

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal (DB) No. 189/2025
State Of Rajasthan, Trhough PP

----Appellant

Versus

1. Jagdish S/o Lakhma Baranda, Aged About 58 Years, R/o Nichli Sigri Phalla Sitradari, Ps Phalasiya, Dist. Udaipur.
2. Govindram S/o Jagdish Baranda, R/o Nichli Sigri Phalla Sitradari, Ps Phalasiya, Dist. Udaipur.

----Respondents

For Appellant(s)	:	Mr. Rajesh Bhati, PP
For Respondent(s)	:	Mr. Rohin Bhansali
		Mohd. Aman
		Ms. Anushka Jain

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA
Judgment

BY THE COURT: (PER HON'BLE MR. JUSTICE VINIT KUMAR MATHUR)

1.	Date of conclusion of argument	17.02.2026
2.	Date on which the judgment was reserved	17.02.2026
3.	Whether the full judgment or only operative part is pronounced	Full Judgment
4.	Date of Pronouncement	25.02.2026

1. The instant Criminal Appeal has been preferred by the Appellant–State under Section 378(iii) & (i) of the Code of Criminal Procedure, 1973, assailing the validity of judgment dated 18.11.2022 passed by learned Additional Sessions Judge No. 2, Udaipur, in Sessions Case No. 54/2017, arising out of FIR No. 40/2017 registered at Police Station Phalasiya, District Udaipur, whereby the accused-respondents, namely, – Jagdish and Govindram have been acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. As per prosecution case, on 08.04.2017 at about 8:00 a.m., the complainant Smt. Priyanka @ Sita Baranda submitted a

written information (Ex.P-1) before the Station House Officer, Police Station Phalasiya, stating therein that she and her brother Subhash had gone to their respective schools in the morning, she to Sitradari School and her brother to Sigri School to appear in an examination. She stated that upon hearing shouting and noise from the direction of her house, she rushed back and saw that the accused-respondents, namely, Jagdish and Govindram were assaulting her Bhuwa Kamla, her grandfather Lakhma, and her grandmother Dhanki with lathis, and thereafter fled from the spot. She further stated that her brother Subhash also reached there and, upon seeing the injured persons lying at the spot, went to inform their Bhuwa Elasi, resident of Sada. When Elasi arrived, it was found that Lakhma and Kamla had succumbed to their injuries, while Dhanki was lying in a seriously injured condition.

3. On the basis of the said information, a formal FIR No. 40/2017 was registered at Police Station Phalasiya for the offences under Sections 302 and 307 read with Section 34 IPC.

4. After completion of investigation, the police filed a charge-sheet against the accused-respondents for the offence under Section 302/34 IPC before the Court of Additional Judicial Magistrate, Jhadol, District Udaipur, from where the case was committed to the Court of Additional Sessions Judge No. 2, Udaipur for trial.

5. The learned Trial Court framed, read over, and explained the charges under Section 302/34 IPC to the accused-respondents, who denied the same and claimed trial.

6. During trial, the prosecution examined as many as 23 witnesses and exhibited documentary evidence from Ex.P-1 to Ex.P-61.

7. The statements of the accused-respondents were recorded under Section 313 Cr.P.C., wherein they denied the prosecution allegations, claimed false implication, and asserted their innocence. The accused-respondents did not lead any evidence in defence.

8. Learned Trial Court, Upon hearing the arguments advanced on behalf of both sides and after appreciation of the oral as well as documentary evidence available on record, acquitted the accused-respondents of the charge under Section 302/34 IPC vide judgment dated 18.11.2022.

9. Being aggrieved and dissatisfied with the impugned judgment of acquittal dated 18.11.2022, the Appellant-State has preferred the present Appeal.

10. Hence the present appeal.

11. Learned counsel for the appellant – state submitted that the learned trial court has committed grave illegality and perversity in acquitting the accused-respondents of the charges levelled against them. The impugned judgment is contrary to law, unsupported by evidence, and deserves to be quashed and set aside.

12. Learned counsel for the appellant – state further submitted that the impugned judgment passed by the learned court below is contrary to the settled principles of criminal jurisprudence as well as the facts and evidence available on record. The learned Trial

Court has failed to properly appreciate the oral and documentary evidence in its correct perspective and has ignored material circumstances and corroborative pieces of evidence, which clearly establish the complicity of the accused-respondents. The learned court below, thus, committed a grave error in acquitting the accused-respondents.

