

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 345 of 2000****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER****and****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT

Versus

ISMILEBHAI HASANBHAI MALEK & ORS.

Appearance:

PUBLIC PROSECUTOR for the Appellant(s) No. 1

MS KD PARMAR(589) for the Opponent(s)/Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR.JUSTICE SANJEEV J.THAKER
and
HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

Date : 27/03/2026**JUDGMENT****(PER : HONOURABLE MR.JUSTICE MOOL CHAND TYAGI)**

1. The present Appeal is filed by the Appellant - State of Gujarat under the provisions of sub-sections (1) & (3) of Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter be referred to as Cr.P.C.*) challenging the Judgment dated 05.02.2000 passed by the learned 3rd Additional

Sessions Judge, Vadodara (*hereinafter be referred to as the Ld. Trial Court / Ld.ASJ*) in Sessions Case No.147 of 1999, whereby the Respondents herein were ordered to have been acquitted of the charges for the offences punishable under Sections 302, 201,118 r/w Section 34 and 120(B) of the Indian Penal Code,1860 (*hereinafter be referred to as IPC*) .

2. The facts and circumstances giving rise to the filing of the present appeal are as follows: Accused No.1 - Ismailbhai Hashanbhai Malek was allegedly having illicit relations with Accused No.3 - Ramilaben - widow of the deceased Jagdishbhai Prabhatbhai Patanvadiya. The deceased strongly disapproved of this illicit relationship. On one occasion, the deceased Jagdishbhai saw Accused No.1-Ismailbhai and Accused No.3-Ramilaben sleeping together. In view of this, both the accused persons are stated to have borne a grudge against the deceased. Consequently, on 19.03.1999 at about 12:00 in the night, accused No.1 allegedly took Jagdishbhai to a field, inflicted a blow on his head with an iron pipe and caused his death. Thereafter, Accused No.2, with the assistance of Accused No.3, allegedly disposed of the dead body by throwing it into a well.

3. Accordingly, FIR being I.C.R.No.97 of 1999 was lodged at Padra Police Station, District -Vadodara, and investigation was carried out and ultimately, charge-sheet came to be filed against the accused under Sections 302, 201,118 r/w Section 34 and 120(B) of the IPC before the Judicial Magistrate. As the case was exclusively triable by the Court of Sessions, learned

Magistrate under Section 209 of the Cr.P.C. committed the said case to the Court of Sessions Court, Vadodara, which came to be numbered as Sessions Case No.147/1999.

4. On 04.08.1999, the learned Trial Court framed the charges at Exh. 3 under Sections 302, 201, 118, 34 and 120(B). Since, the accused did not plead guilty and claimed to be tried, they were tried for the said offences.

5. In order to bring the home the guilty of the accused, the prosecution has led following oral and documentary evidences:-

ORAL EVIDENCES

Sr.No.	P.W.NO.	WITNESS	Exh.
1.	1.	Deposition of Complainant - Sureshbhai Prabhatbhai	14
2.	2.	Deposition of witness Rajubhai Haribhai	16
3.	3.	Deposition of witness - Lilaben Haribhai	18
4.	4.	Deposition of witness - Bhikhabhai Ramsinhbhai	19
5.	5.	Deposition of witness - Dr.Ajaybhai Jayantilal	25
6.	6.	Deposition of witness-Satishbhai Ranchodbhai Panchal	27
7.	7.	Deposition of witness-Ismailbhai Mahammadbhai Pathan	29
8.	8.	Deposition of witness-Nizamkha Ibrahimkha Pathan	32
9.	9.	Deposition of witness-Mirza Mahmmd Pathan	34
10.	10.	Deposition of witness-Ayubhai Ahmedbhai Pathan	37
11.	11.	Deposition of witness-Ibrahim Jibava Pathan	38
12.	12.	Deposition of witness-Basirkha Najarkha Pathan	40
13.	13.	Deposition of witness-Rajendrasinh Natwarsinh Rana - P.I.	41

