

**(2020) 06 GUJ CK 0005**  
**In the Gujarat High Court**  
**Case No : R/Criminal Appeal No. 813 Of 2006**

|                                         |            |
|-----------------------------------------|------------|
| Babubhai Bhalabhai Parmar & 10 Other(s) | APPELLANT  |
| Vs                                      |            |
| State Of Gujarat                        | RESPONDENT |

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**Date of Decision :** 22-06-2020

**Acts Referred:**

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 188, 392, 427, 435, 436, 452  
Code Of Criminal Procedure, 1973 — Section 209, 313, 386

**Citation :** (2020) 06 GUJ CK 0005

**Hon'ble Judges :** Dr A. P. Thaker, J

**Bench :** Single Bench

**Advocate :** Darshan Dave, Jirga Jhaveri

**Final Decision :** Allowed

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**Judgement**

P.W.1,Viral Dipakkumar Shah,Doctor,Exh.26

P.W.2,Shivsinh Gulabsinh,ASI,Exh.28

P.W.3,Rajendrakumar Jivrambhai,"Police  
Constable",Exh.29

P.W.4,Mangalsinh Magansinh,"Police  
Constable",Exh.30

P.W.5,Amrutbhai Maljibhai,"Police  
Constable",Exh.31

P.W.6,Sohansinh Harisinh Barot,"Police  
Constable",Exh.32

P.W.7,Ranjitsinh Devisinh Vaaja,"Police  
Constable

& I.O",Exh.33

P.W.8,Kishansinh Durgasinh,"Panch

Witness",Exh.42

P.W.9,Salimkhan Abdulkhan Pathan,,Exh.44

P.W.10,"Shivshankar Devkumar

Sharma","Police

Inspector

& I.O",Exh.45

P.W.11,"Rameshchandra Shankarlal

Jagtap","Police

Inspector

& I.O",Exh.46

P.W.12,"Aniruddhsinhji Mahobbatsinhji

Jadeja","Police

Inspector

& I.O",Exh.47

P.W.13,"Narvarsinh Gambhirsinh

Chavda","Police

Constable",Exh.51

P.W.14,Vikramsinh Babaji,"Police

Constable",Exh.55

P.W.15,Madhukant Mavjibhai Nirmal,Doctor,Exh.58

Sr.No,Particulars,Exhibit,

1.,"Certificate of Satishbhai Bababhai

Vaghela dated 17.05.2002",27,

2.,"Panchnama of scene of offence

dated 25.04.2002",34,

3.,"Panchnama of destroyed property at

scene of offence dated 05.05.2002",35,

4.,"Panchnama of destroyed property at

scene of offence dated 06.05.2002",36,  
5.,"Panchnama of destroyed property at  
scene of offence 27.05.2002",37,  
6.,"Panchnama of destroyed property at  
scene of offence 28.05.2002",38,  
7.,"Panchnama of destroyed property at  
scene of offence dated 14.06.2002",39,  
8.,"Panchnama of destroyed property at  
scene of offence dated 14.06.2002",40,  
9.,"Panchnama of muddamal articles  
seized from accused No.13  
Hasmukhbhai Jadav dated  
10.04.2002",43,  
10.,"Panchnama of destroyed property  
dated 02.09.2002",48,  
11.,"Notification of law and order of  
weapon issued by Police  
Commissioner dated 25.02.2002",49,  
12.,Order of Curfew dated 24.04.2002,50,  
13.,"Station Diary of Shaherkotada Police  
Station",52,  
14.,"Report regarding registration of  
offence dated 25.04.2002",53,  
15.,Complaint dated 25.04.2002,54,  
16.,"Injury certificate of Jitendra  
Ramjibhai dated 24.04.2002",59,

and sentencing them for the offences as alleged which they have never committed. He has submitted that the impugned judgment and order of,,, conviction of the Trial Court is based on assumption and presumption and there is no scope of any assumption and presumption in the criminal trial. He,,,

has submitted that the prosecution has miserably failed to prove the charges beyond reasonable doubt leveled against the accused. He has submitted,,,

that the arrest panchnama has been not been proved and as the complainant has died, the contents of the FIR are not proved. He has submitted that",,,

as the evidence on record is not cogent and reliable, the present appeal may be allowed and the impugned judgment and order of the Trial Court may",,,

be quashed and set aside and the accused may be acquitted from the charges leveled against them.,,,

