

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 563 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE SANGEETA K. VISHEN** Sd/-

and

HONOURABLE MR. JUSTICE VIMAL K. VYAS Sd/-

Approved for Reporting	Yes	No
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STATE OF GUJARAT

Versus

BHURABHAI DHARAMSHIBHAI SURELA & ORS.

Appearance:

MS JYOTI BHATT, APP for the Appellant(s) No. 1

HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No.

1,2,3,4,5,6,7

YAGNESHKUMAR S JOSHI(8074) for the Opponent(s)/Respondent(s) No.

1,2,3,4,5,6,7

CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

and

HONOURABLE MR. JUSTICE VIMAL K. VYAS**Date : 21/02/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE VIMAL K. VYAS)**

1. The present appeal preferred under Section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 31.01.2003 passed by the learned Additional Sessions Judge, Amreli, in Sessions Case

No.118 of 2000, whereby the learned Sessions Judge acquitted all the accused persons from the charges levelled against them for the offences punishable under Sections 302, 324, 504, 147, 148 and 149 of the Indian Penal Code.

PROSECUTION'S VERSION IN NUT-SHELL :

2.1 It is the case of the prosecution that the complainant Popatbhai Gobarbhai Koli had filed a complaint, *inter alia*, stating that on 03.06.2000 at around 9 O'clock in the night, there was an uproar/ruckus in the vicinity, therefore, he came out of his house, where he saw exchange of words between his uncle - Kalubhai Manjibhai, his cousin - Naranbhai Savjibhai, and the accused Bhurabhai Dharamshibhai, Babubhai Bhurabhai, Bhupatbhai Bhurabhai and Dakubhai Bhurabhai. It is further the case of the prosecution, as per the complaint, that the accused persons were quarreling regarding collection of firewood and hurling abuses, therefore, the complainant had told them not to utter filthy language.

2.2 As per the case of the prosecution, the complainant has further stated in his complaint that in the alleged incident which

had occurred on 03.06.2000 at around 9 O'clock in the night, the accused Babubhai Bhurabhai Koli got agitated and inflicted Axe blows on the forehead of the complainant, on the right-hand elbow of his uncle Kalubhai Manjibhai and on the head of Naranbhai Savjibhai; whereas, the accused Dakubhai Bhurabhai Koli had inflicted a spear blow on the abdomen of Kalubhai Manjibhai and the accused Bhupatbhai Bhurabhai had inflicted a sword blow on the left-hand of Naranbhai Savjibhai. It is further the case of the prosecution that on hearing the outcry, the co-accused Kantaben, wife of Bhupatbhai Bhurabhai; Savitaben, wife of Bhurabhai Dharamshibhai, and Lilyben Mavjibhai came running out and started pelting stones on the complainant - Popatbhai Gobarbhai, the injured - Kalubhai Manjibhai and the deceased - Naranbhai Savjibhai. Thereafter, Jivtiben Kalubhai, Savitaben Naranbhai, Samjuben and other ladies saved the complainant and the injured from further assault by the accused persons.

2.3 It is the case of the prosecution that the injured were rushed to the Government Hospital, Dhari, and thereafter the complainant (PW-1) Popatbhai Gobarbhai had filed the complaint before the Dhari Police Station on 03.06.2000. The

injured Naranbhai Savjibhai Koli succumbed to the injuries during the treatment at the Junagadh Hospital.

3. On the basis of the complaint, an offence came to be registered against the respondents-accused for the offences punishable under Sections 302, 324, 504, 147, 148 and 149 of the Indian Penal Code *vide* I-CR No.37 of 2000 registered before the Dhari Police Station. Thereafter, the investigation commenced and the Investigating Officer prepared a panchnama of the place of the incident (Exh.39), inquest panchnama (Exh.46), arrest panchnama of the respondents-accused (Exh.40), took the blood samples of the deceased for examination *vide* panchnama (Exh.48), muddamal panchnama (Exh.54) and recorded the statement of the relevant witnesses.