DOCUMENTARY EVIDENCES

Sr.No.	EXH	Description
1.	15	Complaint of Sureshbhai Prabhatbhai
2.	20	Inquest panchnama
3.	21	Scene of offence panchnama
4.	22 & 23	Yadi forwarded to Muddamal Chemical Analyzer
5.	26	Post-mortem Note
6.	28	Recovery panchnama of weapon
7.	30	Scene of offence panchnama
8.	31	Recovery panchnama of cycle
9.	32	Arrest panchnama of accused
10.	35	Recovery panchnama of clothes from the dead-body
11.	39	Panchnama of pent of the deceased produced by accused-Ramilaben
12.	42	Complaint
13.	43	Report of Laboratory

6. After recording all the evidence, statements of the accused under Section 313 of Cr.P.C., were recorded and all the incriminatory evidence were put to them. They denied all the incriminatory evidences and took the plea that they have been falsely implicated in the crime. Thereafter, the case was fixed for the evidence of Accused persons but they had not led any oral and/ or documentary evidence. Thereafter, hearing the arguments on behalf of the prosecution and the defence and having considered the arguments and evaluating the oral as well as documentary evidences, the Ld. ASJ acquitted all the accused of all the charges levelled against them by the Judgment dated 05.02.2020.

7. Being aggrieved by and dissatisfied with the judgment dated 05.02.2000 passed by the learned 3rd Additional Sessions Judge, Vadodara, the appellant-State has preferred the present Criminal Appeal.

8. We have heard learned advocates for the parties.

9. Mr. Yuvraj Brahmbhatt, learned Additional Public Prosecutor for the appellant-State, vehemently submitted that the prosecution witnesses viz. Sureshbhai Prabhatbhai, Rajubhai Haribhai, Lilaben Haribhai, and Bhikhabhai Ramsinhbhai, have categorically deposed before the learned Trial Court that accused No.3 - Ramilaben made an extra-judicial confession before them. It is submitted that she admitted to having an illicit relationship with accused No.1, and that the deceased - Jagdishbhai had caught them while they were sleeping together. It is further submitted that, in order to eliminate Jagdishbhai, accused No.1 came during the night and took the deceased to the field, where accused Nos.1 and 2 inflicted blows with a pipe on his head, thereby committing his murder. It is further submitted that the dead body of Jagdishbhai was thrown into a well, and that the pant of the deceased was handed over to accused No.3 - Ramilaben.

10. The learned Additional Public Prosecutor further submitted that the muddamal articles i.e. pipe, bicycle, and motorcycle used in the commission of the offence, were recovered at the instance of the accused. It is submitted that

such recovery has been duly proved on record. It is, therefore, contended that the learned Trial Court has failed to appreciate the extra-judicial confession as well as the recovery of the muddamal articles at the instance of the accused persons in their proper perspective, and has thereby committed a manifest error in acquitting the accused persons of all the charges levelled against them. He, therefore, submitted that the impugned judgment and order deserve to be set aside.

11. Per contra, Mr.K.D.Parmar, learned advocate appearing on behalf of the respondents herein - original accused vehemently submitted that the prosecution could not prove the case beyond reasonable doubt. It is submitted that the extra judicial confession was not proved by the prosecution beyond reasonable doubt. It is submitted that the recovery of muddamal has not been proved on record. Therefore, the learned Trial Court has rightly acquitted the accused persons from all the charges leveled against them. He, therefore, submitted that the captioned appeal is liable to be dismissed.