11. Per contra, Mr.Jirga Jhaveri, learned Additional Public Prosecutor for the respondent â?" State has submitted that in the present case, the accused",,,

were arrested on the spot and all the police witnesses have supported the case of the prosecution and there is no rule of law that the evidence of,,,

police witnesses cannot be relied on. She has submitted that the contradiction in the evidence of the police witnesses is minor in nature and that cannot,,,

be treated as major one. She has submitted that there is corroborative piece of evidence available from the other witnesses and there is medical,,,

evidence on record also. She has submitted that the Trial Court has properly appreciated the evidence on record and has rightly reached to the,,,

conclusion of convicting the accused and sentenced them. According to her submission, the judgment and order of conviction and sentence is proper",,,

one and it is sustainable in the eyes of law and no interference is warranted. She has prayed to dismiss the present appeal and to confirm the judgment,,,

and order of the Trial Court and to direct the accused to undergo sentence imposed upon them by the Trial Court.,,,

12. In view of the provision contains in Section 386 of the Criminal Procedure Code, 1973, in an appeal from a conviction, the Appellate Court can (i)",,,

reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to",,,

such Appellate Court or committed for trial; (ii) alter the finding, maintaining the sentence or (iii) with or without altering the finding, alter the nature or",,,

the extent, or the nature and extent, of the sentence, but not so as to enhance the same.",,,

13. It is well settled that it is the duty of the Appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as,,,

to whether the said evidence can be relied upon or not and even it can be relied upon then whether the prosecution can be said to have proved the,,,

case beyond reasonable doubt by leading evidence. The credibility of a witness has to be adjudged by the Appellate Court in drawing inference from,,,

proved admitted facts.,,,

14. It is also well settled that the law clearly expects the Appellate Court to dispose of the appeal on merits not merely by perusing the reasoning of,,,

the Trial Court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and",,,

findings recorded by the Trial Court are consistent with the materials on record.,,,

15. Considering the oral evidence on record, it appears that P.W.1 Dr.Viral Dipakkumar Shah, at Exhibit 26 has stated in his evidence that on",,,

24.04.2002, he was on duty in Civil Hospital and at that time, one Satishbhai Bababhai was brought before him for medical treatment and it was",,,

informed that he got injury due to lodging teargas shell. According to him, the condition of the patient was general and he was stable and the patient",,,

was sustained injury on right side neck, on back side, on left side buttock and wrist of right hand. He has stated that all these injuries were superficial",,,

in nature and on X-Ray carried out, no fracture or serious injury was found on the body of the patient. He has stated that the patient was discharged",,,

on the next day. This fact has not been challenged by the defence and, therefore, the aforesaid factum is admitted facts.",,,

16. On perusal of the evidence of P.W.2 Shivsinh Gulabsinh, ASI, at Exhibit 28, it appears that he has stated that on 24.04.2002, he was on duty in the",,,

vehicle of Shaherkotada No.1 and his in-charge was Police Inspector S. D. Sharma. He has stated that when they were in patrolling and at that time",,,

at about 1.40 am, he received message from control room that the mob has gathered near Nirmalpur Cross Road and there were mobs of both the",,,

community and they were pelting stones against each other and there was shouting and the members of the mob were having swords, iron pipes",,,

sticks etc. and In-charge Mr.Sharma has instructed mob to disburse. He has stated that at that time Shri Desai has arrived at in vehicle No.2 and he",,,

has directed the mob to disburse and other police officials also came there. According to him, though the instruction has been given by the police",,,

officer to disburse, the mobs were not disbursed and, therefore, as per the instruction of Shri Sharma, he has lobbed teargas shell on the mobs and",,,

other police personnel have also lobbed teargas shell and firing was made.

According to him, no police personnel from his vehicle No.1 have made any",,,  
firing. He has stated that thereafter, the members of the mobs were running and,  
therefore, the police staff ran to chase them and eleven persons",,,  
from the mobs were arrested. He has stated that no one from his jeep have  
chased or arrested the members of the mobs. He has stated that he does,,,  
not now the persons who were arrested and he has not given the names and  
addresses of them. According to him, the age of the persons was",,,  
between 25 to 35 years.,,,

16.1 In his cross-examination, he has stated that there was communal riot in  
Ahmedabad and they were on patrolling, have visited the Dosumiya Chali,",,  
Bail Jivi Chali, Popatlal Chali, Saiyed Riyaz Chali, Mohanlal Chali etc. and they all  
were adjacent to each other. He has stated that there were 3 to 4",,,  
mobs opposite to each other and there were three mobs of Hindu people and 3  
to 4 mobs of Muslim. He has stated that when he reached near,,,  
Nirmalpur Cross Road he came to know that four persons have been arrested.  
He has stated that no persons from the place of incident were,,,  
arrested for breach of order of curfew.,,,