13. Learned counsel submitted that in the present case, the prosecution has successfully proved its case beyond reasonable doubt and has brought home the guilt of the accused-respondents for the offence punishable under Section 302 read with Section 34 IPC.

14. Learned counsel also submitted that though the complainant PW-1 Priyanka was declared hostile, yet in her cross-examination she categorically stated that she had seen the accused-respondents assaulting the deceased and the injured persons with lathis. Her testimony, to the extent it supports the prosecution case, could not have been brushed aside merely on the ground that she was declared hostile. He further submitted that there existed a land dispute between the parties and due to prior enmity; the accused-respondents committed the murder of Kamla and Lakhma.

15. Learned counsel for the appellant-state also invited attention to the medical evidence on record and submitted that PW-15 and PW-17, in their sworn testimonies, clearly stated that Kamla and Lakhma died due to excessive bleeding, multiple rib fractures and massive haemorrhage. The injuries sustained by the deceased were grievous in nature and sufficient in the ordinary course of

nature to cause death, which fully corroborates the ocular version of the prosecution witnesses.

16. In view of the above submissions, learned counsel for the appellant-State prayed that the impugned judgment of acquittal be set aside and the accused-respondents be convicted in accordance with law.

17. Learned counsel for the accused-respondents has opposed the submissions made by the counsel for the appellant- state and has supported the judgment passed by learned Additional Sessions Judge No. 2, Udaipur, and he submitted that there is no infirmity in the judgment passed by the learned trial court while acquitting the accused-respondents of the offence under Section 302 read with Section 34 of the Indian Penal Code vide judgment dated 18.11.2022.

18. We have considered the submissions made before this Court and have carefully examined the relevant record of the case, including the impugned judgment dated 18.11.2022.

19. Upon appreciation of the evidence available on record, it emerges that the present case is founded primarily on direct evidence and not on circumstantial evidence. The prosecution has projected PW-1 Priyanka @ Sita and PW-5 Prabhulal as the principal eyewitnesses of the occurrence. So far as PW-1 Priyanka @ Sita is concerned, in her examination-in-chief she deposed that on the date of the incident she had gone to school at about 8:00 a.m. and that her house was not visible from the school premises. She categorically stated that she did not witness the assault on her grandmother, aunt and grandfather and that she had no

knowledge of the occurrence. In view of her resiling from the earlier version, she was declared hostile.

20. It is noteworthy that the First Information Report (Ex.P-1) was lodged by PW-1 Priyanka @ Sita, wherein it was alleged that at about 11:00–12:00 noon she had seen from the school window that accused-respondents, namely, Jagdish and Govindram, were assaulting Kamala, Lakhma and Dhanki with *Lathi* and, thereafter, fled from the spot. However, in her Statement recorded under Section 164 Cr.P.C before the Court, she did not support the contents of the FIR. During cross-examination, she admitted that Jagdish and Govindram had assaulted her relatives and caused injuries, but in cross-examination she stated that she did not know, who had written Ex.P-1 and further stated that Jagdish and Govindram did not assault anyone. Though she admitted her signatures on her statement recorded under Section 164 Cr.P.C., but she denied having dictated substantial portions of her police statement. Thus, the substantive evidence of PW-1 in Court does not corroborate the version given in the FIR or her statement recorded under Section 164 Cr.P.C.

21. The second alleged eyewitness, PW-5 Prabhulal, a teacher at the Primary School, Sitradari, also did not support the prosecution case. In his examination-in-chief, he stated that on 08.04.2017 he was teaching students of 5th standard in school and, on coming out of the classroom, he saw Lakhma, Dhanki and Kamala lying on the ground. He did not state that he had seen the accused-respondents assaulting them. He was also declared hostile. In cross-examination by the prosecution, he denied material portions

of his police statement (Ex.P-12)r and stated that he had no knowledge of any fight near the school on that day. Thus, PW-5 also did not provide substantive evidence implicating the accused-respondents.

22. PW-2 Subhash, though is not an eyewitness, but he stated that upon returning from examination, his sister told him that Jagdish and Govindram had killed their grandmother, grandfather and aunt. However, he later denied that his sister had informed him so on that date. Priyanka @ Sita PW-1 herself denied having narrated the incident to PW-2. Thus, his testimony remains hearsay in nature and does not advance the prosecution case.

23. Similarly, PW-3 Ailasi and PW-4 Shantilal are also hearsay witnesses. They deposed that Subhash PW-2 informed them that the accused-respondents had assaulted the deceased. Both admitted that they were not present at the place of occurrence. Their testimony, being based on what was allegedly told to them, cannot be treated as direct evidence of the incident.

