

HIGH COURT OF GUJARAT**Bench: Honourable Mr. Justice Ilesh J. Vora and Honourable Mr. Justice Niral R. Mehta****Date of Decision: 14th May 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 816 OF 1999

STATE OF GUJARAT ...APPELLANT**VERSUS****SHASHIKANT GORDHANBHAI PATEL & ORS. ...RESPONDENTS****Legislation:**

Sections 302, 323, 365, 342, 147, 148, 149 of the Indian Penal Code (IPC)

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

Subject: Criminal appeal challenging the acquittal of the respondents in a double murder case involving abduction and wrongful confinement.**Headnotes:**

Criminal Law – Appeal against Acquittal – Legal Standards and Appellate Review – Criminal Appeal against the judgment of acquittal passed by the Additional Sessions Judge, Kheda, Camp at Anand – Acquittal of respondents under Sections 302, 323, 365, 342, 147, 148, 149 of IPC – Allegation of abduction and murder – Supreme Court emphasizes double presumption of innocence in favor of the acquitted – Reappreciation of evidence by appellate court. [Paras 1-18]

Oral Dying Declaration – Reliability and Corroboration – Evaluation of oral dying declaration made by deceased – Deceased's fit state of mind questioned – Absence of written record of dying declaration – Medical evidence indicating deceased unable to speak – High Court finds trial court's skepticism reasonable – No reliance on oral dying declaration without corroboration. [Paras 15-17]

Hostile Witnesses – Impact on Prosecution's Case – Key witnesses turned hostile – Prosecution's failure to establish case beyond reasonable doubt due

to hostile witnesses – High Court upholds trial court’s decision, emphasizing lack of credible evidence. [Paras 5-16]

Decision – Acquittal Upheld – Appeal dismissed – High Court affirms trial court’s judgment of acquittal – No compelling reasons found to interfere with trial court’s findings – Registry directed to return records and proceedings to trial court – Bail bonds canceled and sureties discharged. [Paras 18-19]

Referred Cases:

- Ravi Sharma v. State (Government of N.C.T. Delhi and another), 2022 LiveLaw (SC) 615
- Chandrappa v. State of Karnataka, (2007) 4 SCC 415
- N. Vijay Kumar v. State of Tamil Nadu, (2021) 3 SCC 687
- Murugesan v. State, (2012) 10 SCC 383
- Hakeem Khan v. State of M.P., (2017) 5 SCC 719

Representing Advocates:

Mr. L.B. Dabhi for the Appellant (State)

Mr. H.M. Parikh, Mr. P.R. Nanavati, and Ms. Rhea Choksi for the Respondents

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 12.04.1999, acquitting the respondents from the offence under Sections 302, 323, 365, 342, 147, 148, 149 of Indian Penal Code, State has preferred instant appeal under Section 378 of the Cr.P.C.
3. This Court has heard Mr. L.B. Dabhi, learned Additional Public Prosecutor, learned Counsel Mr. B.S. Khatana, Mr. Hemang Parikh, Senior Counsel Mr. Tejas Barot assisted by Ms. Rhea Choksi for the respective parties.

4. Learned counsel Mr. B.S. Khatana and Mr. Hemang Parikh upon instructions, state that during the pendency of this Appeal, the accused No.1 Shashikant Patel, accused No.2 – Arvind Patel and Accused No. 4 – Gordhan @ Bhanu Patel have passed away. The State has also conceded the statement made at the bar. Thus, the present appeal stands abated qua accused Nos. 1, 2 and 4.

5. Brief facts giving rise to file the present Appeal are that, on 19.12.1997, deceased Ranchhodbhai and his son Arvind had been killed at the farm of accused accused No. 2 – Arvindbhai Patel. The father and son were abducted by the accused and wrongfully confined by the accused. There was a suspicion that deceased Arvind stolen gunny bags of the principal accused. The accused herein went to the house of the deceased. The wife of the deceased Ranchhodbhai was found alone at the house. The accused No. 4 Gordhan Chhotabhai and accused no. 2 – Arvind Patel, went to the market in search of deceased Arvind and subsequently, he was brought back by them at his house. The father and son were taken to the farm of accused no. 2. At the farm, the accused by using wooden logs and giving fist and kick blows, mercilessly caused a fatal injuries to both – father and son. As a result, the father Ranchhod died at the place, whereas the son Arvind was in semi unconscious state of mind and was declared dead on arrival at the Government Hospital. The entire incident was being seen by the complainant Punjiben, as she also came at the farm after the incident of abduction.

The accused no. 3 – Rajendra Patel and accused no. 8 Pankaj Patel, after the incident, came to Vidhyanagar Police Station. They informed to the police that, they caught the thieves of the gunny bags and they are at their farm. The police namely Janardan Mahida – PW-16, along with other officials went to the place of offence where they found the dead body of deceased Ranchhodbhai. They also saw the deceased Arvind and heard that he was asking for water. The police immediately taken him to the Karamsad Hospital. Before they could reach at the hospital, the deceased Arvind made a declaration orally that, he and his father assaulted by Shashikant Patel and others. The doctor declared the deceased brought dead.