12. Having considered the submissions of learned advocates for the parties and having gone through the record, it is to be noted that in order to bring home the guilt of the accused persons, the prosecution has examined as many as 13 witnesses. In light of arguments canvassed by learned APP, the case of prosecution based on extra judicial confession and recovery of muddamal articles at the instance of the accused persons. Now, in light of ocular evidence, it has to be seen that as to whether the extra judicial confession has been proved on

record beyond reasonable doubt. In order to prove the extra judicial confession, the prosecution has examined Sureshbhai Pratapbhai as PW.1 at Exh.14, Rajubhai Haribhai as PW.2 at Exh.16, Lilaben Haribhai was examined as PW.3 at Exh.18 and Bhikabhai Ramsinhbhai was examined as P.W.4 at Exh.19.

13. P.W.1 Sureshbhai Prabhatbhai, the younger brother of the deceased – Jagdishbhai, is the complainant in the present case. He deposed before the learned Trial Court that, after the cremation of his brother, his sister-in-law (bhabhi) i.e. accused No.3 made a confessional statement before the family members. She stated that on 19.03.1996, at about 12.00 hours in the mid-night, accused No.1 – Ismailbhai came to her house and took her husband-Jagdishbhai to the field. It is further deposed that accused No.1 was waiting on the way, and thereafter, the accused persons returned with the pant of the deceased, which they handed over to her, informing her that they had eliminated her husband. He further deposed that accused No.3 also confessed that about two months prior to the incident, while she and accused No.1 – Ismailbhai Hasanbhai Malek were sleeping together on a cot, the deceased – Jagdishbhai saw them, and thereafter, he beaten accused No.1. In his cross-examination, he admitted that the cremation took place in the evening of 03.04.1996. He further admitted that the police had handed over the dead body of the deceased between 03:00 p.m. and 04:00 p.m., following which the last rites of the deceased – Jagdishbhai were performed. He also admitted that accused No.3 – Ramilaben was present at the said last rites. He further deposed that, thereafter, on the

night of 03.04.1996, he went to Padra Police Station; however, he did not make any statement to the police during the said night. His additional statement came to be recorded on 04.04.1996. It has, therefore, emerged from his cross-examination that a doubt is created as to the time and circumstances under which accused No.3 - Ramilaben allegedly made the confession after the cremation, particularly when he himself was not present at the relevant time.

14. The prosecution has examined Rajubhai Haribhai as P.W.2 at Exh.16. He deposed that he had found the dead body of the deceased in a well and had informed Suresh (P.W.1) about the same. He has also deposed on similar lines regarding the alleged extra-judicial confession. However, in his cross-examination, he admitted that after the cremation, he returned home and went to sleep. He further admitted that on the next day, i.e., 04.04.1996, he woke up at about 07:00 a.m., went to school, returned at about 05:00 p.m., and thereafter, after completing his homework, went to sleep. He also admitted that after 2-3 days, his uncle Suresh informed him that he had been made a witness in the case. In view of the aforesaid admissions, it becomes doubtful as to when accused No.3 made the confessional statement before him, particularly when his own version indicates that he had no occasion to meet or interact with her during the relevant period. Therefore, the version of the alleged confessional statement cannot be said to be proved beyond reasonable doubt.

15. P.W.3 Lilaben Haribhai, who is sister-in-law of the deceased-Jagdishbia also deposed on the same line of confessing the guilt by Ramilaben before the family members. She deposed that the police has inquired her at night after the cremation of the deceased-Jagdishbhai. The cremation of the deceased-Jagdishbhai took place on 03.04.1996, however, Sureshbhai (P.W.1) deposed that the accused no.3-Ramilaben made her confessional statement on 04.04.1996.

16. P.W.4 Bhikhabhai Ramsinhbhai also deposed that his aunt Ramilaben made the confessional statement on 04.04.1996 before Sureshbhai (P.W.1), Lilaben (P.W.3) & ors., but in the cross-examination, admitted that he has not told the police that Ramilaben has made any confessional statement before him.

17. Thus, in light of oral testimony of P.W.1 to P.W.4, it is evident that there is a material contradiction in the deposition regarding the time of making confessional statement and availability of these witnesses at the time of making confessional statement by accused no.3-Ramilaben.

