

(2015) 07 GUJ CK 0049
In the Gujarat High Court
Case No : Criminal Appeal No. 1045 of 1993

State of Gujarat	Vs	APPELLANT
Rajesh Nathia Chhara and Others		RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 379
Penal Code, 1860 (IPC) — Section 114, 143, 147, 149, 302

Citation : (2015) 3 GLR 2480

Hon'ble Judges : Anant S. Dave, J; S.H. Vora, J

Bench : Division Bench

Advocate : Hardik Soni, APP, for the Appellant; Yogesh Lakhani, and N.R. Kodekar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.H. Vora, J—Challenge in the present appeal preferred under Section 378 of the Code of Criminal Procedure, 1973 (for short, the "Code") by the appellant-State of Gujarat is the judgment dated 31.05.1993 passed by the learned City Sessions Judge, Ahmedabad in Sessions Case No. 261 of 1992 whereby, the respondents, namely, Mr. Rajesh Nathia Chhara, Mr. Anil Kantilal Chhara, Mr. Prabhat Manohar Chhara, Ms. Madhuben and Ms. Manekben came to be acquitted of the charge of offence punishable under Sections 147, 143, 452 and 302 of the Indian Penal Code (for short, "I.P.C.").

2. The prosecution case as unfolded before the trial Court can be stated thus.

2.1. That, one Mr. Harsan Lakha in June, 1992 resided with his family in free colony, Kubernagar - Chharanagar in Sardarnagar area in the City of Ahmedabad. Amongst other children, one daughter of Mr. Harsan Lakha, namely, Ms. Gitaben, was engaged to marry one Mr. Rajesh Nathia i.e. accused No. 1. On account of their engagement, both Ms. Gitaben and accused No. 1-Mr. Rajesh Nathia used to move together, visit theaters to see movie and accused No. 1 - Mr. Rajesh Nathia was permitted physical access by Ms. Gitaben willingly on two

occasions as he was engaged to marry her. Accused No. 1 often used to insist Ms. Gitaben to go with him and permit him sexual intercourse but, Ms. Gitaben used to decline saying that as they were to marry around Diwali, she would permit all such things after their marriage but, still however, accused No. 1 was insisting for physical gratification. That, at around in the month of June, 1992, Mr. Harsan Lakha was constructing a house opposite his residential house. At about 12:00 O'clock on 18.06.1992, accused No. 1 - Mr. Rajesh Nathia had come to the house of Ms. Gitaben and told her that she should be ready at 3:30 p.m. as they would be going to see the movie and that he would come to take her at 3:30 p.m. whereupon, Ms. Gitaben told him that his intentions were not honest and so, she would not accompany him whereupon, accused No. 1 - Mr. Rajesh Nathia told her that if she did not come with him, he would take her forcibly and thereafter, he went away. That, at about 3:30 p.m., Ms. Gitaben was alone in her house and accused No. 1 - Mr. Rajesh Nathia came and told her that why she was not ready though she was so told and she should be ready but, as Ms. Gitaben did not want to go with him, she did not get herself ready. That, accused Nos. 2 to 5, namely, Mr. Anil Kantilal Chhara, Mr. Prabhat Manohar Chhara, Ms. Madhuben and Ms. Manekben, followed accused No. 1 - Mr. Rajesh Nathia within no time and as Ms. Gitaben did not get ready to accompany accused No. 1 - Mr. Rajesh Nathia, accused Nos. 2 to 5 held Ms. Gitaben and accused No. 1 - Mr. Rajesh Nathia applied cotton bandage on her eyes and thereafter, one person out of accused Nos. 1 to 5 sprinkled kerosene oil on Ms. Gitaben and accused No. 1 - Mr. Rajesh Nathia, who had come with match-box in his hand, lighted the match-stick and set fire whereupon, Ms. Gitaben raised cries to save herself and fell down. At that time, Ms. Gitaben removed the bandage which was tied on her eyes and then, accused No. 1 - Mr. Rajesh Nathia and other accused persons with him had run away from her house and upon hearing her cries, her neighbours, namely, Mr. Ashok Bachu and Ms. Sunia Bachu etc., came and extinguished the fire with quilt. Thereafter, Ms. Gitaben was removed to the civil hospital in the company of P.W.1-Ms. Shakuntlaben Ratanbhai, who happens to be maternal aunt of injured - Ms. Gitaben.