17. On perusal of the evidence of P.W.2 Rajendrakumar Jivrambhai, who is Police  
Constable at Exhibit 29 has stated that on 24.04.2002, he was in",,,  
the car of P.S.I. Shri G. B. Damor and police constable Shri Manharsinh  
Magansinh and other police personnel were along with them and they were,,,  
on patrolling and at that time, they received message from control room that  
near Nirmalpur Cross Road, there were mobs of Hindu community and",,,  
Muslim community and they were pelting stones to each other and Shri Damor  
has directed the mob to disburse from there. He has stated that but,",,  
the mobs were not disbursed and continued to pelting stones to each other and  
certain members of the mobs having iron pipes, swords and sticks in",,,  
their hands. He has stated that the other police personnel came there and they  
lobbed teargas shell and nobody has lobbed teargas shell from their,,,  
vehicle. He has stated that the police has resorted firing and the persons of  
B.S.F. have resorted firing and due to that, mobs were running here and",,,  
there. He has stated that he and Shri Damor and other police personnel chased  
the members of the mobs and 5 to 6 persons were arrested and he has,,,  
arrested one person and asked his name and his name was Kalpesh. According to  
him, thereafter, they brought the said persons to the Police Station",,,

and arrested them.,,,

17.1 During his cross-examination, he has stated that he has arrested the person near Dosumiya Chali. He has stated that they chased the persons of",,,

the mobs, they were in different Chalis and the persons of the mobs were running here and there. He has stated that he has caught a person from",,,

Doosumiya Chali. He has stated that no weapon was found from the said person whom he has caught hold were in hands. He has denied the,,,

suggestion that the persons from the Chali were standing near their own house to see the mob and from that place, they have been arrested.",,,

18. On perusal of the evidence of P.W.4 Mangalsinh Magansinh Thakor at Exhibit 30, it appears that he has narrated the facts on the line of the other",,,

two police constables as referred to hereinabove.,,,

18.1 In his cross-examination, he has stated that he cannot say as to the place where they have received the message. He has stated that within 15 to",,,

20 minutes, after receiving the message, they reached Nirmalpura Cross Road and at that time, there were no other vehicle of the police officer. He",,,

has stated that when they reached near that place, within half an hour, the other police officers came in vehicle. He has stated that as per the direction",,,

of the higher officer, the teargas shell was lobbed and firing was also resorted to. He has stated that on reaching Nirmalpura, they alighted from the",,,

vehicle and they were standing between the two mobs. He has stated that no persons from any of the mobs were pelted stones on the police. He has,,,

stated that the persons of the mobs were 50 meters to 100 meters away from him. He has stated that no weapons were seized or recovered from the,,,

person whom they have caught hold. He has denied the suggestion that he has caught hold accused No.1 from his house.,,,

19. On perusal of the evidence of P.W.5 Amrutbhai Maljibhai at Exhibit 31, in his chief-examination, has reiterated the same story which is narrated",,,

by other police constables. He has stated that he has caught hold one person whose name was Vinod @ Gobo Vallabhbhai Patel. He has stated that,,,

he cannot identify the person whom he has caught hold as long time, has passed away. He is unable to identify the person who is present in the Court.",,,

19.1 In his cross-examination, he has stated that there were no any weapons in the hands of the persons whom he has caught hold. He has accepted",,,

the fact that after firing, the persons of the mob were running in a different

directions.",,,

20. On perusal of the evidence of P.W.6 Sohansinh Harisinh Barot, police constable at Exhibit 32, it appears that in his chief-examination, he has",,,,

narrated the same facts which are narrated by the other police officers earlier and he has stated that he has caught hold one person namely,,,

Natvarbhai Jivabhai Patel. He has also identified one Babubhai, who was caught hold by Shri Damor.",,,

20.1 During his cross-examination, he has admitted the facts regarding distance of the mobs and no weapons were found from the persons whom the",,,,

police has caught hold near Chali of Bai Jivi. He has denied the suggestion that the persons whom he has identified in the Court were caught hold,,,

from their residence.,,,,

21. On perusal of the evidence of P.W.7 Ranjitsinh Devisinh Vaaja has, in his chief-examination, narrated the same facts which are narrated by other",,,,

police officers as referred to hereinabove and has stated that in his presence, the persons have given their names and those names were dictated by",,,,

him in police report. He has stated that as long time has passed, he cannot remember as to what was the name of those persons and he cannot",,,,

identify them. However, on perusal of his evidence, it appears that he could not identify the persons by proper names and has committed error.",,,