4. After completing the investigation, charge-sheet came to be filed against the respondents-accused before the learned Judicial Magistrate, First Class, Dhari, which was registered as Criminal Case No.562 of 2000. Thereafter, since the case was exclusively triable by the Sessions Court, the same was committed to the Court of the learned Additional Sessions Judge, Vadodara, under Section 209 of the Code of Criminal Procedure, which was

numbered as the Sessions Case No.118 of 2000. Since the respondents-accused pleaded innocence, the trial was held.

5. To prove the guilt against the respondents, the prosecution has examined in all ten witnesses and produced nineteen documentary evidence, which are as follows :-

WITNESSES		
Sr. No.	Description of the document	Exhibit
1	Deposition of the Witness No.1 – Popatbhai Gobarbhai	22
2	Deposition of the Witness No.2 – Savitaben Naranbhai	25
3	Deposition of the Witness No.3 – Dr.Mahmadbhai Usmanbhai	27
4	Deposition of the Witness No.4 – Dr.Pravinbhai Ramji	31
5	Deposition of the Witness No.5 – Dr.Sumit Bharatbhai	35
6	Deposition of the Witness No.6 – Himmatbhai Somabhai	38
7	Deposition of the Witness No.7 – Pratapbhai Nankubhai	53
8	Deposition of the Witness No.8 – Kalubhai Manjibhai	55
9	Deposition of the Witness No.9 – Udesinh Bhupatbhai	56
10	Deposition of the Witness No.10 – Nazabhai Chhanabhai Chauhan, Investigating Officer	57

DOCUMENTARY EVIDENCE		
Sr. No.	Description of the document	Exhibit
1	Complaint by Popatbhai Gobarbhai	23
2	Police Yaadi	28
3	Death Certificate	29
4	Postmortem Note	30
5	Medical Certificate of Naran Savji	32
6	Medical Certificate of Popatbhai Gobarbhai	33
7	Medical Certificate of Kalubhai Manjibhai	34
8	Medical Certificate of Naran Savji issued by Junagadh doctor	36
9	Case-papers issued by Junagadh Hospital	37
10	Panchnama of the scene of offences	39
11	Arrest Panchnama of the Accused	40
12	Report submitted to the P.S.O., Dhari, by the P.S.I., Dhari, for registration of the offence	45
13	Inquest Panchnama	46
14	Receipt of handing over dead-body of the deceased Naranbhai to Savjibhai	47
15	Panchnama of blood sample obtained of the deceased Naranbhai for examination	48

16	Map of the scene of offence prepared by the Circle Inspector, Taluka Panchayat, Dhari	49
17	Receipt of muddamal received by the Chemical Analyzer along with the counterfoil of the muddamal	50
18	Examination Report along with the forwarding letter of the Chemical Analyzer and the Serological Department	51
19	Arrest Panchnama of Daku Bhurabhai and Babu Bhura as well as the Muddamal Panchnama	54

6. At the end of the trial, after recording the statement of the accused under Section 313 of the Code of Criminal Procedure and considering the arguments canvassed on behalf of the prosecution and the defence, the learned Additional Sessions Judge, Vadodara, *vide* judgment and order dated 31.01.2003, acquitted the respondents-accused from all the charges, by giving them the benefit of doubt.

7. Being aggrieved and dissatisfied with the aforesaid judgment and order of acquittal, the appellant-State has preferred the present appeal.

8. Heard learned APP Ms.Jyoti Bhatt for the appellant-State and learned advocate Mr.Yagneshkumar S.Joshi for the respondent-accused.

9. Learned APP Ms.Bhatt appearing for the appellant-State has vehemently contended that the impugned judgment and order passed by the learned Additional Sessions Judge, Amreli, is against the provisions of law and the learned Sessions Judge has not properly appreciated the evidence led by the prosecution. Moreover, on a bare perusal of the provisions of law itself, it is established that the prosecution has proved the offence against the respondents-accused by leading cogent evidence.