2.2. That, at 16:50 hrs., C.M.O., civil hospital informed the constable on duty about the incident which was taken down vide Exh. 32 in the civil hospital and the same was conveyed to Sardarnagar police station at 17:20 hrs. Thereafter, in the civil hospital, complaint of the injured was lodged vide Exh. 30. Thereafter, Yadi Exh. 41 was written to P.W.12-Executive Magistrate for recording dying declaration of injured Ms. Gitaben, who in turn, recorded dying declaration at Exh. 42 in the civil hospital. At about 10:15 p.m. on 18.06.1992, panchnama Exh. 38 was drawn in the presence of panchas regarding muddamal articles lying at the scene of offence and also on the next day i.e. on 19.06.1992 at about 10:00 am., panchnama Exh. 23 pertaining to recovery of muddamal articles in presence of F.S.L. officer was drawn and thereafter, statements of the persons residing nearby were recorded, more particularly, witnesses, namely, P.W.1-Ms. Shakuntlaben Ratanbhai, P.W.3-Mr. Manojbhai Nandubhai Chhara and P.W.5-Mr.

Dharmendra Harsanbhai Chhara. That, on the same day at around 19:00 hrs., accused persons were arrested and clothes of the accused were recovered and sample hair from their hands were also recovered by drawing separate panchnama and the statements of the other witnesses were also recorded. Injured Ms. Gitaben succumbed to injuries at 7:30 a.m. on 22.06.1992 and thereafter, further investigation was conducted by P.W.10 - P.I. - Mr. D.B. Pandey and upon receipt of relevant materials from the hospital and F.S.L. and upon completion of investigation, chargesheet was filed against the accused persons.

2.3. Upon committal of proceedings before the City Sessions Court, accused Nos. 1 to 5 appeared before the Court to stand trial of the accusations leveled against them vide Exh. 2 which, if freely translated in English, reads as under:--

"1. On 18/6/92, at about 3-30 hrs in afternoon, you all accused persons got united, formed unlawful assembly whose common intention was to commit murder of Gitaben, daughter of Harsanbhai Lakhabhai Chhara residing in Free Colony, Kubernagar -Chhranagar, Sardarnagar area, Ahmedabad city, by entering her house or you all accused persons had the aforesaid common intention and for the furtherance of the aforesaid common intention of the unlawful assembly, on the aforesaid date, time and place, you all accused persons used force - violence and thus rioted. When the said offence was committed, you all accused persons were member of the unlawful assembly and by doing so you all accused persons have committed the offence u/s. 143, 147 of IPC.

(2) Moreover, on the aforesaid date, time and place, as a part of the same task and for the furtherance of aforesaid common intention, you all accused persons made preparation in advance to commit murder of the deceased Gitaben and intruded in her house and by doing so, you all accused persons committed offence u/s. 452 of IPC.

(3) Moreover, on the aforesaid date, time and place, as a part of the same task, for the furtherance of aforesaid common intention, you all accused persons, with intention of killing the deceased Gitaben, you accused No. 2 to 5 caught hold of deceased Gitaben and one accused out of you the accused persons, poured kerosene on her and you accused No. 1 set her ablaze and therefore the deceased died due to burn injuries and thus you committed murder and by doing so you all accused persons committed offence as per Sec. 302 of IPC and alternatively, the offence punishable u/s. 302 read with Sec. 149 has been committed."

2.4. All the accused persons denied charges levelled against them and claimed to be tried.

3. The prosecution, in order to bring home the charge leveled against accused persons, adduced following oral as well as documentary evidence:--

Oral Documents:

Documentary Evidence:--

4. Upon completion of trial, the accused persons were examined under Section 313 of the Code with regard to the circumstances incriminating against them emerging from the prosecution evidence. Accused No. 1 - Mr. Rajesh Nathia admits that he was engaged to marry deceased - Ms. Gitaben but he denied all other incriminating circumstances put to him and also other co-accused persons. In substance, the accused persons have denied their involvement stating that they have been falsely implicated and they do not know anything about the incident.

