IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2238 of 2004

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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THE STATE OF GUJARAT
Versus
GOVIND GENDALAL SOMANI & ORS.

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Appearance:
MR HARDIK SONI APP for the Appellant(s) No. 1
MR MP SHAH(2418) for the Opponent(s)/Respondents No. 1,2
MS. KRUTI M SHAH(2428) for the Opponent(s)/Respondents No. 1,2
RULE NOT RECD BACK for the Opponent(s)/Respondents No. 3

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

Date : 23/12/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Here is the Appeal by the State against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Vadodara, passed in Sessions Case No. 197 of 1997, dated 21.10.2003, acquitting the

respondents from the offence under Sections 302, 120B, 201 of the IPC, the State has preferred instant appeal under Section 378 of the Cr.P.C.

3. This Court has heard Mr. Hardik Soni,, learned Additional Public Prosecutor, Ms. Kruti Shah for the respective parties.

4. Brief facts giving rise to file the present Appeal are that, the respondents accused were prosecuted and tried for the offence of double murder. The trial Court, acquitted the respondents accused, while convicted A1 Krishna Somani. According to prosecution case, deceased Rambhai Harjivandas Patel had lent Rs.2 crore to A1 Krishna Somani and upon repeated request, the amount was not repaid. In order to avoid the liability, a criminal conspiracy was having been hatched with an object to kill two partners. In order to execute the said criminal conspiracy, on 12.09.1997, the two partners namely Ramji Patel and Ramabhai Harjivandas were being called at the company premises - Advance Bio-coal Co. Limited, situated Savli-Vadodara Road, where, two partners being killed by using sharp cutting weapons and in order to screen their offence the accused, put the dead bodies in Peugeot Car bearing No. GJ-1-HH-7610, and set the vehicle on fire.

In such circumstances, pursuant to the lodgement of the FIR, total 4 accused namely Krishna Somani, Govind Somani, Naresh Pawar and Jayantibhai Patel had been arrested for the alleged act of murder and causing disappearance of evidence.

5. In view of the aforesaid facts and circumstances, this acquittal appeal has been preferred by the State.

6. Mr. Hardik Soni, learned Additional Public Prosecutor appearing for the appellant – State, assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material. The case of the prosecution rests on the circumstantial evidence. The learned trial Court while convicting A1, had believed the evidence of one Laxmiben, wife of deceased Ramabhai and one of the partner – Amratbhai and considered other incriminating circumstances. In such circumstances, when A1 was convicted on the same set of evidence, the acquittal of the respondents accused is not sustainable as role attributed to the accused in killing the two persons having been proved and established. That the trial Court failed to appreciate the settled law of unlawful assembly that when the person is a member of the unlawful assembly and his presence is established then for fixing vicarious liability, it is not necessary to prove his or her overt act.

7. In such circumstances, as referred above, it has been submitted that while acquitting the respondent accused, the trial Court has discarded and ignored the truthful, reliable and acceptable evidence and as such, no cogent reasons being assigned while discarding such evidence. Therefore, it is submitted that the

conclusion of acquittal recorded by the Trial Court is contrary to the evidence on record and upon erroneous understanding of law. Thus, it is prayed that the prosecution has succeeded in proving the charge against the respondents accused and the judgment and order of acquittal be set aside and accused may be convicted and sentenced for the offence as referred above.

8. Ms. Kruti Shah, learned advocate appearing for and on behalf of the respondents accused has submitted that the entire case of the prosecution rests on circumstantial evidence. The conviction of A1 is being set aside by the Co-ordinate Bench of this Court and now, in absence of any incriminating circumstances, pointing towards the guilt of the respondents accused, the trial Court has rightly acquitted the accused.

9. In such circumstances, referred to above, learned counsel appearing for the respondents accused, has submitted that the Trial Court while acquitting the accused has assigned cogent and sufficient reasons and therefore, the judgment of acquittal passed is well reasoned, legally sustainable and does not suffer any infirmity warranting interference by this Court.

10. Before proceeding to address the rival submissions, we would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. In exceptional cases, where there are compelling circumstances and the judgment under

appeal is found to be perverse, the appellate court can interfere with the judgment of acquittal. The Appellate Court should bare in mind the presence of innocence of the accused and further that, the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there are reasons for interference.

11. In the present case the issue falls for our consideration as to whether the trial Court was justified in acquitting the accused?

12. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court. It is no doubt true that vide judgment and order dated 28.03.2022 the Co-ordinate Bench of this Court in Criminal Appeal No. 1576 of 2003, has set aside the conviction and order of sentence qua A1 Krishna Somani. While setting aside the conviction, the Co-ordinate Bench of this Court, had examined the oral as well as documentary evidence and held and observed that the circumstances from which an inference of guilt is sought to be drawn have not cogently and firmly established and chain of incriminating circumstances is not complete. In order to appreciate the contention of respective parties, we may profitably refer the relevant paras of the judgment of Co-ordinate Bench. Paras- 9 to 14 read as follows:

"9. We find that the prosecution case depends on circumstantial evidence, and there is no direct evidence. The dead bodies were found in the Peugeot car, which was lying near Parthampura. But, how that vehicle and the dead bodies came to that place is not brought on record by the prosecution. There is no evidence to know who is the owner of that vehicle. There is no material on record which would establish any nexus between the accused-appellant and the said vehicle.