18. It is a settled proposition of law that a conviction can be based on the confessional statement of an accused, provided that such statement is voluntary and trustworthy. However, in the present case, in light of the depositions of the alleged eye-witnesses, it has not been proved beyond reasonable doubt that accused No.3-Ramilaben made any such confessional statement before them.

19. So far as the recovery of muddamal articles is concerned, P.W.6 – Satishbhai Ranchhodbhai Panchal, who is the panch witness to the alleged recovery of the iron-rod, has deposed that the accused – Ismailbhai – went inside the room and produced the iron pipe alleged to have been used in the commission of the offence. However, a close scrutiny of his testimony reveals that the preliminary panchnama of recovery has not been duly proved. Further, in his cross-examination, the witness has admitted that he was called to the police station by Sureshbhai (P.W.1) to act as a panch witness, which casts doubt on the credibility of the alleged recovery.

20. P.W.7, Ismailbhai Mahammadbhai Pathan, is a panch witness to the recovery panchnama of the bicycle. In his cross-examination, he admitted that he was not called to the police station by the police, but was instead called by Sureshbhai (P.W.1). P.W.8, Nizamkha Ibrahimkha Pathan, a panch witness to the recovery of the Rajdoot motorcycle, turned hostile and did not support the case of the prosecution. Similarly, P.W.11, Ibrahim Jibava Pathan, and P.W.12, Basirkha Nazarkha Pathan, who are panch witnesses to the recovery panchnama of the deceased's pant, have also turned hostile and failed to support the prosecution's case. Thus, in light of the oral testimonies of the panch witnesses, it is evident that the alleged recovery of muddamal articles at the instance of the accused persons has not been duly proved on record.

21. So far as the other witnesses are concerned, P.W.5-Dr. Ajaybhai Jentibhai Joshi is the medical officer who conducted the post-mortem of the deceased-Jagdishbhai. P.W.13, Rajendrasinh Natvarsinh Rana, is the Investigating Officer, who conducted the investigation and filed the charge-sheet. Thus, upon a careful scrutiny of the oral as well as documentary evidence on record, it is evident that the prosecution has miserably failed to prove its case against the accused persons beyond reasonable doubt.

22. Thus, in the light of evidence, the prosecution has miserably failed to prove the extra judicial confession as well as recovery of muddamal articles at the instance of accused persons, beyond reasonable doubt. It is settled proposition of law that the prosecution has to prove the guilt of the accused persons beyond reasonable doubt.

23. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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.

24. Further, 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

25. In the instance case, learned APP failed to point out any cogent and incriminating evidence against the accused persons, which may connect the accused persons with the commission of the offence beyond reasonable doubt. At this stage, it would be profitable to refer to the judgment of Apex Court in the case of **Chandrappa & Ors. Vs. State of Karnataka** reported in **2007 (4) SCC 415**. The relevant

observations made in the said judgment are as under:-

“..... (1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The [Code of Criminal Procedure](#), 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 emphasize 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 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.”

26. Applying the aforesaid principle as laid down by the Apex Court in the case of Chandrappa (*supra*), it is apparent on

record that no credible evidence had been produced by the prosecution, which may connect the accused persons in the alleged crime. The prosecution has miserably failed to prove the guilt of the accused persons beyond reasonable doubt. Thus, the Trial Court has not committed any error in appreciating the evidence on record and in acquitting the accused persons from the challenges levelled against them.

27. In these facts and circumstances, we are of the considered opinion that the learned Trial Judge committed no error in passing the impugned judgment and order. Hence, the present appeal deserves to be dismissed.

28. In the result, the appeal fails and is ***dismissed***. The judgment and order of the Trial Court dated **05.02.2020** stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. R & P be sent back to the concerned Trial Court, forthwith. No order as to costs.

(SANJEEV J.THAKER,J)

(MOOL CHAND TYAGI, J)

GIRISH