5. Upon hearing the submissions made before the trial Court and after appreciation of evidence, both oral as well as documentary, the learned trial Judge found that the prosecution has been able to establish the homicidal death of deceased-Ms. Gitaben having sustained 90% burn injuries at about 3:30 p.m. on 18.06.1992. It was found and observed by the learned trial Judge that the prosecution has not been able to establish the new house of Mr. Harsan Lakha as the place of incident and it cannot be said with reasonable certainty that the incident took place only in the new house of Mr. Harsan Lakha and thus, the possibility of incident having taken place in the residential house of Mr. Harsan Lakha cannot be ruled out. It was found and observed by the learned trial Judge that dying declaration Exhs. 30 and 42 cannot be conclusively said to bear thumb mark impressions of a person, who had both the hands completely burnt from nail to shoulder and the lines on the thumb would disappear when the burns are even less than 1 degree as per evidence of P.W. 14- Dr. Digant Kalidas Dixit. It was found and observed by the learned trial Judge that answer to question No. 10 of dying declaration Exh. 42 having been obtained by putting questions for explanations and P.W.12 -Executive Magistrate interpreted the answers given by deceased - Ms. Gitaben and written in his own way which would not inspire in conclusively holding that the statement Exh. 42 and the statement Exh. 30 not free from doubt. It was found and observed by the learned trial Judge that the patient may or may not be in the state of mental orientation to give statement and looking to the medical evidence and as far as oral dying declarations made before P.Ws. 1, 3 and 5, namely, Ms. Shakuntla Ratanbhai, Mr. Manojbhai Nandubhai Chhara and Mr. Dharmendra Harsanbhai Chhara respectively are concerned, they are inconsistent with Exhs. 30 and 42 and other evidence on record and, therefore, they cannot be acted upon without any corroboration and non-examination of material witnesses, namely, Mr. Ashok Bachu, Ms. Sunia Bachu, Mr. Navnit, Mr. Jaychandbhai, Ms. Rushita and Ms. Jijabai would render the prosecution version at-least not free from reasonable doubt and, therefore, upon appreciation of evidence, the learned trial Judge observed that the evidence adduced on record cannot be said to have conclusively established the guilt against any of the accused persons beyond reasonable doubt and, therefore, the learned trial Judge observed that the accused persons are entitled to the benefit of doubt as the prosecution has not been able to bring home the guilt of the accused persons beyond any reasonable doubt.

6. Assailing the impugned judgment, learned A.P.P. Mr. Hardik Soni for the

appellant-State, after taking us through the relevant evidence on record, more particularly, oral depositions of P.Ws. 1, 3 and 5 before whom, deceased - Mr. Gitaben made statement as to occurrence of incident and four dying declarations made before the doctor, Executive Magistrate and the concerned police vide Exhs. 30, 42, 53 and 54, would contend that by adducing the evidence, the prosecution proved incident dated 18.06.1992 at 3:30 p.m.; that the accused were the members of unlawful assembly and object of the assembly was to commit murder of said Ms. Gitaben - daughter of Mr. Harsan Lakha; that, in furtherance of the common object, the accused persons came to the newly constructed house of Mr. Harsan Lakha wherein, Ms. Gitaben was present; that, upon seeing that Ms. Gitaben had not got herself ready to go with accused No. 1 as told to her at about 12:00 O'clock by the accused No. 1, accused No. 1 tied her eyes with cotton bandage and one of the accused persons sprinkled kerosene oil on her and accused No. 1 lighted match-stick and set fire to said Ms. Gitaben; that there are as many as 7 dying declarations, oral as well as written and the circumstances of the accused persons having been seen running away from the place of incident no sooner the incident took place; that there is no reason to disbelieve P.W.14 - Dr. Digant Kalidas Dixit, who deposed that deceased-Ms. Gitaben gave the names of all the accused persons having set fire to her and the said witness is an independent witness; that injured Ms. Gitaben was conscious and well oriented; that though general condition of her might be poor because of burns and blood pressure, may be high or low, yet she was mentally well oriented so as to answer the questions put to her; that, before P.W.14 - Dr. Digant Kalidas Dixit shortest possible declaration has been made by deceased - Ms. Gitaben implicating all the accused persons vide Exh. 53; that, considering the details of all the 7 dying declarations and there being no history of unconsciousness, the learned trial Judge ought to have signed the judgment of conviction as declarations made by deceased-Ms. Gitaben are trustworthy and no corroboration is required. Learned A.P.P. Mr. Soni would contend that P.Ws. 1, 3 and 5 were eye- witnesses, who seen the accused persons running away from the place of incident no sooner fire was set to deceased-Ms. Gitaben and said witnesses have no enmity with any of the accused persons or there is no reason to falsely implicate them. Learned A.P.P. Mr. Soni would further contend that reference about residential house or new house under construction by the witnesses is because of some misunderstanding and such minor contradiction in mentioning the place of incident would not be fatal to the prosecution case and yet, the learned trial Judge gave much emphasis on this aspect. Learned A.P.P. Mr. Soni would contend that non-examination of Mr. Ashok Bachu, Ms. Sunia Bachu and Mr. Navnitlal is not fatal as the three written dying declarations are before the Government Officers and there was no allegation of bias and, therefore, the view of the learned trial Judge is not legally sustainable. At the end, learned A.P.P. Mr. Soni, would urge that the impugned judgment may be reversed by signing judgment of conviction against the accused persons for the offence for which, they are charged and they suitably be punished. In support of the submissions made at bar, learned A.P.P. Mr. Soni placed reliance upon the