In nutshell, it is the case of the prosecution that, the accused herein formed an unlawful assembly with the common object to kill the father and son, as a result, they were abducted and wrongfully confined at the farm of

accused no. 2 – Arvind Patel, where by using wooden logs and physically assaulted by kicks and fits blows, which resulted into untimely death.

The complaint was being filed by Punjiben Ranchhodbhai – PW-1, wherein, she had narrated the entire incident and role played by each of the accused. The Vidhyanagar Police registered the aforesaid offence. The accused were arrested. The investigating officer Mr. Desai seized the wooden logs and other materials from the place of incident. He obtained the medical papers as well as PM report. After having found sufficient evidence against the accused for the said offences, the chargesheet came to be filed. Since the case was exclusively triable by the Sessions Court, the Court committed the case to the Sessions Court, who has been culminated into Sessions Case No. 104 of 1998.

The learned Additional Sessions Judge, Anand, vide its order dated 04.01.1999, framed 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 25 witnesses in support of its case. The following material witnesses were examined by the trial Court namely, the complainant eye-witness PW-2 – Punjiben Ranchhodbhai, Exh. 31, PW4 – Jagdish Ranchhodbhai Exh. 34, Dr. Abhijit Das, PW-18, Exh.18, Dr. Mayur Trivedi, PW-20, Exh. 62, Bhailalbai Punjabhai, PW-3, Exh. 33, Laljibhai Ranchhodbhai, PW-6, Exh. 36, Mafatbhai Shankarbhai PW-5, Exh. 35, Janardan Narsinh Mahida – PW-16, Exh. 51. Jayantibhai Gordhanbhai PW-17, Exh. 52, Karamshi H. Desai, PW-23, Exh. 73 and Dr. Minakshi

Patel PW-25, Exh. 83.

7. During the course of the trial, the prosecution, proved and produced 32 documents including the PM reports, injury certificate of complainant, the arrest panchnama, panchnama of seizure of the vehicles, the inquest panchnama of the deceased.
8. On conclusion of oral evidence, the trial Court recorded further statements of the accused as provided under Section 313 of the Code, wherein, they claimed their innocence.

9. The learned Sessions Judge after appreciating and examining the oral as well as documentary evidence acquitted the accused herein for the offences with which they were charged, on the ground that, the eye-witnesses have not supported the case of the prosecution and the oral Dying Declaration before the police officials does not inspire any confidence.
10. In view of the aforesaid facts and circumstances, this acquittal appeal has been preferred by the State.
11. Mr. L.B. Dabhi, learned Additional Public Prosecutor appearing for the appellant – State assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material. The learned trial Court ought to have considered the oral dying declaration of the deceased, which had been disclosed by the deceased voluntarily and at relevant time, he was in fit state of mind. The witness Janardan Mahida – PW-16 is an independent witness and he has no reason to falsely involved the accused. In such circumstances, the trial Court, while acquitting the accused discarded the material evidence and has committed error of law while coming to the conclusion that prosecution miserably failed to prove its case.
12. On the order hand, learned counsel appearing for the respondents accused have submitted that the High Court in a case of Appeal against the acquittal, can interfere only when there are compelling substantial reasons for doing so and more particularly, the findings are without reasons and unreasonable and contrary to the evidence. In the facts of the present case, there is no direct evidence. The evidence available is the oral dying declaration before the police officials, PW-16, which has not been relied by the trial Court, as it does not inspire confidence. The deceased Arvind was semi-unconscious state of mind and when he brought to the hospital, the doctor declared him 'brought dead'. The medical evidence clearly established that, the deceased was not able to speak because of the injuries. In such circumstances, the trial Court has rightly disbelieved the oral dying declaration.
13. In view of the aforesaid contentions, the learned counsels appearing for the original accused have submitted that, the findings recorded by the trial Court cannot be said to be perverse as while arriving at the findings in relation to

oral Dying Declaration, the trial court has considered the entire material and assigned sufficient reasons for not believing the evidence of the police officials and has rightly come to a conclusion that the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt.

14. Before proceeding to reappraise the evidence, it would be appropriate to brief account of the settled legal position while dealing with the appeal against the acquittal.

Recently, the Hon'ble Apex Court in the case of **Ravi Sharma v State (Government of N.C.T. Delhi and another)**, **MANU/SC/0856/2022 : 2022 LiveLaw (SC) 615** has considered and discussed the law settled by the Hon'ble Apex Court in the case of **Chandrappa v. State of Karnataka**, **MANU/SC/7108/2007 : 2007:INSC:142 : (2007) 4 SCC 415**, which are 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 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 phraseology 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 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."

12. Likewise in the same judgment, the Hon'ble Apex Court has touched and dealt with as to what is meant by perverse findings by taking recourse to the earlier decisions in the cases of **Arulvelu and another v. State, MANU/SC/1709/2009 : 2009:INSC:1168 : (2009) 10 SCC 206; Babu v. State of Kerala MANU/SC/0580/2010 : 2010:INSC:495 : (2010) 9 SCC 189 and Anwar Ali and another v. State of Himachal Pradesh, MANU/SC/0723/2020 : 2020:INSC:563 :**

(2020) 10 SCC 166.

Similarly, while dealing with the aspect as to what is meant by "possible view", the Hon'ble Apex Court in **Ravi Sharma (supra)**, by referring to the Judgments in the cases viz. **N.Vijay Kumar v. State of Tamil Nadu, MANU/SC/0051/2021 : 2021:INSC:60 : (2021) 3 SCC 687; Murugesan v. State, MANU/SC/0857/2012 : 2012:INSC:467 : (2012) 10 SCC 383, Hakeem Khan v. State of M.P., MANU/SC/0316/2017 :**

2017:INSC:254 : (2017) 5 SCC 719, observed that "if the "possible view" of the trial Court is not agreeable for the High Court, even then such "possible view" recorded by the trial Court cannot be interdicted. It is further held that as long as the view of the trial Court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial Court cannot be interdicted and the High Court cannot be supplant over the view of the trial Court".

15. In the facts of present case, the father and son died in the alleged incident and their dead bodies were found at the farm, mentioned in the panchnama of the place of offence. The injured eyewitness Punjiben PW:2, Exh.18 did not support the case of the prosecution and in the cross examination, she denied the factum of incident and role attributed to the present applicants herein. The son of the deceased Jagdish Ranchhod, PW:4 was also declared hostile. The other two witnesses Mafat Shankar Raval and Lalji Ranchhod PWs:5 and 6 have did not support to the case of the prosecution. In such circumstances, the prosecution miserably failed to prove the charge against the accused by

leading direct evidence. The only evidence available before the Trial Court was the oral Dying Declaration of the deceased Arvind, made before the witness Janardan Mahida PW:16, Exh.37. The witness Janardan Mahida, when he reached at the place, he heard that deceased Arvind was asking for water and he was in semi-conscious condition. According to the case of the prosecution,

the deceased had disclosed the factum of incident before the witness PW-16 to the effect that the accused Shashikant and Arvind Patel beaten him by wooden logs and others have caused injuries by giving fists and kicks blows. The learned Trial Court, while examining the acceptability and readability of the oral Dying Declaration, observed that the statement of police official was not recorded nor the witness PW:16 had recorded the Dying Declaration in writing. The factum of oral Dying Declaration admittedly not found in the station diary or case diary of police. The Medical Officer Dr. Minakshi Patel, before whom the deceased Arvind was examined, declared brought him dead. The police official has categorically stated that while they were on the way to hospital, the deceased died before they could reach the hospital. The witness Janardan deposed that they reached the hospital within five minutes from the place of the incident. It is on record that the oral Dying Declaration was not reduced in writing by the police official. In such circumstances, the Trial Court observed that the oral Dying Declaration does not inspire confidence and in absence of corroboration to the contents of the oral Dying Declaration, it cannot be relied upon.

16. The law is well settled that an oral Dying Declaration can form the basis of conviction if the deponent is in fit condition to make the declaration and if it is found to be truthful. The Courts as a matter of prudence look for corroboration to oral Dying Declaration. However, if there exists any suspicion as regards the correctness or otherwise of the said Dying Declaration, the Courts in arriving at the conclusion of conviction, shall look for some corroborating evidence. The Apex Court in its various pronouncements observed and held that a mechanical approach in relying upon the Dying Declaration just because it is there, is extremely dangerous and it is the duty of the Court to examine a Dying Declaration scrupulously with a microscopic eye to find out whether the Dying Declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency, who may be interested in the success of investigation or which may be negligent while recording the declaration.

17. Reverting back to the facts of present case, the family members of the deceased examined before the Trial Court have also not pointed out that the deceased Arvind made an oral Dying Declaration before the police nor threw any light on the issue of oral Dying Declaration. The witness PW-16 Janardan Mahida in his deposition has not stated that at the time of oral declaration, the deceased was in a fit state of mind and was able to understand what he is speaking. In such circumstances, the trial Court has rightly seek corroboration to the oral declaration as within three to four minutes, the deceased succumbed to his injuries, which factors weighed to come to a conclusion that the oral declaration made before the witness cannot be formed basis of conviction.

18. In light of what has been noted above, the reasons for not accepting the oral Dying Declaration are reasonable and based on the evidence on record and the view taken by the Trial Court is plausible and there is no perversity in the findings brought to the notice of this Court so as to interfere. Thus, in our considered opinion, the Trial Court was justified in acquitting the accused and we are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the Court below and hence finds no reason to interfere with the same.

19. With the observations as aforesaid, the appeal is accordingly dismissed. The Registry is directed to send back the R & P to the Trial Court. Bail bonds are cancelled, if any, and surety is discharged.

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