However, he has identified certain persons by name.",,,

21.1 During his cross-examination, he has stated that he cannot exactly say as out of five persons, whom he has caught hold at the place. He has",,,,

stated that the persons whom he has caught hold were aged of 22 years to 30 years. He has stated that they reached near the Nirmalpura Cross Road,,,

at night. He has stated that he did not remember where there was order of curfew or not in that vicinity. He has stated that near Nirmalpura Cross,,,

Road there were mobs of two community and they were pelting stones to each other and they were not pelting stones on the police. He has stated,,,

that he cannot remember as to whether the police rushed and chased towards the members of the mob of other community. He has also shown his,,,

ignorance as to whether any person from Hindu and Muslim community had sustained any injury or not. He has stated that after firing, the members",,,,

of the mobs were running in different directions. According to him, they ran almost 100 to 150 meters behind the members of the mobs. He has stated",,,,

that no weapons or any materials were found from the persons whom he has caught hold. He has denied the suggestion that 3 to 5 persons were,,,

caught hold from their own houses when they were standing near the door of the houses.,,,

22. On perusal of the evidence of P.W.8 Kishansinh Durgasinh at Exhibit 42, it appears that he has stated that police has called him in the police",,,

station and obtained his signatures and nothing has been found before him and nobody was present at that time. He identified his signature on,,,

panchnama at Exhibit 43. As he has not supported the case of the prosecution, he has been declared hostile and the prosecution has cross-examined.",,,

But in such cross- examination also, he has not supported the case of the prosecution.",,,

23. On perusal of the evidence of P.W.9 Salimkhan Abdulkhan Pathan at Exhibit 44, it appears that he has stated in his evidence that on 10.05.2002,",,

at about 1.00 pm, he was called by the police in the Police Station and the panchnama was prepared and one TV and one fan were lying there. He",,,

has stated that except that there was no material and his signature was obtained in panchnama at Exhibit 43 and at that time, 2 to 3 persons aged",,,

about 30 years to 35 years were present there. But, he is not able to identify them. As he has not supported the case of the prosecution, he has been",,,

declared hostile and he has been cross-examined by the police regarding the contents of the panchnama. But in such cross-examination also, he has",,,

not supported the case of the prosecution.,,,

24. On perusal of the evidence of P.W.10 Shivshankar Devkumar Sharma at Exhibit 45, it appears that he has stated that on 25.04.2002, he was",,,

Police Inspector in Shaherkotada Police Station and the investigation of the present case was hand over to him and received the complaint of PSI Shri",,,

Damor and the report regarding arrest of the eleven accused. According to him, he has made the panchnama of scene of offence in presence of",,,

panchas and also recorded various statements of the police personnel and statements of the persons whose properties were damaged. He has stated,,,

that on 29.07.2002, he has arrested accused Jitendrakumar Bababhai and recorded his statement and he was produced before the Court on",,,

30.07.2002. He has stated that on 05.04.2002, he has arrested Hasmukhbhai Haribhai and recorded his statement. He has stated that he has also",,,

seized TV, fan etc. from the accused. He has stated that as he was transferred; he has handed over further investigation to the Police Inspector Shri",,,

Jadeja. He has identified two accused in the Court.,,,

24.1 During his cross-examination, he has stated that the offence for breach of curfew was also registered against the members of the mobs of both",,,

the community. He has stated that at the time of incident, he was present at the place of offence and lobbed teargas shell and due to that, the",,,

members of the mobs were running in different directions. He has stated that the members of the mobs having sword, iron pipes, sticks etc. in their",,,

hands. He has stated that no persons from the mob of other community have been arrested or caught hold at that time. He has admitted that no,,,

weapons were found from the persons whom he has caught hold from the place. He has stated that PSI Shri Damor has caught hold and arrested,,,

them and handed over to him. He has stated that he cannot say as to whom, at that point of time, Shri Damor has arrested He has stated that he has",,,

received the seizure panchnama of muddamal recovered from Hasmukhbhai Harimbhai dated 10.05.2002 during the investigation and Hasmukhbhai,,,