decisions of the Hon"ble Apex Court rendered in the case of Abrar Vs. The State of Uttar Pradesh, AIR 2011 SC 354 : (2011) 1 Crimes 56 : (2011) 3 JT 567 : (2011) 2 SCC 750 : (2011) 2 SCC(Cri) 702 : (2011) AIRSCW 3696 ; Vithal Vs. State of Maharashtra, (2007) CLT 463 Supp : (2007) CriLJ 317 : (2006) 10 SCALE 585 : (2006) 9 SCR 234 Supp ; Smt. Paniben Vs. State of Gujarat, AIR 1992 SC 1817 : (1992) CriLJ 2919 : (1992) 1 Crimes 1180 : (1992) 4 JT 397 : (1992) 1 SCALE 655 : (1992) 2 SCC 474 : (1992) 2 SCR 197 ; Surajdeo Ojha and Others Vs. State of Bihar, AIR 1979 SC 1505 : (1979) CriLJ 1122 : (1979) SCC(Cri) 519 : (1979) 11 UJ 412 and in the case of Ashabai and Another Vs. State of Maharashtra, (2013) 2 ABR 321 : AIR 2013 SC 341 : (2013) 1 Crimes 15 : (2013) 1 DMC 208 : (2013) 1 JCC 722 : (2012) 1 JCC 22 : (2013) 1 JT 376 : (2013) 1 RCR(Criminal) 629 : (2013) 1 SCALE 88 : (2013) 2 SCC 224 : (2013) AIRSCW 333 : (2013) 1 Supreme 97 .

7. Per contra, learned Senior Counsel Mr. Yogesh Lakhani appearing with learned advocate Mr. N.R. Kodekar for the respondents-accused would contend that the complaint/dying declaration Exh. 30 is tutored one; that, it speaks of long past, intimacy and demand but does not say that the incident occurred in the newly constructed house but say that deceased-Ms. Gitaben was in her house, not once, but for about 7 times; that the declaration Exh. 42 makes distinction between two premises; that, oral evidence of so-called eye-witnesses, namely, P.Ws. 1, 3 and 5 are self-destructive and stand conclusively proved that they were not eye-witnesses to the incident and, therefore, no question of any declaration being made by deceased-Ms. Gitaben to any of them would arise; that Exh. 30 refers to only two persons namely, Mr. Ashok Bachu and Ms. Sonia Bachu, who arrived at the place of incident and as one witness Mr. Navnitlal Jayantilal showed the place of incident, yet he has not been examined and thus, the material witnesses have been suppressed by the prosecution and the witnesses convenient to the prosecution have been examined; that written dying declarations Exhs. 53 and 54 made before two doctors within two hours of admission of deceased- Ms. Gitaben in the hospital are not consistent as Exh. 54 does not refer accused Nos. 2 to 5; that, injured - Ms. Gitaben was not well oriented and there is no evidence for mental state of orientation of deceased-Ms. Gitaben and, therefore, she could have given detailed and long statement at Exh. 30 and, therefore, genuineness of Exh. 30 is doubtful and the learned trial Judge has rightly disbelieved both oral and written dying declarations; that the prosecution has not proved recover/discovery panchnama of the clothes alleged to have been recovered from the body of the accused persons and also collection of sample of hairs of their hands by leading legal evidence in this regard. On all these broad submissions made at bar, learned Senior Counsel Mr. Lakhani would contend that there are serious doubts about the manner in which, the incident has occurred as well as the assailants and their participation in the alleged offence on the basis of various versions appearing in seven written/oral dying declarations coming on record and at the end, he would contend that the learned trial Judge has made thread bare analysis of the evidence led before him and has

