosecution are noticed by the learned trial Court and as the prosecution failed to prove the case against the accused beyond all reasonable doubts, learned trial Court has not committed any error in acquitting the accused.

19) Accordingly, present appeal fails and is hereby **dismissed**. The judgment and order of acquittal qua accused No.2 dated 29.07.2003 passed by learned Additional Sessions Judge (Fast Track Court No.1),

Vadodara, in Sessions Case No.211/2002, stands confirmed. Bail bond, if any, given by respondents- accused stands discharged. Record and proceedings be sent back to the concerned trial Court forthwith.

Sd/-
(HASMUKH D. SUTHAR,J)

Sd/-
(PRANAV TRIVEDI,J)

SUCHIT

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PATEL SUCHIT JAYESHBHAI(HC01083), Private Secretary, at High Court of Gujarat on 10/07/2025 10:59:43