

**HIGH COURT OF GUJARAT****Bench: Honourable Mr. Justice Ilesh J. Vora and Honourable Mr. Justice Niral R. Mehta****Date of Decision: 15th May 2024**

Case Number: R/CRIMINAL APPEAL NO. 977 of 1999

**State of Gujarat ..... Petitioner****Versus****Bhikhabhai Punjabhai Solanki & Ors. .... Respondents****Legislation and Rules:**

Sections 100, 114, 302, 307, 354, 426, 504, 34 of the Indian Penal Code (IPC)

Section 313, 378 of the Criminal Procedure Code (Cr.P.C.)

**Subject:** Criminal appeal against the acquittal of respondents in a case involving murder and assault, with the main focus on the credibility of the sole eyewitness and the applicability of private defense by one of the accused.**Headnotes:**

Criminal Law – Appeal Against Acquittal – State appealed against the acquittal of Bhikhabhai Punjabhai Solanki and others by the Additional Sessions Judge, Kheda, Camp at Anand - The case involved the death of Vitthalbhai due to alleged assault by respondents on suspicion of illicit relationship - Prosecution's case primarily hinged on the testimony of sole eyewitness PW-1 Sureshbhai, brother of the deceased - Trial Court acquitted accused No.3 Revaben on grounds of private defense and found the prosecution's evidence insufficient to convict other respondents – Court assessed the conduct of PW-1 as unreliable and his presence at the crime scene doubtful - Several key witnesses turned hostile, undermining the prosecution's case [Paras 1-10, 18-21].

Assessment of Sole Eyewitness – Reliability of Evidence – PW-1's conduct and delayed reporting of the incident raised doubts about his presence at the crime scene – Trial Court deemed his testimony unreliable - No corroboration from other witnesses - Defence of Accused No.3 under Section 100 of IPC accepted as she acted in self-defense against the deceased's alleged assault [Paras 11-14, 20-21].

Legal Principles – Double Presumption of Innocence – High Court reiterated principles laid down by Supreme Court for interference in acquittal cases – Emphasized double presumption in favour of acquitted accused - Appellate Court should not interfere unless trial court's judgment is perverse or based on erroneous view of law - Prosecution failed to provide compelling reasons for interference [Paras 15-17].

Decision – Acquittal Upheld – High Court dismissed the State's appeal, affirming the Trial Court's judgment – Found no compelling reasons to disturb the acquittal - Bail bonds cancelled and surety discharged [Paras 22-24].

### **Referred Cases:**

- Babu vs. State of Kerala (2010) 9 SCC 189
- Balak Ram v. State of U.P (1975) 3 SCC 219
- Sheo Swarup v. King Emperor AIR 1934 PC 227
- Vadivelu Thevar vs. The State of Madras AIR 1957 SC 614
- Ghurey Lal v. State of U.P (2008) 10 SCC 450

Representing Advocates:

Mr. Tirthraj Pandya for the Appellant (State of Gujarat)

Ms. Priya A. Patel for Mr. M.C. Barot for the Respondents

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### **ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. Here is the Appeal by the State against the judgment and order of acquittal.
2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Kheda, Camp at Anand, dated 27.07.1999, acquitting the respondents from the offence punishable under Sections 302, 504 read with Section 34 of Indian Penal Code, State has preferred instant appeal under Section 378 of the Cr.P.C.
3. This Court has heard Mr. Tirthraj Pandya, learned State counsel, Ms. Priya Patel, learned counsel for Mr. M.C. Barot for the respective parties.

4. Brief facts giving rise to file the present Appeal are that, on 28.08.1990 at about 19:30 p.m., the deceased Vitthalbhai had proceeded from his agricultural farm towards his house, at Village: Navli, Anand. When he reached near the house of accused Bhikhabhai Punjabhai Solanki, he was attacked by the accused Mafatbhai Bhikhabhai and was assaulted by stick. The accused inflicted 2 to 3 fatal blows over the head, as a result, he succumbed to his injuries on 29.08.1990. It is the case of prosecution that, the PW.1 – Patel Suresh Ranchhodbhai who happened to be brother of the deceased, was eye-witness of the incident. On the day of incident, the witness PW-1 had gone to the field of the deceased where he was informed by the deceased that, the accused Bhikhabhai, having suspicion of him maintaining illicit relation with the wife-accused no.3 Revaben, he was threatened. Subsequently, the deceased left the farm alone and when he reached near the place of incident, raising the dispute of the illicit relationship, the accused came out from his house and the accused no.2 Mafatbhai who was armed with stick, inflicted fatal blows over the head of the deceased. Before the incident took place, the PW-1 Sureshbhai on hearing the screaming, came to the place of incident where he saw that accused Mafatbhai hurled abusive and when deceased objected to it, the accused inflicted the fatal blows. The PW-1 Sureshbhai and others taken the deceased to the Civil Hospital, Anand and was referred to Karamsad Hospital. On the next day i.e. on 29.08.1990, the deceased succumbed to the injuries.

It needs to be noted that, the accused no.3 – Revaben on the date of incident i.e. 28.08.1990, lodged an FIR against the deceased for the offence punishable under Sections 354, 426 of the Indian Penal Code and same was registered as I-C.R. No.346 of 1990. In the said FIR, it was alleged by the accused Revaben that, when she was out of her house to answer nature's call, the deceased met her and demanded sexual favour, which she refused, as a result, she was molested by the deceased. In order to restrain the deceased, by exercising right of private defense, she took a wooden log from nearby place and assaulted the deceased by it.

Pursuant to the said FIR, the Police Head Constable PW-5 Mehbubkhan Imamkhan, started investigation and on the next day i.e. on 29.08.1990, he reached at Karamsad Hospital where the deceased Vitthalbhai was admitted. After primary inquiry of the wife of deceased Vimlaben and the brother Suresh PW-1, the Police Constable PW-5 Mehbubkhan became a complainant and lodged the FIR against the accused herein for the alleged offence, causing injuries to the deceased Vitthalbhai

punishable under Sections 307 read with Section 114 of the Indian Penal Code and later on, Section 302 was added with the permission of the court.

Pursuant to the FIR filed by the PW-5, the investigation was entrusted to PSI PW-13 Pankaj Bhatt. The PSI Mr. Bhatt, arrested the accused and seized the weapon stick, drew the panchnama of place of incident, collected necessary samples of blood etc. and recorded the statements of eye witnesses and finally, the accused were chargesheeted. Since the case was exclusively tribal by the Magistrate Court, the Magistrate Court had committed the case to the Court of Sessions at Anand which has been culminated into Sessions Case No.58 of 1993.

5. The learned Additional Sessions Judge, Anand vide its order dated 19.01.1998, framed the charge under the aforesaid sections against the accused to which, they pleaded not guilty and claimed trial.
6. In order to prove the charge, the prosecution has examined in all 14 witnesses and proved and produced the necessary documents. The following material witnesses were examined before the trial court:
  - (1) PW-1 Patel Suresh Ranchhod;
  - (2) PW-2 Vimlaben Vitthalbhai Ex.12;
  - (3) PW-3 Dr. Vinay Khanapur Ex.15;
  - (4) PW-5 Police Constable Mehbubkhan Imamkhan Ex.22;
  - (5) PW-6 Sakuben Gordhanbhai Ex.24;
  - (6) PW-7 Mahesh Manibhai Ex.25;
  - (7) PW-8 Vinubhai Parmar Ex.26;
  - (8) PW-9 Dinesh Patel Ex.27;
  - (9) PW-13 I.O. Pankaj Bhatt Ex.48;
  - (10) PW-14 Dr. Mohammad Shaikh Ex.53;
7. The material documentary evidence proved and produced before the trial court will be referred at the appropriate stage, if necessary.
8. After the evidence of prosecution witnesses over, the trial court recorded the further statements of accused under Section 313 of Cr.P.C. The accused Bhikhabhai and his son Mafatbhai raised the plea of alibi, stating that, at relevant time, they were at their farm and they did not know about the offence.

So far as accused no.3 Revaben is concerned, by written statement, she had specifically stated that, on the day of incident, when she was out to answer nature's call, the deceased Vitthalbhai met her at the place and demanded sexual favour and molested her and in her defense, by taking a wooden log lying near the place, she inflicted a blow over the head of the deceased and thereafter, she lodged an FIR against the deceased under Section 354 of the Indian Penal Code.

9. The learned trial court after appreciating and examining the oral as well as documentary evidence, acquitted the accused no.3 Revaben in view of Section 100 of the Indian Penal Code as she inflicted the stick blows in her private defense. The accused no.1 and 2 have been acquitted mainly on the ground that, the prosecution miserably failed to prove case against them beyond reasonable doubt as the deposition of sole eye witness PW-1 Sureshbhai was not wholly reliable.
10. Aggrieved with the judgment and order of acquittal dated 27.07.1999 passed by the Additional Sessions Judge, Anand, the State has come up before this Court by preferring this acquittal appeal. At the time of admission of the appeal, the Coordinate Bench of this Court vide its order dated 17.04.2000, dismissed the appeal qua accused no.3 Revaben and so far as accused no.1 and 2 are concerned, leave was granted and accordingly, appeal admitted against them. During the proceedings of present appeal, the accused Bhikhabhai has passed away. The appeal qua accused no.1 stands abated.
11. Mr. Pandya, learned Additional Public Prosecutor, assailing the judgment and order of acquittal, has submitted that, the findings of acquittal qua the accused Mafatbhai are contrary to law and evidence on record and the same are palpably erroneous and based on the irrelevant material. The learned trial court ought to have held that, the testimony of PW-1 is wholly reliable which does not needs any corroboration. The presence of PW-1 Suresh who happened to be brother of deceased at the field was natural and when the deceased reached near the place of incident, the PW-1 heard his screaming and rushed to the place. Thus, the presence of PW-1 is established and merely being a brother of the deceased, his testimony could not have been discarded by the court.
12. In such circumstances, learned State counsel Mr. Pandya has submitted that, the testimony of PW-1 on material particulars is satisfactory and credible and the motive for the incident was also clear as the accused Bhikhabhai was

having suspicious about the illicit relationship and same has been admitted by the accused in their statement recorded by the court under Section 313 of Cr.P.C. Thus, he would urge that, the trial court while acquitting the accused, discarded the trustworthy evidence of PW-1 and on flimsy ground, the court has disbelieved his evidence and acquitted the accused and thus, therefore, the findings recorded by the trial court being perverse, case is made out warranting interfere with the judgment of acquittal.

13. On the other hand, Ms. Priya Patel, learned counsel appearing for the accused Mafatbhai Patel, has submitted that, the learned trial court has rightly disbelieved the testimony of PW-1 Sureshbhai. That the conduct of the witness was unnatural. That, no prudent man would act in the situation as projected in the prosecution because on the day of incident, the deceased had informed the witness PW-1 that the quarrel took place with the accused on the illicit relationship and he was threatened by them and despite of these facts, the deceased was permitted to proceed alone from his farm towards his house. The second infirmity in the evidence of PW-1 is that the incident of 28.08.1990, was neither reported by the witness Sureshbhai or the wife of deceased Vimlaben before the Doctor, nor before the Police Constable PW-5 Mehbubkhan Ex.22, who was in charge of investigation of the case registered against the deceased. The neighbours of the vicinity of area have not supported the case of prosecution. The trial court has believed and accepted the private defense of accused no.3. The material witnesses namely Sitaben and Shantaben who were the witness of offence of molestation, were not examined by the investigating officer. The FIR of accused no.3 was prior to the complaint of present case.
14. In view of aforesaid contention, it is submitted that, the accused have been falsely implicated by the police, as on the day of incident, the accused no.3 Revaben in her self-defense, caused injuries over the head of the deceased and the witnesses of the said incident have not been examined by the investigating officer. Thus, the learned trial court after appreciation of testimony of PW-1, has rightly held that his evidence is wholly unreliable and his presence at the spot is not established.
15. Lastly, Ms. Priya Patel, learned counsel would urge that, in a case of appeal against the acquittal, there is a double presumption in favour of the accused i.e. the presumption of innocence is available to him under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by the competent court of law and secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court

and thus, she submitted that the view taken by the trial court is a possible view and prosecution is failed to point out the compelling reasons warranting interference in the order and judgment of acquittal, no case is made out to disturb the acquittal.

16. Before considering the appeal on merits, the law on the appeal against the acquittal and the scope and ambit of Section 378 of Cr.P.C. and interference by the High Court in an appeal against the acquittal is require to be considered. In *Babu vs. State of Kerala (2010 9 SCC 189)* the Supreme Court reiterated the principles to be followed in an appeal against the acquittal. In paras-12 to 19, it is observed and held as under:

*“12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P.**

*v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)*

13. In *Sheo Swarup v. King Emperor AIR 1934 PC 227*, the Privy Council observed as under: (IA p. 404) “... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755) : (2007 2 SCC (Cri) 162).*

15. In *Chandrappa v. State of Karnataka (2007) 4 SCC 415*, this Court reiterated the legal position as under: (SCC p. 432, para 42)

*“(1) An appellate court has full power to review, reappraise 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 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. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.*

*17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)*

*“20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”*

*18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)*

*“28 (i) The High Court’s decision is based on totally erroneous view of law by ignoring the settled legal position;*

*(ii) The High Court’s conclusions are contrary to evidence and documents on record;*

*(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*



(iv) *The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*

(v) *This Court must always give proper weight and consideration to the findings of the High Court;*

(vi) *This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanapal v. State (2009) 10 SCC 401.*

19. *Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."*

17. In light of the settled law and applying the same to the facts of present case, the issue falls for consideration as to whether the trial court was justified in acquitting the accused or not.

18. The issue is not in dispute that, the death of deceased Vitthalbhai was homicidal death. The Doctor PW-14 Mr. Shaikh who conducted the postmortem, has opined that, the cause of death was shock due to hemorrhage with multiple fractures of skull bone.

19. PW-1 Sureshbhai Ranchhodbhai Ex.11 was examined before the trial court. In his chief examination, he narrated the entire incident and further alleged that, the accused Mafatbhai, caused injuries by weapon stick, over the head of the deceased. It is admitted fact that, the incident of 28.08.1990 was reported on the next date and that too not by the PW1 Sureshbhai but based on their input, the Head Constable Mehbubkhan PW-5 became a complainant and lodged the FIR. In such circumstances, considering the conduct of Sureshbhai, the learned trial court did not acted upon the testimony of the witness as his presence at the place was doubtful and except Sureshbhai, no one has stated that, the accused were involved in the offence. Thus, the entire case of the prosecution hinges upon the sole evidence of PW-1 Sureshbhai. The other witnesses namely Sakuben Gordhanbhai PW-6, Mahesh Manibhai PW-7, Vinu Parmar PW-8 and Dinesh Patel PW-9 who were neighbours of the parties, have chosen not to depose against the accused and they were turned hostile and in their cross-examination also, they did not extend their support to the case of prosecution.

20. Law is well settled that, where the prosecution case based on the sole evidence of eye witness, the court may act upon the testimony of single witness though uncorroborated, provided that, his testimony is found reliable. The Apex Court in *Vadivelu Thevar vs. The State of Madras (AIR 1957 SC 614)* has laid down the dictum that, evidence of single witness if wholly reliable, the conviction can be safely based on that evidence alone. In assessing the value of evidence of an eye witness, two principles are necessary to consider: (i) whether in the circumstances of case, it is possible to believe his presence at the scene of offence or in such situation, as would make it possible for him to witness the fact deposed by him, (ii) whether there is anything inherently improbable or unreliable in his evidence.
21. Reverting back to the facts of present case, the PW-1 from the date of incident, sat silent and his conduct, permitting the deceased to proceed alone is further create a doubt about his presence at the field as well as place of offence. When the Deceased had informed him that on the issue of illicit relationship, dispute arose with the accused, in that circumstances, the natural conduct would be not to permit the deceased to proceed alone and he should have accompanied the deceased so as to avoid the further consequences. The second conduct came to our notice that, when he was at the field, he heard the screaming of the deceased and he immediately rushed to the place. This conduct would further create a doubt about his presence at the place of offence. It is to be noted that throughout the proceedings, the wife of deceased was with PW-1 and she could have an opportunity to lodge the complaint when police came to them. In such circumstances, the findings recorded by the trial court that presence of PW-1 at the place is doubtful and the testimony of him is wholly unreliable and same suffers from serious infirmities as discussed hereinabove. The trial court while acquitting the accused no.3 Revaben, accepted her defense under Section 100 of the Indian Penal Code. The observations qua the accused no.3 acquitting her, has attained finality as neither the complainant, nor the State has challenged it before the competent court. Thus, it is evident that, on the day of incident, when accused no.3 was out to answer nature's call, the deceased met her and demanded sexual favour for which she was molested and in her defense, she inflicted a stick blows.
22. For the reasons recorded, the findings of acquittal arrived at by the trial court based on the evidence on record and views of the trial court as to the credibility of witness PW-1 is possible view and therefore, the judgment is just, reasonable and proper which do not warrant any interference.

23. We are in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence, finds no reason to interfere with the same.

24. Resultantly, in absence of any compelling reasons to interfere with the judgment of acquittal, this acquittal appeal preferred by the State stands dismissed. The bail bonds, if any, stand cancelled. Surety, if any, given stands discharged. R & P to be sent to the trial court.

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