Hamirbhai was arrested on 05.08.2002. He has stated that the date mentioned in chief-examination i.e. 05.04.2002 is mentioned inadvertently. He has,,,

stated that no weapons from the place of occurrence have been seized. He has stated that there was no curfew in the vicinity of Shaherkotada. He,,,

has stated that the accused Jitendrakumar was arrested from Nirmalpur Cross Road when police was in patrolling and accused Jitendrakumar had,,,

sustained injury.,,,

25. On perusal of the evidence of P.W.11 Rameshchandra Shankarlal Jagtap at Exhibit 46, it appears that he has stated in his evidence that on",,,

20.04.2002, he was serving in Ahmedabad city in Special Branch as Police Inspector and he got investigation on 03.05.2002. He has stated that during",,,

investigation, he has recorded the statements whose properties were damaged. He has stated that on 16.05.2002, on returning of Shri Parmar from",,,

leave, he has handed over the investigation to him. He has stated that he has prepared panchnama of 2 to 3 properties which is produced at Exhibit 35",,,

and 36. He has adhered that fact in his cross-examination.,,,

26. On perusal of the evidence of P.W.12 Aniruddhsinhji Mahobatsinhji Jadeja at Exhibit 47, it appears that he has stated in his evidence that on",,,

19.08.2002, he was on duty, he got the investigation of this case from Shri Sharma. He has stated that during the investigation, he has prepared",,,

panchnama of resident of Aminaben and Avalben. He has produced the panchnama at Exhibit 48 and he has filed the charge-sheet against the,,,

accused and nothing further has been carried out.,,,

26.1 In his cross-examination, he has stated that all the accused No.1 to 11 were arrested on 25.04.2002 at 1.00 am, whereas, accused No.12 was",,,

arrested on 29.07.2002 at 17.00 hours and accused No.13 was arrested on 05.08.2002 at 12.30 hours. He has denied the suggestion that the,,,

panchnama at Exhibit 48 was prepared in the Police Station and only signature of the panch was obtained and it was not dictated by the panchas. He,,,

has stated that during the investigation, one person sustained injury and no injury was sustained by any members of the police force. 27. On perusal of",,,

the evidence of P.W.13 Natvarsinh Gambhirsinh Chavda at Exhibit 51, it appears that he has narrated that on 24.04.2002, he was on duty as PSO",,,

from 24.04.2002 at 8.00 pm till 25.04.2002 at 8.00 am, at that time, he has received report from PSI Shri Damor for registration of the offence and",,,

accordingly, he has recorded the same in register and handed over the investigation to the Police Inspector. He has produced certain documentary",,,

evidence of the Police Station. He has stated that the PSI has died and except registering the offence and handing over the investigation to other,,,

official, he has not carried out any further investigation." ,,,

27.1 During his cross-examination, he has stated that he has recorded the FIR on the basis of the complaint at Exhibit 54 and the same is signed by",,,

Shri Damor as complainant and police officer. According to him, the handwriting of complaint at Exhibit 54 is not of Shri Damor but it is his writer Shri",,,

Vikramsinh.,,,

28. On perusal of the evidence of P.W.14 Vikramsinh Babaji at Exhibit 55, it appears that he has stated in his evidence that he was serving as head",,,

constable in Shaherkotada Police Station and was writer of second Police Inspector Shri Desai and Shri Damor was serving as PSI, Surveillance",,,

Squad. He has stated that Shri Damor has filed the complaint at Exhibit 54 which was written down by him as per the version of Shri Damor. He has,,,

