

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 516 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

and
HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
BHOPABHAI SHANABHAI BHARWAD & ANR.

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Appearance:
MR. MANAN MEHTA, APP for the Appellant(s) No. 1
MS BANNA S DUTTA(315) for the Opponent(s)/Respondent(s) No. 1,2

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 01/08/2026

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE P. M. RAVAL)

1. The State has preferred the present appeal under the provisions of Section 378(1)(3) of the Code of Criminal Procedure, 1973, against the judgment and order of acquittal, dated 23.10.2003, passed by the learned Additional Sessions Judge, Nadiad, in Sessions Case No. 348 of 1999.

2. The case of the prosecution in a nutshell is that on 16.11.1995 at 5:00 p.m. the complainant alongwith his father Babubhai Gandabhai was ploughing their field situated at Gharoda village. At

that time, accused Bhopabhai Shanabhai Bharwad and Babubhai Shanabhai Bharwad both allowed their cows to graze in the field of the complainant. The complainant and his father objected to the grazing of the cows in their field and thereupon the respondents-accused gave foul abuses to the complainant and his father and also assaulted them with sticks. That the complainant shouted for help and on the intervention of the witnesses the complainant and his father were saved from further beating. Thereafter, both the respondents-accused left the field alongwith their cows. On these facts, the complaint was filed with the police and the police after investigation charge sheeted the accused for the offences punishable under Sections 307, 323, 325, 504 read with Section 114 of the Indian Penal Code, wherein, at the end of the trial by judgment and order dated 23.10.2003, the learned Judge has acquitted the accused.

2.1. Hence, the State has preferred this appeal.

3. Learned Additional Public Prosecutor Mr. Manan Mehta would submit that the trial Judge ought to have believed the evidence of the complainant Babubhai Dhanabhai, wherein, he has clearly deposed that as he and his father told the accused to drive out the cows from their field, the accused Bhopabhai Shanabhai Bharwad inflicted stick blows on both the legs of the witness Dhanabhai Gandabhai and accused Babubhai Shanabhai Bharwad inflicted sticks blows on the wrist of the complainant, and thereby,

caused serious injuries to both the complainant and witness Dhanabhai Gandabhai.

3.1. Learned Additional Public Prosecutor would further argue that the evidence of witness Dhanabhai who was also seriously injured in the incident, and therefore, the learned Judge ought to have believe the testimony of the said witness. That, the trial Court ought to have considered the injury certificates at Exhibit 26 and 27, in its true perspective keeping in view the deposition of both these witnesses, coupled with the fact that witness Bachubhai Ashabhai has also clearly deposed that he had seen the accused beating the complainant and his father.

3.2. Learned Additional Public Prosecutor would further submit that the evidence of Medical Officer, Kachralal Mohanbhai Vankar, examined at Exhibit 25 is not believed by the trial Court nor the trial Court has given due weightage to his evidence, merely on the ground that the injured had not given name of the assailants which was not recorded in the history. However, that fact would not wash the evidence of the injured as well as the complainant, inasmuch as, the trial Court has committed grave error in acquitting the accused on the ground that there are discrepancies in the evidence of witnesses as to who inflicted injuries to whom, despite of the fact that prosecution has proved beyond reasonable doubt that the accused had caused injuries to the complainant and the witness and

that there was no third person present at the alleged place of incidence, and thus, the accused were responsible for causing the injuries. Thus, it is argued to allow the present appeal.

4. At the outset, it would be apt to refer the judgment of the Hon'ble Supreme Court in the case of ***Constable 907 Surendra Singh vs State Of Uttarakhand*** reported in ***(2025) 2 SCR 239*** wherein the Hon'ble Apex Court held that:-

“11. Recently, in the case of Babu Sahebagouda Rudragoudar and others v. State of Karnataka, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

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) 6 (2024) 8 SCC 149

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 : (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 :(2007) 2 SCC (Cri) 325], SCC p.432,

para 42)

“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, re appreciate 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 378CrPC 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.

12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the Ld. Trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading / omission to consider material evidence on record and 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.”

5. Further, Apex Court in the decision in State of **Karnataka v. Hemareddy @ Vemareddy, AIR 1981 SC 1417**, has held that:

“6. We were taken through the Judgement of the learned Judges of the High Court. We are satisfied that the learned Judges were justified in coming to the conclusion on the evidence that Hemareddy alias Vemareddy is guilty u/s. 467 read with sec. 114, I. P. C. and that Pyatal Bhimakka is guilty u/s. 467, I. P. C. Since we agree with the learned Judges of the High Court on the question of fact in so far as it relates to A-2 in full and as regards Hemareddy alias Vemareddy (A-2) in respect of his conviction u/s. 467 read with sec. 114, it is unnecessary for us to refer to the



*evidence relied upon by the learned Judges for coming to the conclusion that Hemareddy alias Vemareddy is guilty under Section 467 read with sec. 114, I. P. C. and that Pyatal Bhimakka is guilty under Section 467, I. P. C. **This Court has observed in Girija Nandini Devi V/s. Bigendra Nandini Choudry (1967) 1 SCR 93 that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with reasons given by the Court the decision of which is under appeal, will ordinarily suffice.** We shall deal with the case of the prosecution against Hemareddy alias Vemareddy under Section 193. I. P. C. separately. We, therefore, confirm the conviction of Hemareddy alias Vemareddy u/s. 467 read with sec. 114, I. P. C. and of Pyatal Bhimakka u/s. 467, I. P. C. We are of the opinion that no interference with the Judgement of the learned Judges of the High Court in regard to the sentence awarded to Pyatal Bhimakka is called for having regard to the fact that the learned Judges have given sufficient reasons for taking a lenient view in regard to that accused on the question of sentence. We, therefore, dismiss the Criminal Appeal in so far as it relates to the question of sentence awarded to Pyatal Bhimakka.”*

(emphasis supplied)

6. Tested on the aforesaid principles, if the evidence of Babubhai Dhanabhai at Exhibit 14, witness Dhanabhai Gandabhai Exhibit 16, witness Bachubhai Ashabhai Exhibit 17, and that of Dr. Kachralal Mohanbhai Vankar at Exhibit 25 are taken into consideration, Babubhai Dhanabhai has not deposed that Bhopabhai Shanabhai had inflicted injury to complainant Babubhai Dhanabhai or witness Dhanabhai Gandabhai. Similarly, witness Dhanabhai Gandabhai also



has not deposed in his deposition that accused Bhopabhai Shanabhai has inflicted any injury to complainant Babubhai Dhanabhai or this witness, namely Dhanabhai Gandabhai. On the contrary, on perusing the deposition of complainant Babubhai Dhanabhai and witness Dhanabhai Gandabhai what has been stated is that, it is accused Babubhai Shanabhai who has inflicted injuries. Thus, what has been stated is only one accused namely Babubhai Shanabhai, that is respondent No.2 herein, has perpetuated alleged crime.

7. If the deposition of Bachubhai Ashabhai is perused, there is also material discrepancy with regards to infliction of injury upon the complainant, and there is material discrepancies as to who injured whom on which part, since there were two accused and only two injured witnesses, this discrepancy goes to the root of the case.

8. There are also discrepancy with regards to the deposition of witness Dhanabhai Gandabhai and witness Bachubhai Ashabhai, and it clearly transpired that witness Bachubhai Ashabhai is not the eye witness of the alleged incidence. Similarly witness Bachubhai Ashabhai has made material improvement in his deposition and has stated more than what has not been stated in the police statement under Section 161 of the Cr.P.C. Thus, there is discrepancy in the deposition before the Court and the police statement which would be also evident from the deposition of the investigation officer.

9. It is also required to be noted that Dhanabhai Gandabhai has stated before the Doctor (Medical Officer) at Kheda Civil Hospital, namely Dr. Kachrabhai Mohanbhai, and in the case history, he has stated this witness has stated that on 19.11.1995, at 5 o'clock someone with sticks has injured him. However, witness Dhanabhai Gandabhai and witness Bachubhai Ashabhai have deposed to the effect that when Dhanabhai Gandabhai was taken to Kheda Civil Hospital, he was unconscious. Therefore, the question of recording history by the doctor also creates serious doubt. The deposition of Doctor (Medical Officer) Kachrabhai Mohanbhai Vankar at Exhibit 25, would also reflect that no name of the assailants has been given to the doctor.

10. Be that as it may, this alone cannot be the ground of acquittal, however, considering the deposition of injured persons and witnesses, there are material discrepancies which goes to the root of the case and makes the case of prosecution unbelievable. And thus, having found nine discrepancies from the entire evidence on record, the trial Judge has acquitted the accused persons to which we are in concurrence and do not find any material irregularity committed by the trial Judge, either in appreciating oral or documentary evidence, nor could the trial Court's judgment be termed as perverse, inasmuch as, a well reasoned order after appreciation of oral and documentary evidence has been passed.

11. Under the circumstances, when two views are possible, the view which favors the accused is required to be adopted, and in view of the same, the present appeal required to be rejected.

12. It is also required to be noted that Babubhai Dhanabhai - original complainant had also preferred Criminal Revision Application bearing No.33 of 2004, against the present respondents - original accused, which came to be rejected by an order dated 19.07.2005.

13. Thus, this Court having found that the reasons recorded by the trial Court are neither unreasonable nor perverse, and that the trial Court has committed no serious error of law, and that the findings recorded are based on appreciation of relevant material on record. As the view taken by the trial Court is possible and reasonable view of the evidence, this Court would be loath in substituting its opinion that of the trial Court.

14. Hence, the appeal being meritless, the same is rejected. The bail bonds of respondents, if any, stand cancelled, surety stands discharged, R&P, if any, to be sent back to the trial Court forthwith.

(VAIBHAVI D. NANAVATI,J)

(P. M. RAVAL, J)

NITIN MAKWANA