10. Learned APP Ms.Bhatt, while taking this Court through the oral as well as the documentary evidence, has submitted that the evidence of the complainant (PW-1) Popatbhai Gobarbhai, who himself is an injured eye-witness, the evidence of the injured (PW-8) Kalubhai Manjibhai and the eye-witness (PW-2) Savitaben Naranbhai, clearly establishes the complicity of the respondents-accused in the alleged offence. Learned APP has submitted that the evidence of the aforesaid witnesses are duly corroborated by the medical evidence. Learned APP Ms.Bhatt has further submitted that the star witnesses, in their respective evidence, have described the incident minutely and also stated

the details as to which accused had inflicted how many blows on which part of their body and with which weapon. Hence, there remains no doubt about the complicity of the respondents-accused in the alleged offence. Ms.Bhatt has further submitted that the evidence of the complainant (PW-1) Popatbhai Gobarbhai, the injured witness (PW-8) Kalubhai Manjibhai and the eye-witness (PW-2) Savitaben Naranbhai, if read in juxtaposition with the medical evidence, it clearly establishes the fact that the accused persons had inflicted blows with axe, spear and sword on the complainant (PW-1) Popatbhai Gobarbhai, the injured eye-witness (PW-8) Kalubhai Manjibhai and the deceased Naran Savji. Learned APP Ms.Bhatt has, therefore, submitted that the trial court has given undue importance to the minor omissions and contradictions in the evidence of the witnesses. She has, therefore, submitted that there was no reason for the trial court to disbelieve the case of the prosecution and to acquit the respondents-accused.

11. At the outset, it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial court have been very succinctly explained by the Supreme Court in a catena

of decisions. In the case of **M.S. Narayana Menon @ Mani vs. State of Kerala & Anr**, reported in (2006) 6 SCC 39, the Supreme Court has narrated about the powers of the High Court in appeal against the order of acquittal. In para 54 of the decision, the Supreme Court has observed as under:

“54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgement of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.”

12. Further, in the case of **Chandrappa vs. State of Karnataka**, reported in (2007) 4 SCC 415, the Supreme Court laid down the following principles:

“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 phraseologies are more in the nature of ‘flourishes of language’ to emphasis 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.”*

13. Thus, it is a settled principle that while exercising appellate power, even 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.

14. Even, in the case of **State of Goa vs. Sanjay Thakran & Anr.** reported in (2007) 3 SCC 75, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under :

“16. From the aforesaid decisions, it is apparent that 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 judgement 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 reappreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with.”

15. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement or to give fresh reasoning, when the reasons assigned by the court below are found to be just and proper. Such principle is laid 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 vs. 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.”

16. Thus, in case the appellate court agrees with the reasoning and the opinion given by the lower court, then the discussion of

evidence is not necessary. Keeping in mind the aforesaid principles, the Court has to appreciate the evidence on record.

17. We have given our thoughtful consideration to the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned APP for the appellant-State. It is settled position of law, as well as the basic requirement for the prosecution, to prove the case against the accused beyond reasonable doubt. It is, therefore, expected that the evidence led by the prosecution must inspire confidence. While appreciating the oral as well as the documentary evidence, we found some serious discrepancies and contradictions in the evidence of the witnesses.

18. Further, considering the Charge at Exh.2 and the original complaint at Exh.23, the case of the prosecution is that, at the time of the alleged incident, which had occurred on 03.06.2000 at 9 O'clock in the night regarding collection of firewood, the accused Babubhai Bhurabhai Koli got agitated and inflicted Axe blows on the forehead of the complainant (PW-1) Popatbhai Gobarbhai, on the right-hand elbow of the injured (PW-8)

Kalubhai Manjibhai and on the head of the deceased Naranbhai Savjibhai. At the same time, the accused Dakubhai Bhurabhai Koli had inflicted a spear blow on the abdomen of the injured Kalubhai Manjibhai and the accused Bhupatbhai Bhurabhai had inflicted a sword blow on the left-hand of the deceased Naranbhai Savjibhai. From the aforesaid, it appears that the complainant (PW-1) Popatbhai Gobarbhai, the injured (PW-8) Kalubhai Manjibhai and the wife of the deceased (PW-2) Savitaben Naranbhai, who is also the eye-witness to the incident, are the star witnesses of the case and, therefore, their evidence is required to be scrutinized carefully.

19. The complainant (PW-1) Popatbhai Gobarbhai is examined by the prosecution at Exh.22, who, in his evidence, has supported the case of the prosecution and stated that at the time of the alleged incident which had occurred on 03.06.2000 at 9 O'clock in the night, on hearing the uproar/ruckus in the vicinity, he came out of his house, where he saw the accused persons quarreling with his uncle - Kalubhai Manjibhai and his cousin - Naranbhai Savjibhai regarding collection of firewood and were hurling abuses, therefore, he had told them not to utter filthy language. The complainant has specifically stated

that during the scuffle, the accused Babubhai Bhurabhai Koli got agitated and inflicted Axe blows on his forehead, on the right-hand elbow of his uncle Kalubhai Manjibhai and on the head of his cousin - deceased Naranbhai Savjibhai. The complainant has further stated that at the same time, the accused Dakubhai Bhurabhai Koli had inflicted a spear blow on the abdomen of his uncle Kalubhai Manjibhai, whereas the accused Bhupatbhai Bhurabhai had inflicted a sword blow on the left-hand of his cousin – deceased Naranbhai Savjibhai. He has also stated that on hearing the outcry, the other co-accused Kantaben, wife of Bhupatbhai Bhurabhai; Savitaben, wife of Bhurabhai Dharamshibhai, and Lilyben Mavjibhai came running out and started pelting stones on him, his uncle Kalubhai Manjibhai and his cousin Naranbhai Savjibhai. Thereafter, Jivtiben Kalubhai, Savitaben Naranbhai, Samjuben and other ladies saved them and they took them to the hospital for treatment, and during the treatment, his cousin – Naranbhai Savjibhai succumbed to the injuries.

20. Considering the aforesaid evidence given by this witness in his examination-in-chief, it is undoubtedly clear that the incident had occurred at 9 O'clock in the night. However, this

witness has stated that at the time of the alleged incident, he and the accused Bhurabhai Dharamshibhai were having torch with them, and during the quarrel, the accused Bhura had placed the torch on the mound and assaulting him, the injured and the deceased. It is pertinent to note that in the complaint at Exh.23, there is no mention regarding the torch. During the cross-examination, it has also been revealed that for the same incident, cross-complaint was also filed, and regarding the same, the complainant was also arrested. This witness has also elicited that in the complaint at Exh.23, there is no mention regarding the torch, however, he has stated that he had informed about the same to the police, but it has not been recorded by the police in the complaint. It is pertinent to note here that the Investigating Officer (PW-10) Nazabhai Chhanabhai Chauhan, in his evidence at Exh.57, has specifically stated that the complainant, in his further statement recorded by him, has not stated that he and the accused Bhura were having torch with them at the time of the alleged incident.

21. The prosecution has also examined the eye-witness (PW-2) Savitaben Naranbhai. This witness is the wife of the deceased Naranbhai Savjibhai. She, in her examination-in-chief, has

supported the case of the prosecution and stated that during the scuffle, the accused Babu Bhura had inflicted Axe blows on on the forehead of Popatbhai Gobarbhai, on the right-hand elbow of Kalubhai Manjibhai and on the head of her husband Naranbhai Savjibhai, due to which, her husband Naranbhai Savjibhai succumbed to the injuries during the treatment. During her cross-examination, she has made several contradictory statements. On one hand, she stated that she had witnessed the entire incident since the accused Bhura had a torch with him, which was kept on the mound at the time of the alleged incident, and the complainant Popatbhai Gobarbhai was also having a torch with him. However, on the other hand, she has stated that at the time of the alleged incident, there was a complete dark, due to which, it was not possible to identify anyone. She has also elicited that she does not know even as to who inflicted injury with which weapon to whom and on which part of the body. She has further elicited that since she was shocked due to the death of her husband, she was not in a position to give the details to the police, however, the complainant Popatbhai Gobarbhai had provided the details to the police and the same were recorded by the police on her behalf. She has elicited that she does not know as to who had caused injuries to the complainant Popatbhai

Gobarbhai and the injured Kalubhai Manjibhai. She has also elicited that when she reached the place of the incident, her husband was lying on the ground and was bleeding profusely.

22. Now, in this context, if we consider the evidence of the injured (PW-8) Kalubhai Manjibhai, it appears that he, in his evidence at Exh.55, has initially tried to support the case of the prosecution and stated the same thing as narrated by the complainant (PW-1) Popatbhai Gobarbhai, however, during his cross-examination, he has elicited that the incident had occurred in the night at around 9 O'clock on a public place where there was no light and it was completely dark. He has further elicited that during the scuffle, there was stone pelting from both the sides and, therefore, it could not be ascertained as to who, from which side, got injured. This witness has further elicited that at the time of the alleged incident, the complainant (PW-1) Popatbhai Gobarbhai, the deceased Naranbhai Savjibhai and the eye-witness (PW-2) Savitben Naranbhai were not having any torch. He has specifically stated that as the eye-witness Savitaben Naranbhai had informed them to look about the deceased Naranbhai Savjibhai, they went there. However, due to darkness, it was not possible for them to ascertain the injuries

sustained by the deceased Naranbhai Savjibhai. He has further elicited that at the time of taking the treatment, he and the complainant Popatbhai Gobarbhai both had similarly stated before the doctor that they got injured due to stone pelting by the accused. It also reveals from the evidence of this witness that he since they were having doubt that the accused Bhura might file a complaint against them, therefore, he as well as the complainant Popatbhai Gobarbhai and the eye-witness (PW-2) Savitaben Naranbhai had discussed and decided how the incident to be narrated and the statement to be given before the police; whose name is to be given; and which weapon & what role to be attributed to which accused. The injured Kalubhai Manjibhai has also elicited that since it was complete dark, it was not at all possible for them to identify anyone, as well as describe with certainty as to who, with which weapon and on which part of the body caused injury to whom. It reveals from the cross-examination of this witness that after their discharge from the hospital, they all went to their home and ultimately he as well as the complainant (PW-1) Popatbhai Gobarbhai and the eye-witness (PW-2) Savitaben Naranbhai had discussed and decided as to which weapon to be attributed to which accused.

23. Considering the evidence of this injured eye-witness along with the evidence of the complainant Popatbhai Gobarbhai and the eye-witness Savitaben Naranbhai, it clearly appears that their evidence are contradictory and inconsistent to each other as well as to the case of the prosecution.

24. On conjoint reading of the evidence of all the aforesaid star witnesses, it transpires that at the time of the alleged incident, there was no light and it was a complete dark in the vicinity and not possible for anybody to identify a person or the weapon. It also appears that there was a scuffle, and in the said scuffle, the complainant (PW-1) Popatbhai Gobarbhai, his uncle Kalubhai Manjibhai and his cousin Naranbhai Savjibhai had sustained injuries, and during the treatment, Naranbhai Savjibhai succumbed to the injuries. If the evidence of the star witnesses is read in juxtaposition, it clearly established that all the witnesses have improvised their version about having a torch. Even, the Investigating Officer (PW-10) Nazabhai Chhanabhai Chauhan, in his evidence at Exh.57, has elicited during cross-examination that he had recorded the further statement of the complainant (PW-1) Popatbhai Gobarbhai, wherein, he has nowhere mentioned that at the time of the alleged incident, he

was having a torch and the accused Bhura had also placed his torch on the mound.