identified the signature of Shri Damor on FIR.,,,

29. On perusal of the evidence of P.W.15 Dr.Madhukant Mavjibhai Nirmal at

Exhibit 58, it appears that he has stated in his evidence that he was",,,  
serving in Shardaben Hospital and on 24.04.2002, Dr.Sharad Jain was serving in  
Orthopedic Department, Shardaben Hospital and after completion of",,,  
residency period, he left the job and now, as to whereabouts of him. He has  
stated that one Jitendra Ramjibhai Makwana was brought for treatment",,,  
on 24.04.2002 at about 12.10 hours in night, to whom casualty medical officer  
Dr.Alkesh has examined him and, thereafter, he was admitted in OPD",,,  
Ward and he was an indoor patient and he was discharged from the hospital on  
29.04.2002. He has stated that the patient has given history to him that,,,  
he sustained injury due to firing and the injury was on right leg and he was also  
various ailment found in his knee. He has stated that the injury could,,,  
be possible by firing. He has produced necessary certificate at Exhibit 59.,,,  
29.1 During his cross-examination, he has admitted that he has found injury and  
it could occur due to firing. He has admitted that if a person is in",,,  
standing condition and firing is made behind him at a distance then such injury  
could be possible.,,,  
30. On consideration of the aforesaid oral as well as documentary evidence on  
record and re-appreciating the same, it appears that there were mobs",,,  
of both community to and the members of the mobs were pelting stone against  
each other. But, no stone injury was pelted upon the police personnel",,,  
and no persons of police force have got stone injury from the side of both the  
communities. It is also reveals from the evidence that no weapons have,,,  
been found from the persons who have alleged to be arrested on the date of  
occurrence. It is also found that the basic case of the prosecution is that,,,  
the members of the mob having deadly weapons like sword and other weapons  
like iron pipes and sticks and burning rag, however, no such weapons",,,  
are found or recovered from accused. It also appears that the evidence of the  
police personnel itself suggests that no such articles were found from,,,  
the persons who have been arrested from the mobs. It also reveals from the  
evidence that the accused were arrested on 1.00 am, whereas, the",,,  
incident is said to have been happened at 9.40 pm. As stated hereinabove, the  
police personnel did not know the persons at the relevant time and they",,,  
have also committed error in identifying them during the trial. As per the FIR,  
there was mob of 600 to 700 of the accused community, whereas, the",,,  
persons of 300 of the opposite community. On perusal of the entire evidence on

record, it clearly transpires that the police personnel has admitted that",,,  
certain persons have been caught hold from chali of Bai Jivi. The defence put up  
by the accused is that they were arrested from their own houses,,,  
where they have standing outside the gate of the house to see the moment of  
the mob. This defence has been put up on record by way of cross-,,,  
examination and the same has also been stated in their further statements under  
Section 313 of the Criminal Procedure Code. Now, it is well settled",,,  
principles of law that the accused have not to prove the defence beyond  
reasonable doubt. But, the defence could be established on the principles of",,,  
preponderance of the probability. It is the duty of the prosecution to prove the  
case against the accused beyond reasonable doubt. Therefore, the fact",,,  
of commission of the offence has to be proved beyond reasonable doubt by the  
prosecution. No burden to prove the benefit of doubt lies on the,,,  
accused. The accused have only to prove their defence either by leading separate  
evidence or by putting the questions in cross-examination to the,,,  
prosecution witnesses. If, after reading the entire evidence of the prosecution  
witnesses which includes the chief-examination, cross-examination and",,,  
re-examination, if any, it is found that the prosecution is able to prove the case  
beyond reasonable doubt then and then only, the burden lies on the",,,  
defence to prove their defence has discussed hereinabove. Now, in this case, it is  
clear defence of the accused that they were arrested from their",,,  
own houses and this fact has been put up in each and every police official in  
evidence. Of course, the police has denied this fact. But the fact emerges",,,  
from the record is that the incident has happened at about 9.40 pm and accused  
have been arrested at 1.00 am and no weapons have been seized,,,  
from the accused.,,,

31. Now, on perusal of the evidence on record, it transpires that the evidence led  
by the prosecution is not sufficient and reliable to convict the",,,  
accused with the alleged crime and the prosecution has miserably failed to prove  
the charges leveled against them. It is pertinent to note that out of,,,  
thirteen accused, the Trial Court has, on the same evidence, acquitted two  
accused from the same charges and convicted eleven accused on the same",,,  
set of facts and evidence. This exercise is not proper one. It also appears from  
the impugned judgment and order that the Trial Court has accepted the,,,  
evidence of the prosecution on the basis that the defence raised by the accused

has not been proved by the accused side. Thus, the Trial Court has",,,  
committed serious error of facts and law in appreciating the evidence on record  
and has also committed the serious error in convicting the accused.,,,  
The impugned judgment and order of conviction is not sustainable in the eyes of  
law and the same warrants interference.,,,  
32. For the foregoing reasons, present appeal is liable to be allowed. Accordingly,  
present appeal is allowed. The impugned judgment and order of",,,  
conviction and sentence passed by learned Additional Sessions Judge, Court  
No.8, Ahmedabad City in Sessions Case No. 192 of 2005 dated",,,  
04.04.2006 for the offence under Section 436 read with Section 149 and Section  
392 read with Section 149 of the Indian Penal Code is hereby,,,  
quashed and set aside. The accused are acquitted from the charges leveled  
against them. Fine, if any, paid to be refunded to the accused. Bail bond",,,  
stands cancelled. Record and proceedings be sent back to the concerned Trial  
Court forthwith.,,,