rightly come to reasonable and plausible finding of not holding the accused persons guilty of the charges leveled against them. Learned Senior Counsel Mr. Lakhani would further contend that the reasonings assigned by the learned trial Judge cannot be said to be unreasonable, perverse or illegal in any manner and, therefore, benefit of doubt given to the accused persons does not require interference in the appeal filed by the State and he urged to dismiss the appeal in the interest of justice.

8. Having heard learned counsel appearing for the respective parties and considering the submissions made before us on the basis of evidence adduced before the trial Court, we find that submissions of learned A.P.P. Mr. Soni for the appellant-State raise two important questions for consideration, namely, (i) whether there is any controversy relating to the place of occurrence in order to doubt the case of the prosecution and (ii) whether any of the dying declarations, oral as well as written, made by deceased - Ms. Gitaben is reliable and truthful so as to sign the judgment of conviction.

9. To begin with, we may record that the defence had advanced arguments before the learned trial Judge to the effect that possibility of suicide by said Ms. Gitaben could not be ruled out as she was having feeling of a sinner because she had taken to drink and she had permitted accused No. 1 for sexual intercourse without marriage and she being alone in the home at the time of incident. For such defence, reference was made to one complaint Exh. 45 which was lodged at 17:15 hrs. on 18.06.1992 for the incident which allegedly took place at 13:45 hrs. for the offence punishable under Sections 323 and 114 of I.P.C. lodged by accused No. 4 - Ms. Madhuben against deceased - Ms. Gitaben and three others. Learned Senior Counsel Mr. Lakhani did not press this defence seriously before us and, therefore, possibility of deceased-Ms. Gitaben committed suicide is out of question. Similarly, the medical evidence indicates that it is not a case of accidental injuries. Thus, we are left with only one option being homicidal death of deceased - Ms. Gitaben. Even otherwise, the evidence of P.W.1-Ms. Shakuntlaben Ratanbhai, P.W.2-Dr. Govindbhai Desai, P.M. Note Exh. 18 and inquest panchnama Exh. 13 go to show that deceased-Ms. Gitaben died homicidal death i.e. death due to shock as a result of burns and its complications. Therefore, point No. 1 answered by the learned trial Judge in affirmative does not require to be taken any further for discussion.

10. Upon hearing submissions of learned A.P.P. Mr. Soni, it is evident that it is the case of the prosecution that the incident of setting fire to deceased-Ms. Gitaben took place in the new under construction house of Mr. Harsan Lakha and as against this, learned Senior Counsel Mr. Lakhani contended that place of incident is not the new under construction house but it is a residential house of Mr. Harsan Lakha where, the incident took place. P.W.1 - Ms. Shakuntlaben deposed that on 18.06.1992 at about 3:30 p.m., when she was in her house, she heard the cries whereupon, she went towards the new house of her sister - Ms. Kapilaben (mother of deceased - Ms. Gitaben) and found deceased-Ms. Gitaben

