

Reserved On : 23/03/2026
Pronounced On : 08/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1728 of 2009

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STATE OF GUJARAT

Versus

LAKHMANBHAI MAVJIBHAI KOLI & ORS.

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Appearance:

MS. MEGHA CHITALIYA, APP for the Appellant(s) No. 1

ADVOCATE NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1,2

UNSERVED EXPIRED (N) for the Opponent(s)/Respondent(s) No. 3,4

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CORAM: HONOURABLE MR. JUSTICE SANJEEV J. THAKER

CAV JUDGMENT

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 10.07.2009, passed by the learned Special Judge, Additional Sessions Judge, Main Fast Track Court, Gondal Camp at Dhoraji in Sessions Case No. 153/1996, for the offences punishable under Sections 306, 354, 506(2), 114 of the Indian Penal Code, Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the appellant – State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, “**the Code**”).

2. The prosecution case, as unfolded during the trial before the lower Court, is that on account of continuous harassment, teasing and threats extended by the accused

persons towards the daughter of the complainant, the complainant was driven to commit suicide by self-immolation, and subsequently died during treatment. Therefore, the complaint was filed against the respondent/s-accused.

3. After investigation, sufficient *prima facie* evidence was found against the accused person/s and therefore charge-sheet was filed in the competent criminal Court for the offences as alleged. Since the offence alleged against the accused person/s was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court where it came to be registered as Sessions Case No.153/1996. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution has examined 8 witnesses and 10 also produced documentary evidence before the trial Court, which are described in the impugned judgment.

Oral evidences

Sr. no.	Exh.No.	Particulars
1.	54	Pradyumanbhai Vasantbhai, Executive Magistrate, who recorded the dying

		declaration.
2.	59	Rasilaben Chanabhai
3.	60	Sonaben Govindbhai
4.	65	Natwarlal Gangadasbhai
5.	67	Vashrambhai Mudubhai
6.	68	Pravinbhai Dayabhai
7.	70	Maheshbhai Jairajbhai, Investigating Officer
8.	80	Gautambhai Narendrabhai

Documentary Evidences

Sr.No.	Exh.No.	Particulars
1.	71	Original Complaint.
2.	48	Inquest Panchnama.
3.	51	Panchnama of the scene of offence.
4.	52	Panchnama of the dead body.
5.	53	Arrest Panchnama.
6.	49,55,71-74,76	Investigating papers including yadis, forwarding letters and investigation orders.
7.	50	Post Mortem Report.

8.	75	Opinion of Scientific Officer, Rajkot.
9.	77	Evidence from the Forensic Science Laboratory Report.
10.	56	Dying Declaration.

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which they were charged, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. Learned APP for the appellant – State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the

accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

7. Though served, none appears on behalf of the respondent/s.

8. In the aforesaid background, considering the oral as well as documentary evidence on record, independently and dispassionately and considering the impugned judgment and order of the trial Court, the following aspects weighed with the Court:

8.1. The prosecution has placed on record the report of Police Inspector, Dhoraji Police Station that respondent no. 3 and 4 have expired, and the statement of Rameshbhai Nihabhai Pataliya, that respondent no.3 Rameshbhai Nihabhai Pataliya has expired five years ago from the date of the said statement which was given on 03.12.2025, and along with the

said communication Police Inspector, Dhoraji Police Station, has also placed on record the Death Certificate of respondent no.4 Gopalbhai Manjibhai who had expired on 03.07.2023, and in view of the same the present appeal abates qua Respondent No's 3 and 4.

8.2. The prosecution has mainly relied on the complaint filed by the deceased Jasuben, produced vide Exh-71, wherein she has stated that the accused after consuming alcohol, used to harass her daughter Dhuna, and therefore, because of the said threat and fear, on 14-07-1996, she poured kerosene on herself and burnt herself and thereafter, her other family members took her to Dhoraji Government Hospital, and as the accused were harassing her, she had tried to commit suicide.

8.3. The said complaint was given by the deceased herself, which is produced vide Exhibit-71. After the deceased was admitted at the hospital, a yadi was sent by the Police Officer to the Executive Magistrate for taking the dying declaration of the deceased which is produced vide Exhibit-55, and the same was received by the Executive Magistrate at 18:15 hours on 14-07-1996. Thereafter, the dying declaration had been taken by the Executive Magistrate which had

started at 18:20 hours, which is produced vide Exhibit-56, and the said dying declaration ended at 18:40 hours, and the same is also signed by Dr. P. V. Patel, at 06:45 pm, wherein, the deceased in a dying declaration has stated that she has burnt herself, and when she was asked that who had given her threats, she had given the name of Respondent No. 4. In a dying declaration, she has stated that Respondent No.4 had threatened to kill her with a knife, and Respondent No. 2 had also threatened her. She has also stated the fact that she had informed the Sarpanch about the threats that was made to her. She has also stated that Respondent No. 1 and 4, after consuming alcohol used to knock on the doors of the deceased's house. When she was asked as to what was the reason for the accused to give her threats, she stated that the said fact cannot be informed, and when asked that when were the threats given by Respondent No. 4, she had stated that two days ago the said threats were given. She has also stated that other than Respondent No's. 3 and 4, there was no one who had given her threats.

8.4. The prosecution has examined the Executive Magistrate, Pradyumanbhai Vasantbhai Mehta, as PW-1 vide Exhibit-54, in his examination-in-chief, he stated that while he was serving as an Executive Magistrate in the Dhoraji Mamlatdar Office, he was called by Police Officials to record

the dying declaration of Jashuben. In his deposition he has stated that he had asked the doctor about the fitness of the deceased to give dying declaration. The said fact of taking opinion of the doctor has not been stated by him in his deposition. Accordingly, on 14.07.2016, he recorded her statement. He further stated that at the time of recording the dying declaration, Jashuben was conscious. After completion of the dying declaration, he obtained the doctor's signature and also took the thumb impression of Jashuben. He deposed that as he kept asking questions to the deceased, she continued to give answers. He further stated that the deceased had mentioned that Gopal had threatened her, however, what exact threat was given by Gopal could not be stated. She also did not say the reason for such threat.

8.5. In cross-examination, this witness stated that when a dying declaration of a patient is to be recorded, it is required to first obtain a certificate from the doctor confirming that the patient is in a conscious and fit state. However, in the present dying declaration, there is no note indicating that the doctor was consulted before recording the statement. He further admitted that he had not taken any fitness certificate from the doctor, he only had obtained signature of doctor on dying declaration.

8.6 The prosecution has thereafter examined the daughter of the deceased, Rasilaben, as PW-2 vide Exhibit-59, in her deposition she has stated that other than the fact that there were quarrels with respect to consuming alcohol, she was not aware of any other dispute. She is also not aware as to with whom the said dispute of alcohol was going on. She has also stated in her cross-examination that the said quarrel of the deceased was going on with one Lakhyabhai. She has stated that she is not aware as to when the threats were given to the deceased, and it is only when the deceased had informed her, she is aware of the said fact.

8.7. The prosecution has examined PW-3, Sonaben Govindbhai, vide Exhibit-60. In her examination-in-chief, she stated that the deceased, Jashuben, was residing at some distance from her house. Upon learning about the incident, she went to Jashuben's house, and thereafter accompanied her to the hospital. Her statement was recorded by the police. In cross-examination, this witness stated that Jashuben was speaking slowly before the police. She stated that she does not remember whether Jashuben had stated before the police that she was compelled to take such a step due to

harassment by the accused. Thus, this witness has been declared hostile by the prosecution.

8.8. The prosecution has examined PW-4, Natverlal Gangadas, vide Exhibit-64, and he has turned hostile and did not support the case of prosecution.

8.9. The prosecution has thereafter examined Vashrambhai Mulubhai as PW-5 vide Exhibit-67. In his examination-in-chief, he stated that the police had recorded his statement. He stated that he does not have direct knowledge about the incident. He further stated that deceased Jashuben used to come to his house, and would say to arrange a place for her to stay as it is not possible to live in Koliwas, as they harass her. At times during the night, they bang on her house, and therefore she is unable to stay there. Therefore, he arranged residence for deceased. She stayed there for three days and thereafter got burnt. The deceased had told him that when she had gone to grind grains, some persons from the Koli community gathered there and showed her a knife. She had mentioned the name of Virji and Rikshaw driver. He further stated that the statement given by the deceased before the Mamlatdar (Executive Magistrate) was true.

8.10. In cross-examination, this witness stated that he was not present at the place of the incident at the relevant time, and apart from stating that threats were given, he has no further knowledge about the incident.

8.11. The prosecution has examined Raveenbhai Dayabhai, vide Exhibit-68 as PW-6. He was residing next to the deceased at the time of incident, and he was the person who had extinguished the fire.

8.12. The prosecution has examined Investigating Officer as PW-7, Maheshbhai Jerambhai Patel, vide Exhibit 70. He stated that while he was serving as the P.I. at Upleta, the papers of this case were forwarded from Dhoraji Police Station to Upleta Police Station under Zero Number. After receiving the said papers, he took them into consideration and proceeded to the place of occurrence for investigation, where he prepared the panchnama of the scene of offence. In cross-examination, this witness stated that the complaint was not written in his presence, and he has not read what is written in the complaint.

8.13. The prosecution has also examined PW-8, as Gautambhai Narendrabhai Chaudhary. In his examination-in-chief, he stated that on 14.07.2016, he had gone to the Government Hospital in Dhoraji for his official work. There, the deceased Jashuben and her relatives were brought for treatment. Police Constable P.B. Dhank recorded the statement of Jashuben, in which he took her thumb impression, identified it, and signed the document. Later, P.B. Dhank also signed it. According to Jashuben, the accused used to harass her daughter, and on 14.07.2016, Jashuben poured kerosene on herself and set herself on fire. In cross-examination, this witness stated that apart from identifying the thumb impression in the complaint produced vide Exhibit-71, he has no personal knowledge of the matter. He clarified that the police told him to identify the thumb impression, and that is all he knows.

8.14. In the present case, if the entire proceeding is taken into consideration, the dying declaration had started at 18:20 hours and had ended at 18:40 hours. The Executive Magistrate in his deposition has stated that he had relied on the opinion given by the said doctor with respect to the fitness of the deceased in giving dying declaration. The fact remains that the said doctor has not been examined by the prosecution nor is there any evidence coming forward that

while giving the dying declaration, the deceased was fit to give a dying declaration. Moreover, if Exhibit-73 is taken into consideration, which is a communication between the P.S.O Dhoraji, and Police Constable P.B. Dhank, dated 14.07.1996, it transpires that the deceased had expired on 14.07.1996 at 18:55 hours, i.e. only 10 minutes after the dying declaration has been taken.

8.15. The prosecution has examined the Police Inspector, Maheshbhai Jairambhai Patel, who was serving at Upleta in the year 1996, he has stated that complaint produced vide Exhibit-71 has been taken by Police Officer P.B. Dhank, the said Police Officer has not been examined by the prosecution. The prosecution has though tried to proved the said complaint by relying on the evidence of the advocate who had identified the thumb impression of the complainant being the complaint produced vide Exhibit-71, but the fact remains that the prosecution has not examined the Police Officer who had taken the complaint. Moreover, no justification has been given by the prosecution for not examining the same Police Officer.

8.16. The reason stated in the complaint produced vide

Exhibit-71 states that as the accused were harassing her daughter Dhuna, but the fact remains that the said fact has not been proved by the prosecution. In the dying declaration produced vide Exhibit-56, also no reasons have been stated by the deceased as to what were the threats given by the accused. Though it has been stated that PW-2, who has been examined vide Exhibit-59, Rasilaben is the sister of Dhuna, whom the deceased used to state, was harassed by the accused. But the said fact has not been proved by the prosecution.

8.17. Moreover, in the complaint produced vide Exhibit-71, and the dying declaration produced vide Exhibit-56, there are a lot of contradictions and discrepancies. The prosecution has not been able to prove that any threats were ever given by the accused to the deceased. In the deposition produced vide Exhibit-59, Rasilaben is the sister of Dhuna whom the deceased used to state was harassed by the accused.

* Therefore, the prosecution has not proved the case against the accused for the offence as alleged. Moreover, as per the observations made by the Hon'ble Apex Court in the case of **Sajan Sakhariya Vs. State of Kerala and others** reported in **AIR 2024 SC 4557**, every insult or intimidation

would not amount to an offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, unless such insult or intimidation is started at a victim because he is a member of a particular Scheduled Castes or Scheduled Tribes. Therefore, from the allegations made in the complaint, the prosecution has not proved that the accused is guilty of an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

* The trial Court, while considering the evidences in detail, has observed that the prosecution has failed to prove the case against the accused beyond reasonable doubt. While discussing the evidence in detail, the trial court has found that the only allegation against the accused is of speaking indecent words against the caste of the complainant. The trial Court has gone into the evidence in detail and has come to the conclusion that the accused are not guilty of the alleged offence.

9. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above

view of the matter, this Court is of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

10. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

11. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of **State of Karnataka Vs. Hemareddy**, reported in **AIR 1981 SC 1417** wherein it is held as under:

“... This court has observed in Girija Nandini Devi V. Bigendra Nandini

Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) 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 the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

12. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

13. In the case of ***Ram Kumar v. State of Haryana***, reported in ***AIR 1995 SC 280***, Supreme Court has held as under:

“The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction.

But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

14. As observed by the Hon'ble Supreme Court in the case of ***Rajesh Singh & Others vs. State of Uttar Pradesh*** reported in ***(2011) 11 SCC 444*** and in the case of ***Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh*** reported in ***(2011) 6 SCC 394***, while dealing

with the judgment of acquittal, unless reasoning by the trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

15. In the case of **Chandrappa v. State of Karnataka**, reported in (2007) 4 SCC 415, the Hon'ble Apex Court has observed as under:

“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, reappraise 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.”

16. The Hon’ble Apex Court, in a recent decision, in the case of ***Constable 907 Surendra Singh and Another V/s State of Uttarakhand reported in (2025) 5 SCC 433***, has held in paragraph 24 as under:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned 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.”

17. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

18. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondent/s - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

19. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove and the same deserves to be dismissed and is ***dismissed***, accordingly.

Record & Proceedings be remitted to the concerned trial Court forthwith.

ADITYA SINGH

(SANJEEV J.THAKER,J)