10. The prosecution has then examined Laxmiben, wife of the deceased Rambhai Harjivandas Patel. She does not know the accused-appellant, but she had received his telephone calls on some occasions in absence of her husband, and said phone calls were being made from Vadodara. They had some monetary transactions with the firm of the deceased, of which Rambhai Harjivandas Patel was also a partner. She says that accused- appellant had called her husband from Ahmedabad to Vadodara by making a phone call. Her husband was unwell, but he was asked to go to Vadodara to settle the transactions. Accused had offered her husband to send car to fetch him. However, the car did not go from Vadodara, and therefore, her husband Rambhai and his partner Ramjibhai Tribhovanbhai Patel went by car from Ahmedabad to Vadodara. They started at 6.00 p.m. on the day for Vadodara, and she received a telephonic message that both of them have been murdered. She says that her husband was called to Vadodara as he had to recover money from the accused-appellant. She does not know if her husband had any other business than angadia firm. She admits that she does not know anything about the business transactions of her husband. Next relevant witness, according to us, would be P.W.2 - Gemalsinh Fatesinh. He says that he heard shouts at about 05.30 in the evening of 12th of May 1997, the day on which the incident has occurred. The shouts were heard from the factory premises and they were for help. From his deposition it is clear that he heard the shouts while he was

at his tea stall near Lasundra bus stand.

This witness's deposition has to be viewed along with the panchnama of place of incident (exh.36), wherein it is recorded that the distance between the bus stand and the factory is about one kilometer. Question is could he have heard any shouts of a human being, however loud they may have been. The answer obviously would be in the negative. The second aspect which hits the prosecution case is that this witness claims to have heard the shouts at about 5.30 p.m in the evening, whereas, according to Laxmiben, the deceased left at 6.00 `O' clock from Ahmedabad. This inconsistency in the evidence of prosecution witnesses has remained unexplained.

11. It is also required to be recorded that the nexus, relation or link between accused-appellant and the Advance Bio-coal India Limited is not established. The investigating officer in his deposition (Exh.50) has admitted during cross-examination that he has not collected any evidence to ascertain if there is any link between the accused and the said factory. He has not even inquired whether that company is registered under the Companies Act. He did not make any inquiry about the names of owners of that company. Assuming for a minute that the incident has occurred in the said factory, as is alleged, in that event, it was expected of the investigating officer to have investigated as to who is the owner, who is the person in control of the factory, how many persons were there, and who could have been present when the incident occurred, and whether that included the accused persons. But, in that regard the evidence is nil. Therefore, the investigation cannot be said to have been carried out properly. There is lack of evidence to link up the appellant with the crime.

12. It is also required to be noted that the trial court had before it accused no.2 also, who is brother of the accused-

appellant, and evidence against both accused no.1 and 2 is identical. Still, however, accused no.2 is acquitted on same set of evidence, benefit of which ought to have gone to accused no.1, the present appellant, which has not been given.

13. We may also observe here that only on the basis of evidence of Laxmiben to the effect that on phone call from appellant, the deceased left for Vadodara, and on the basis of P.W.2 Ghemasinh Fatesinh having heard the shouts, the link is believed to have been established. But, a closer look at the evidence of Laxmiben would reveal that in the telephone call which was received by the deceased it was suggested by the appellant that he would send his car to fetch the deceased to Vadodara, but no such car was sent, and therefore, the deceased left on his own in company of his partner in the Peugeot car. Whether it can be said that the deceased left for Vadodara at the instance of appellant?

14. The foregoing discussion would show that there is virtually no link, which can sustain the load of connecting the accused with the crime. When the case depends upon circumstantial evidence, the prosecution is expected to complete a chain of circumstances, which would leave no scope for hypothesis of innocence of the accused. In the instant case, the prosecution has failed to do so. The trial court has erred in convicting the appellant. The appeal, therefore, deserves to be allowed and the same is allowed. The judgment and order dated 21.10.2003 of Additional Sessions Judge, Fast Track Court No,1, Vadodara in Sessions Case No.197 of 1997 is hereby set aside. Accused-appellant is acquitted of charges levelled against him. The bail bond stands cancelled. Fine paid, if any, be refunded."

13. So far as role attributable to the respondents accused are concerned, there is no evidence either direct or circumstantial, to

prove their complicity in the crime. They had been arraigned on the basis of suspicion. The fundamental principle of criminal jurisprudence says that the burden of proof squarely rests on the prosecution and that general never shifts and there can be no conviction on the basis of surmises and conjectures or suspicion, however, grave it may be and strong suspicion, strong coincidences and grave doubt cannot take the place of the legal proof. The Supreme Court has always emphasis that even if the offence is shocking one, the gravity of the offence cannot by itself overweight as far as legal proof is concerned **(Jaharlal Vs. State of Orissa (1991) 3 SCC 27).**

14. In the facts of the present case, the conviction of A1 has already been set aside by the co-ordinate Bench of this Court and State has not further carried the matter upto the Supreme Court. So far as respondents accused are concerned, as discussed, there is no iota of evidence to connect them in the alleged murder of two partners and therefore, the view of the trial Court giving benefit of doubt to the accused, is reasonable and plausible view and while acquitting the accused, the Trial Court has assigned cogent and sound reasons and therefore, findings of acquittal are reasonable and based on the evidence on record and we do not find any perversity in the findings of acquittal so as to interfere. Thus, in our considered opinion, the Trial Court was justified in acquitting the accused and we are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by

the Court below and hence finds no reason to interfere with the same.

15. With the observations as aforesaid, the appeal is accordingly **dismissed**. The Registry is directed to send back the R & P to the Trial Court. Bail bonds are cancelled, if any, and surety is discharged.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

P.S. JOSHI/24.12.2025.

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 24/12/2025 14:37:52