24. With regard to recovery, PW-18 Dalpat Singh, the Investigating Officer, deposed that pursuant to information furnished under Section 27 of the Evidence Act by accused-respondents, namely, Jagdish and Govindram (Ex.P-50 and Ex.P-51), Lathis were recovered from their houses vide recovery memos Ex.P-22 and Ex.P-23. PW-6 Kalulal and PW-20 Balwant Singh were recovery witnesses. However, PW-6 Kalulal, though not declared hostile, stated that he was called to the police station and made to sign documents and that the lathis were not recovered in his presence. He denied that the accused-

respondents were arrested or that the site plan was prepared in his presence. Thus, he did not corroborate the recovery proceedings.

25. PW-20 Balwant Singh, a police official, supported the prosecution version regarding arrest and recovery. Though there is no legal bar in relying upon police witnesses, the recovery in the present case does not stand corroborated by an independent witness. In such circumstances, the evidentiary value of the alleged recovery requires cautious appreciation.

26. As regards the FSL report (Ex.P-59 and Ex.P-60), it reveals that human blood of group "B" was detected on certain seized articles including soil samples, clothes of the deceased and the lathis allegedly recovered from the accused-respondents, however, neither the blood group of the deceased nor that of the accused-respondents was determined and brought on record. In absence of such evidence, the mere presence of blood group "B" on the recovered articles cannot conclusively connect the accused-respondents with the commission of crime, particularly when it is common knowledge that a large number of persons may share the same blood group.

27. PW-22 Dr. Vardichand Katara, who conducted the post-mortem examinations of deceased Lakhma (Ex.P-27), found multiple injuries , including:-

- a) An open fracture with a lacerated wound measuring 2 × 3 × 4 cm below the right knee;
- b) A fractured lacerated wound measuring 3 × 3 × 4 cm on the left arm;

- c) A lacerated wound $2 \times 3 \times 2$ cm deep up to the bone on the left knee;
- d) A lacerated wound measuring $2 \times 3 \times 2$ cm on the right wrist;
- e) Multiple abrasions on the anterior and posterior chest; a lacerated wound $2 \times 1 \times 2$ cm on the left side of the head; and
- f) A lacerated wound $2 \times 2 \times 3$ cm on the right side of the head.

He further found that two ribs were fractured and the lungs were filled with blood. The injuries were ante-mortem in nature. He proved the post-mortem report (Ex.P-27) and identified his signatures thereon. In his opinion, the cause of death was excessive hemorrhage and respiratory obstruction due to fractured ribs piercing the lungs

28. On the same day, PW-22 also conducted the post-mortem examination of deceased Kamala and prepared the report (Ex.P-28). He found multiple injuries , including:-

- a) A $3 \times 3 \times 5$ cm incised wound on the head extending up to bone depth;
- b) Fracture of the left arm with multiple abrasions; abrasions on the upper right arm with fracture of the right wrist;
- c) A fracture with lacerated wound below the left knee;
- d) A $2 \times 2 \times 4$ cm incised wound on the right leg; abrasions on the left side of the chest; and
- e) A $3 \times 3 \times 5$ cm incised wound on the left side of the head in front of the ear.

Two ribs on the left side of the chest were fractured and the lungs were found filled with blood due to laceration. The abdominal organs were normal. He proved the post-mortem report (Ex.P-28) and his signatures thereon. In his opinion, the

cause of death was excessive bleeding and respiratory failure resulting from rib fractures piercing the lungs. In cross-examination, PW-22 stated that such injuries could not be entirely ruled out in a case where a person falls from a considerable height or from a mountain. However, there is no evidence on record to suggest that the deceased sustained the injuries as a result of any such fall.

29. PW-15 Dr. Iqbal Ali, who was one of the members of the medical board conducting the post-mortem examinations of deceased Lakhma and Kamala, has fully corroborated the testimony of PW-22 Dr. Vardichand Katara. He deposed that the post-mortem reports of deceased Lakhma and Kamala were prepared as Ex.P-27 and Ex.P-28 respectively and proved his signatures thereon. He affirmed the injuries noted in the post-mortem reports and supported the opinion regarding the cause of death as recorded therein.

30. PW-17 Dr. Manish Kumar Sharma deposed that on 09.04.2017 he was posted as Assistant Professor at M.B. Hospital and, on the same day, conducted the post-mortem examination of deceased Smt. Dhanki Devi as a member of the medical board. He stated that the deceased had been admitted in the Neurosurgery Ward of M.B. Hospital on 08.04.2017 and succumbed to her injuries on the morning of 09.04.2017. The post-mortem was conducted at about 5:15 p.m. on 09.04.2017. He proved the post-mortem report (Ex.P-29) and identified his signatures thereon. In cross-examination, PW-17 stated that head injuries of such nature cannot be entirely ruled out if a person falls with great force on a

hard and uneven surface. However, there is no evidence on record to suggest that the deceased had suffered such a fall. The consistent medical opinion is that the injuries were ante-mortem and sufficient in the ordinary course of nature to cause death.

31. PW-7 Premchand Varanda, PW-8 Mannalal, PW-9 Rameshchandra, PW-10 Suresh, PW-11 Shambhulal, PW-12 Shantilal, PW-13 Shantilal, PW-14 Veerji and PW-16 Nathulal were examined as witnesses to the *Panchayatnama* proceedings of deceased Lakhma, Kamala and Smt. Dhanki Devi (Ex.P-5, Ex.P-6 and Ex.P-9) and the handing over memos of the dead bodies (Ex.P-7, Ex.P-8 and Ex.P-10). Though some of these witnesses stated that they had signed the documents at the police station and that the bodies were not handed over in their presence, they admitted their signatures on the respective documents. The Investigating Officer also deposed that the *Panchayatnamas* were prepared and the dead bodies were handed over to the relatives of the deceased.

32. From the cumulative reading of the medical evidence and the *Panchayatnama* proceedings, it is clearly established that the deaths of Lakhma, Kamala and Smt. Dhanki Devi were not natural. The multiple ante-mortem injuries, fractures, internal hemorrhage and head injuries, as proved by the medical experts, demonstrate that the deaths were the result of violent assault. The nature and extent of injuries leave no manner of doubt that the deaths fall within the ambit of culpable homicide and are homicidal in nature.

33. Upon a comprehensive appreciation of the entire oral and documentary evidence available on record, it emerges that though the prosecution case is founded on alleged direct evidence, both the principal eyewitnesses, namely PW-1 Priyanka @ Sita and PW-5 Prabhulal, have not supported the prosecution version and were declared hostile. The remaining witnesses are either formal in nature or hearsay witnesses, whose testimonies do not provide substantive corroboration to the prosecution case regarding the actual occurrence.

34. So far as the recovery of the alleged weapon of offence is concerned, the independent witness PW-6 Kalulal has not supported the prosecution case and has failed to affirm that the lathis were recovered from the possession of the accused-respondents in his presence. The other witness to recovery, being a police official, has supported the recovery proceedings; however, in absence of corroboration from an independent witness, the evidentiary value of such recovery becomes doubtful.

35. The FSL report indicates that human blood of group "B" was detected on the blood-stained soil seized from the spot, on certain clothes of the deceased, and on the lathis allegedly recovered from the accused-respondents. However, the prosecution has not placed on record any evidence establishing the blood group of the deceased or that of the accused-respondents. In absence of such evidence, the mere presence of blood group "B" on the recovered articles is not sufficient to conclusively connect the accused-respondents with the crime, particularly when it is a matter of

common knowledge that a large number of persons may share the same blood group.

36. Undoubtedly, three members of the same family sustained grievous injuries and succumbed to the same, and the medical evidence clearly establishes that their deaths were homicidal in nature. However, the crucial link connecting the accused-respondents with the commission of the offence has not been established beyond reasonable doubt. The prosecution has failed to present cogent, reliable and trustworthy evidence to prove that it was the accused-respondents, namely, Jagdish and Govind Ram, who inflicted the fatal injuries upon the deceased.

37. It is a settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt and that if two views are possible on the basis of the evidence on record, the one favourable to the accused must be adopted. The benefit of doubt, however slight, must go to the accused.

38. The Hon'ble Supreme Court in the case of ***Tulasareddi and Ors. Vs. The State of Karnataka and Ors*** reported in **2026 INSC 67** in para No.29 has held as under:-

"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.

39. In view of aforesaid observation, we find no infirmity or perversity in the findings of learned Additional Sessions Judge No. 2, Udaipur below acquitting the accused-respondents of the charges under Section 302 read with Section 34 of the Indian Penal Code. Hence, impugned judgment of Acquittal passed by learned trial court dated 18.11.2022 is upheld.

40. Accordingly, the appeal is dismissed.

41. Office is directed to send the record of the trial court forthwith.

(CHANDRA SHEKHAR SHARMA),J

(VINIT KUMAR MATHUR),J

-Kartik Dave/C.P. Goyal`/-