25. Considering the aforesaid, there remains no doubt that the complainant (PW-1) Popatbhai Gobarbhai and the injured witness (PW-8) Kalubhai Manjibhai have improvised their version regarding presence of torch at the time of the alleged incident with a view to establish that they saw the incident in the torchlight. Furthermore, considering the admission made by the injured witness - Kalubhai Manjibhai as well as considering the evidence of the Investigating Officer - Nazabhai Chhanabhai Chauhan, it clearly established that at the time of the alleged incident, none of them were having a torch. This cast serious doubt about the version of the prosecution.

26. The prosecution has also examined the witness (PW-6) Himmatbhai Somabhai at Exh.38, who is the panch-witness to the panchnama of the scene of offence as well as the panchnama of arrest and recovery of weapon. This witness has also not supported the case of the prosecution and turned hostile. Similarly, the second panch-witness of the panchnama of arrest and recovery of the weapon (PW-7) Pratapbhai Nankubhai, who

is examined at Exh.53, has also not supported the case of the prosecution and turned hostile.

27. Thus, it appears that all the star witnesses, in their respective evidence, have tried to support the case of the prosecution, however, considering the facts revealed in their cross-examination, the entire case of the prosecution appears to be doubtful. Even, the trial court, after appreciating the evidence, has arrived at the same conclusion. Admittedly, the medical evidence corroborates the injuries sustained by the deceased as well as the injured witnesses. However, considering the inconsistencies and material contradictions in the evidence of the star witnesses, it can certainly be said that, no doubt, the incident has occurred, but not as per the version of the prosecution.

28. It is pertinent to note that as per the case of the prosecution, at the time of the arrest of the accused in presence of these panch-witnesses, the accused persons had produced different weapons used in the commission of the offence. Considering the biological as well serological reports of the FSL at Exh.51, it clearly established that no blood was found from

any of the weapons allegedly used in the incident and seized by the police. Therefore, considering the same, it appears that the evidence regarding recovery of the weapons allegedly used in the incident seems to be doubtful since the panchas have not supported the case of the prosecution. Furthermore, the FSL report suggests that no blood was found on any of the weapons seized by the police.

29. Upon careful examination of the judgment of the trial court at Exh.59, it is evident that even the trial court has observed the inconsistencies and contradictions in the evidence of the star witnesses. The trial court, after careful appreciation of the evidence, has arrived at the conclusion that the evidence of the complainant (PW-1) Popatbhai Gobarbhai, the injured (PW-8) Kalubhai Manjibhai and the eye-witness (PW-2) Savitaben Naranbhai are mutually inconsistent and contradictory with each other. Furthermore, they have improvised their version regarding presence of the torch. The trial court has also arrived at the conclusion that the recovery and the use of weapons seems to be doubtful as no panchas have supported the recovery and even the FSL evidence is not in corroboration with the case of the prosecution.

CONCLUSION :

30. Upon reassessment of the entire evidence of the prosecution, this Court is of the opinion that the prosecution has failed to prove the case beyond reasonable doubt and the learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest error or illegality or that the decision is perverse or that the trial court has ignored material evidence available on record.

31. Before parting with the judgment, it would be apt to refer to the judgment of the Supreme Court in the case of **Mallappa vs. State Of Karnataka**, reported in (2024) 3 SCC 544, wherein the Supreme Court has observed thus :-

“26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The two-views theory has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the

presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action....”

32. On the overall appreciation of the evidence as well as considering the impugned judgment and order, this Court is of the considered opinion that the findings recorded by the trial court do not suffer from any perversity or illegality. The findings recorded by the trial court are absolutely just and proper, and in recording the same, no illegality or infirmity has been committed by the trial court. This Court is in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial court. Hence, no interference is warranted.

33. On the facts and in the circumstances of the case, the Appeal, therefore, fails, and the same is hereby dismissed. Records and proceedings be sent back to the concerned trial court.

(SANGEETA K. VISHEN, J.)

(VIMAL K. VYAS, J.)

/MOINUDDIN