sitting in the new house with burn injuries on her whole body. In the same line, as deposed by P.W.1-Ms. Shakuntlaben, P.W.3-Mr. Manojbhai Nandubhai Chhara deposed before the trial Court. In cross-examination, P.W.3-Mr. Manojbhai Nandubhai Chhara admitted that from the house of Mr. Harsan Lakha, police recovered burnt clothes of deceased-Ms. Gitaben and that panchnama was being written in the residential house of Mr. Harsan Lakha. The said witness denied that he did not go to the new under construction house of Mr. Harsan Lakha. P.W.5 - Mr. Dharmendra Harsanbhai Chhara, who happens to be the brother of deceased-Ms. Gitaben, deposed before the trial Court that while he was taking rest in his old house at about 3:30 p.m., he heard the cries "save save" whereupon, he looked towards his new house and went there and found deceased-Ms. Gitaben burnt. In the cross-examination, he deposed that the police had come to his residential house at about 9:00 to 10:00 p.m. on the date of incident and the police remained for one and half hours in his residential house. P.W.5- Mr. Dharmendra Harsanbhai Chhara admitted that at this place, police prepared panchnama. Again, on the next day, at about 1:30 p.m., police had come to his residential house and panchnama was prepared at his residential house and while drawing panchnama, the police had recovered quilt, pieces of burnt clothes of deceased-Ms. Gitaben, tumbler etc. from the residential house. It is also stated by P.W.5 that on the night of the date of incident for drawing panchnama, place of incident was shown to the police by him. Upon close scrutiny of the evidence of P.Ws. 1, 3 and 5, it can be inferred that the police made panchnama sitting in the residential house of Mr. Harsan Lakha and pieces of burnt clothes of deceased-Ms. Gitaben and other articles were recovered from his residential house. In view of the evidence surfaced on record, the prosecution case as to the place of occurrence is new under construction house cannot be accepted. Furthermore, statement of deceased-Ms. Gitaben Exh. 30 suggest that at about 12:00 O'clock on the date of incident, accused No. 1 came to the house of deceased-Ms. Gitaben and after he left, she was alone in her house. There is no distinction between the residential house and new under construction house. In the said statement, the place of incident is referred to as "my home". In the said statement, at two places, it is stated that deceased-Ms. Gitaben was alone in her house. The statement Exh. 30 does not say, as deposed by P.W.1-Ms. Shakuntlaben, that deceased-Ms. Gitaben had told her that she had gone to respond nature's call to her new house at 3:30 p.m. Admittedly, in the statement before P.W.14-Dr. Digant Kalidas Dixit - C.M.O., Civil Hospital and also in the Vardhi Exh. 32 given to P.W.9-Zahed Hussain Gulam Hussain by P.W.14-Dr. Digant Kalidas Dixit, the place of incident either residential or new under construction house has not been mentioned. According to the prosecution case, deceased-Ms. Gitaben said to have given statement Exh. 42 before P.W.12-Mr. Udesing Karshanbhai Vaghela - Executive Magistrate. In the cross-examination of the said witness, it has been admitted that for getting the reply recorded in question No. 10, he had to get repeated explanations from deceased-Ms. Gitaben. It appears that no note is made as to which were the questions put for getting the explanation in question No. 10. It is admitted that in question No. 10,

answer "When I was alone in my house at 3:30 p.m. in afternoon in the bungalow i.e. in my house without roof" was given after the explanation was asked for from deceased-Ms. Gitaben. According to the deposition of P.W.12, 3 to 4 questions were put for explanation for the replies given in question No. 10. Further, Exh. 42 is the statement of deceased-Ms. Gitaben recorded by P.W.12. In Exh. 42, question No. 8 is "Where and when did the incident take place? The answer to this question is "In the residential house". Question No. 10 is "State the details of the incident". The answer written is "Today on 18.06.1992 when I was alone in my house at 3:30 p.m. in afternoon and when I went to urinate in the bungalow i.e. in my house without roof, suddenly five persons came there and kerosene".

11. Thus, it would be seen from the answer given in question No. 10 that it makes distinction between the residential house and new under construction house. According to deceased-Ms. Gitaben, the incident took place in the new under construction house. P.W.12- Mr. Udesing Karshanbhai Vaghela has categorically deposed that the answer to question No. 10, as reproduced above, was given after explanation was asked for from deceased-Ms. Gitaben and for that reason, 3 to 4 questions were put for explanation for the replies given in question No. 10 and that, the replies given for question No. 10 were interpreted by P.W.12 in his own way for writing as to what deceased-Ms. Gitaben wanted to say. Admittedly, the questions put for seeking explanation of Ms. Gitaben do not form part of record as the same have not been noted in Exh. 42. Thus, it would be seen that in Exh. 42 itself, two places are shown as the place of incident, one residential house and other under construction new house. The evidence of P.W.5 - Mr. Dharmendra Harsanbhai Chhara, who happens to be the brother of deceased-Ms. