**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2156 of 2026**

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STATE OF GUJARAT

Versus

KISHANJI S/O. PRAVINJI SHANKARJI THAKOR

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Appearance:
MR ROHAN H RAVAL ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s) No. 1

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

**Date : 21/09/2026**

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

1. Being aggrieved and dissatisfied by the judgment and order dated 25.03.2026, passed by the learned Sessions Judge, Mehsana in Sessions Case No.87 of 2025, acquitting the accused under Section 103(1) of the Bharatiya Nyaya Sanhita (for short, 'BNS'), 2023, the present appeal under Section 419 of the Bharatiya Nagrik Suraksha Sanhita (for short, 'BNSS'), 2023 has been preferred by the appellant – State.

2. The brief facts of the case are as under:

2.1 It is the case of the prosecution that the deceased – Pravinji Shankarji Thakor, aged 45 years, is the father of the respondent accused. On 04.07.2025, between 20:00 and 21:00 hours, a dispute arose between the deceased and the accused over food in

Indirapara Village, Moje Malosan. During the quarrel, the accused got agitated and beaten the deceased with a hammer on his chest due to which the ribs of the deceased's chest inside were broken, thereby causing death due to serious injuries.

2.2 The complainant namely Vishnuji Shankarji Thakor has lodged an FIR registered at Ladol Police Station, Mehsana on 05.07.2025 vide FIR No.11206079250115/2025 against the accused for the offences punishable under Section 103(1) of the BNS, 2023.

2.3 The Investigating Officer upon completion of the investigation, laid charge-sheet and Criminal Case No.1444 of 2025 was registered before the learned Additional Chief Judicial Magistrate, Vijapur and upon committal, the charge was framed at Exh.4 by the learned Sessions Court, Mehsana.

2.4 The prosecution has examined 10 prosecution witnesses and relied upon 27 documentary evidences. The witnesses claimed to have supported the case of the prosecution, despite the learned Sessions Court by way of the impugned judgment and order dated 25.03.2026 passed under Sessions Case No.87 of 2025 acquitted the respondent – accused herein. Hence, the present appeal has been preferred by the complainant.

3. Submissions made on behalf of the appellant are as under:

3.1 It is submitted that the learned Sessions Court has made a grave error by not appreciating the medical evidence rendered by Doctor Subhash Bhalabhai Patel (PW-8, Exh-23) and the post-

mortem report at Exh.27, which clearly establishes the fact that the deceased died on account of severe internal injuries and respiratory failures caused by multiple rib fractures given by the accused with a hammer corresponding to severe kick and fist blows.

3.2 It is submitted that although the first informant, namely, Vishnuji Shankarji Thakor (PW-5, Exh.17), the wife of the deceased Jamnaben (PW-6, Exh.19) and Jagdishji Pravinji Thakor (PW-7, Exh.20) have turned hostile by not supporting the prosecution case, the learned Sessions Court has overlooked by discarding their evidence in its entirety. It is submitted that it is well settled that the evidence of the hostile witnesses does not become wholly inadmissible, and that the portion thereof which supports the case of the prosecution can and ought to be relied upon. It is submitted that, in the present case, the evidence of the said witnesses, to the extent it corroborates the presence of the respondent-accused at the scene of crime, ought to have been accepted and acted upon by the learned Sessions Court.

3.3 It is further submitted that the learned Sessions Court failed to appreciate the significance of the prompt intimation furnished by the Hospital at Exhibit-31, which was duly recorded by Assistant Sub-Inspector Kumudsinh Rajendrasinh (PW-9, Exh-30), and which specifically records that the deceased had been assaulted. It is submitted that the said intimation, being free from any afterthought, lends further credence to the case of the prosecution and ought to have been given due weightage by the learned Sessions Court.

3.4 It is further submitted that the Investigating Officer, Gajendrasinh Ajitsinh Solanki (PW-10, Exh-34), has fully supported the case of the prosecution, and that his testimony, coupled with the other evidence on record, completes the chain of circumstances pointing towards the guilt of the accused.

3.5 It is further submitted that the incident occurred inside the residential premises of the deceased during the night hours, and that it is an admitted position that the accused was present in the house at the relevant time when the deceased sustained the fatal injuries. It is submitted that, in such circumstances, the burden lay upon the accused to offer a plausible explanation regarding the manner in which the deceased sustained the fatal injuries, which burden the accused has failed to discharge, and the learned Sessions Court erred in overlooking this material aspect.

3.6. It is submitted that, having regard to the cumulative effect of the medical evidence, the partly corroborative testimony of the hostile witnesses, the hospital intimation, and the evidence of the Investigating Officer, the prosecution has been able to establish a complete and unbroken chain of circumstances conclusively pointing to the guilt of the respondent-accused. It is submitted that the findings recorded by the learned Sessions Court are perverse, contrary to the evidence on record, and resulted in a miscarriage of justice, and that the impugned judgment and order of acquittal is, therefore, unsustainable in law and deserves to be quashed and set aside, and the accused

deserves to be convicted and suitably sentenced for the offence with which he stands charged.

4. We have heard the learned APP for the State at the stage of admission and carefully examined the oral and documentary evidences adduced before the learned Sessions Court.

***- Evaluation of the Evidence of the Complainant and the other Witnesses (PW-5, PW-6 and PW-7):***

5. The evidence of the complainant, Vishnuji Shankarji Thakor (PW-5, Exh-17), the wife of the deceased, Jamnaben Pravinji Thakor (PW-6, Exh-19), and the son of the deceased, Jagdishji Pravinji Thakor (PW-7, Exh-20), when read together, discloses a consistent version to the effect that the deceased was a person of intemperate habits and that on the relevant night, the deceased had consumed liquor and engaged in some altercation within the house, thereafter he went to sleep and was found unresponsive the following morning. None of the said witnesses have any knowledge as to the actual cause of his death. All three witnesses have specifically and categorically deposed that there was no altercation between the deceased and the respondent-accused over food, and that it is not the case that the respondent-accused assaulted the deceased by kicks or fist blows resulting in his death.

5.1 Despite detailed cross-examination on the material facts of the prosecution case, none of the said witnesses have furnished even a shred of evidence connecting the respondent-accused with the assault upon the deceased, and all three were, in the

circumstances, upon request of the learned APP, rightly declared hostile to the prosecution.

5.2 Though it is settled law that the evidence of a hostile witness does not stand wholly effaced and the portion thereof supporting the prosecution may be relied upon, this Court, on a close reading of the depositions of PW-5, PW-6 and PW-7, finds no such supporting thread. On the contrary, being the persons in closest proximity to the deceased - his brother, wife and son, their affirmative and consistent denial of any assault by the respondent-accused, coupled with their attribution of the deceased's habitual intemperance, materially weakens rather than advancing the prosecution case. Their evidence, therefore, furnishes no basis whatsoever to connect the respondent-accused with the death of the deceased.

-***Evaluation of the medical and scientific evidences:***

6. The evidence of Dr. Subhash Bhalabhai Patel (PW-8, Exh-23), the Medical Officer who conducted the post-mortem examination of the deceased, Pravinji Shankarji Thakor, read together with the post-mortem notes at Exhibit-27, discloses that upon internal examination the deceased was found to have sustained fractures of the third, fourth and fifth ribs on the right side and the third to seventh ribs on the left side, with associated injuries to the lobes of both lungs, resulting in accumulation of approximately 500 ml of blood in the right thoracic cavity and approximately 1 litre of blood in the left thoracic cavity. Viscera samples were duly preserved and

forwarded for chemical analysis vide the forwarding memo at Exhibit-26, and upon receipt of the Forensic Science Laboratory report (Exhibit-29), which disclosed no presence of alcohol or chemical poison, the witness confirmed the final cause of death as cardio-respiratory failure on account of hemorrhagic shock resulting from the said internal chest injuries.

6.1 The Medical Officer has further deposed that such fracture of the rib cage is consistent with a person being subjected to forceful kicks and fist blows, and that the death of the deceased in the present case occurred on account of the fracture of the ribs and the consequent lung injury, thereby conclusively ruling out the theory of natural death. This Court finds the said testimony to be natural, consistent, and duly corroborated by the post-mortem notes and the Forensic Science Laboratory report. Being an independent expert witness with no conceivable interest in the outcome of the proceedings, there is no reason to disbelieve him. This Court, therefore, concurs with the finding of the learned Trial Court that the death of the deceased was homicidal in nature, caused by blunt force trauma to the chest.

6.2 It is, however, clarified that the aforesaid finding is confined to the nature and cause of death alone and does not extend to the question of identity of the assailant or the culpability of the respondent-accused, which shall be considered upon appreciation of the evidence of the remaining material witnesses.

7. The evidence of Chiragkumar Dashrathlal Patel (PW-3, Exh-12), the Forensic Science Laboratory Officer, discloses that

pursuant to the telephonic message received from the Investigating Officer, P.I. Shri G.A. Solanki, at 14:44 hours on 05.07.2025, regarding registration of the offence at Ladol Police Station (Part-A, Crime Reg. No.120607925011525), the said witness conducted forensic examination of the scene of offence between 15:45 hours and 16:45 hours on the same day.

7.1 Upon inspection of the said premises, the witness has candidly deposed that no suspicious stains, marks, or articles connected with the incident were found at the scene, and the spot panchnama/inspection report prepared to the said effect has been produced at Exhibit-14.

7.2 This Court finds that the evidence of the FSL Officer, being that of an independent scientific witness, is not shown to suffer from any infirmity, and there is no reason to disbelieve the same. However, the said evidence, far from corroborating the case of the prosecution, records a conspicuous absence of any bloodstains, marks or incriminating articles at the very spot where the fatal assault is alleged to have taken place, a circumstance which does not tilt easily with the prosecution's case of a violent assault involving kicks and fist blows of sufficient force to fracture multiple ribs. This aspect shall be considered along with the other evidence on record while arriving at the final conclusion regarding the culpability of the respondent-accused.

***-Evaluation of the evidence of the Police Personnel and I.O.'s:***

8. The evidence of Kumudben Rajendrasinh (PW-9, Exh-30), who was posted as P.S.O. at Ladol Police Station on 05.07.2025, discloses that upon receipt of information from one Ranjitsinh Thakor of Biliya village at 07:10 hours regarding an assault upon Pravinji Shankarji Thakor of Malosan village, the said witness recorded the telephonic entry at Entry No.76/25 and forwarded the same to A.S.I. Pravinbhai Babubhai, vide the entry produced at Exhibit-31. This Court finds that the said witness has merely recorded the hospital/telephonic entry and, admittedly, has performed no further investigative role in the matter. The evidence of this witness, therefore, is formal in nature and does not carry the prosecution case any further, one way or the other.

8.1 The evidence of the Investigating Officer, Gajendrasinh Ajitsinh Solanki (PW-10, Exh-34), who was posted as P.I. at Ladol Police Station on the relevant date. As per the investigation undertaken by him, he firstly recorded the inquest panchnama (Exh-7) of the deceased pursuant to the report of the Executive Magistrate (Exh-35). After that, he undertook recording of the complaint at the instance of the complainant, Vishnubhai Shankarbhai Thakor (Exh-18), and registration of the offence under Section 103(1) of the B.N.S. along with recording of statements of the material witnesses. Thereafter, he prepared the panchnama of the scene of offence (Exh-16) and the panchnama for seizure of the clothes of the deceased (Exh-32) and of the accused (Exh-21). After obtaining of the post-mortem

notes and medical certificate (Exh-27 and Exh-28); receipt of the spot inspection report (Exh-14) and the site plan (Exh-9 to Exh-11); he arrested the accused on 05.07.2025 (Exh-38); forwarding the Muddamal for forensic examination (Exh-39) and receipt of the FSL reports pertaining to the toxicology, biology and serology divisions (Exh-40 to Exh-44); and, upon culmination of investigation, he filed the charge-sheet against the accused.

8.2 This Court finds that the evidence of the Investigating Officer is essentially formal and procedural in character, being confined to a reiteration of the steps of investigation undertaken by him and a repetition, in his deposition, of the statements earlier furnished to him by the complainant and other witnesses during investigation. Such evidence, being merely corroborative of the investigative process and not being substantive evidence of the guilt of the respondent-accused, cannot, by itself, fill the gaps left by the complainant and other witnesses who have not supported the case of the prosecution on the material aspect of identity and culpability. The evidence of the Investigating Officer, therefore, does not materially advance the case of the prosecution any further than what has already been considered.

9. Upon cumulative appreciation of the entire evidence on record, this Court finds that while the medical evidence of Dr. Subhash Bhalabhai Patel (PW-8) conclusively establishes that the deceased died a homicidal death on account of fracture of the ribs and consequent internal chest injuries, the prosecution has failed to establish, through any cogent or reliable evidence,

that it was the respondent-accused who inflicted the said injuries upon the deceased.

10. The complainant (PW-5) and all the eyewitnesses from the household of the deceased have turned hostile and have furnished no evidence, even remotely, connecting the respondent-accused with the assault. The panch witnesses have merely identified their signatures on the panchnamas without supporting the substantive facts of the prosecution case. The FSL Officer's spot inspection revealed no incriminating stains, marks or articles at the scene of offence; and the evidence of the police witnesses, being formal and investigative in character, does not fill this vital gap, in absence of direct and corroborative evidences implicating the respondent – accused, further mitigates against the prosecution version.

11. With regard to the submissions advanced by the learned APP that the incident in question had taken place in proximity of house of the accused along with the deceased, however, nothing sort of any such material had been placed on record. Apart from that, even considering Section 106 of the Indian Evidence Act, initially, the burden lies on the prosecution to successfully prove its case beyond reasonable doubt and it is only after that, the burden of proof would shift under Section 106 of the Indian Evidence Act to rebut the same. Thus, a presumption cannot be drawn to the accused, in absence of material witness/substantial evidence produced by the prosecution, as held by the Hon'ble Supreme Court, in the case of ***Anees v. The***

***State Govt of NCT,*** reported in ***2024 LiveLaw (SC) 344.***

12. At this juncture, it is apt to refer the judgment of the Hon'ble Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67***, the relevant paragraphs of which read as under:

> *"26. At this stage, we would like to refer the decisions rendered by this Court on the aspect of interference of Appellate Court in the appeal filed by the State challenging the acquittal of the accused recorded by the Trial Court.*
>
> *27. In the case of* ***Babu Sahebagouda Rudragoudar v. State of Karnataka*** *this Court held in paragraphs 39 to 42 as under:*
>
> > *39. This Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar,(2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp.482-83, para 29)*
> >
> > > *"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 of acquittal in the following words: (Chandrappacase [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri)325], SCC p. 432, para 42)*
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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:*
> > >
> > > *(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.'*

*40. Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC as follows : (SCC p. 584, para 8)*

*"8..... 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."*

*41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:*

*41.1. That the judgment of acquittal suffers from patent perversity,*

*41.2. That the same is based on a misreading/omission to consider material evidence on record, and*

*41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

*42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.*

*xxx xxx xxx*

*29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, 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. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:*

*(a) whether the judgment of acquittal suffers from patent perversity,*

*(b) whether the judgment is based on misreading/omission to consider the material evidence on record,*

*(c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.'*

*(d) 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,*

*(e) 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*

*(f) 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."...*

13. In a nutshell, the learned Sessions Court rightly held that the accused is entitled to the benefit of doubt. Its finding proceeds upon a proper and careful appreciation of the deposition of the material witnesses, and cannot be said to be perverse or contrary to the material available. This Court, accordingly, finds no ground warranting interference with the reasoning of the learned Sessions Court on this part of the case.

14. In the result, the present appeal sans merit and deserves to be dismissed and accordingly, it is ***dismissed***.

15. The impugned judgment and order of acquittal dated 25.03.2026 passed by the learned Sessions Judge, Mehsana in Sessions Case No.87 of 2025 stands confirmed.

16. Record and proceeding, if any, be remitted to the concerned Court.

**(ILESH J. VORA,J)**

**(R. T. VACHHANI, J)**

PARMAR KRISH/16

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PARMAR KRISH(HC02348), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 28/09/2026 10:48:33