

(2022) 01 GUJ CK 0062

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 23123 Of 2021 In R/Criminal Appeal
No. 2046 Of 2021

State Of Gujarat

APPELLANT

Vs

Manilal Ramjibhai Ninama

RESPONDENT

Date of Decision : 10-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302, 307, 504, 507

Code Of Criminal Procedure, 1973 — Section 209, 378, 378(1)(3), 379

Citation : (2022) 01 GUJ CK 0062

Hon'ble Judges : S.H.Vora, J;Sandeep N. Bhatt, J

Bench : Division Bench

Advocate : CM Shah

Final Decision : ?Dismissed

Judgement

- 1,Exh.15,Complainant Sankaliben Hirabhai Vagadiya
- 2,Exh.18,Witness Hirabhai Nanabhai Vagadiya
- 3,Exh.19,Witness Hanifaben Salamrahim Shaherawala
- 4,Exh.20,Witness Shaileshbhai Bhagabhai Patel
- 5,Exh.21,Witness Parvatbhai Hirabhai Vagadiya
- 6,Exh.22,Dr. Jenish Popatbhai Kachhadiya
- 7,Exh.25,Witness Lilaben Hirabhai Vagadiya
- 8,Exh.26,Witness Shardaben Hirabhai Vagadiya
- 9,Exh.27,Panch Witness Shankarbhai Lalabhai Damor
- 10,Exh.38,Panch Witness Jesingbhai Somabhai Vagadiya
- 11,Exh.44,PSO Harishbhai Parmabhai Patel

12,Exh.48,Witness Ghanshyambhai Ramabhai Prajapati

13,Exh.51,Witness Meenaben Rameshbhai Pandor

14,Exh.52,Investigating Officer Kantibhai Nevlabhai Rathva

15,Exh.64,Investigating Officer Karunpalsinh Chimanbhai Pargi

16,Exh.66,PSO Shaileshkumar Abhesinh Khant

17,Exh.33,Dr. Drashtiben

5,Exh.28,Panchnama of the scene of offence

6,Exh.39,Panchnama of Physical condition of the deceased

7,Exh.42,Panchnama of Muddamal produced by the accused

8,Exh.45,Telephone Vardhi

9,Exh.46,Xerox copy of station diary

10,Exh.47,Suchipatra

11,Exh.49,"Report of analysis of place of incident by DFS, Gandhinagar

12,Exh.53,Suchipatra

13,Exh.54,Yadi to the Executive Magistrate for inquest

14,Exh.55,Seeking information regarding CDR/SDR

15,Exh.56,Police report to the Civil Surgeon with dead body

16,Exh.57,Yadi for mapping the place of incident

17,Exh.58,Yadi to Executive Magistrate for taking dying declaration

18,Exh.59,Dying declaration

19,Exh.61,Authority Certificate

20,Exh.62,"Letter of FSL, Vadodara

21,Exh.63,Muddamal Analysis FSL report

22,Exh.65,"Yadi to Executive Magistrate, Kadana for taking dying declaration

23,Exh.66,"Yadi to Executive Magistrate, Kadana for taking dying declaration

24,Exh.68,Xerox copy of station diary

10. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:",,

â??The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under,,

Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable",,,

that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness",,,

the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate",,,

Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main",,,

grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely",,,

and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."""",,,

11. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and",,,

in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the",,,

judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High",,,

Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High",,,

Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.",,,

12. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of",,,

appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.",,,

13. In view of the above and for the reasons stated above, present application for leave to appeal fails and same deserves to be dismissed and is",,,

accordingly dismissed. In view of dismissal of the application for leave to appeal, captioned Criminal Appeal also deserves to be dismissed and is",,,

accordingly dismissed.,,,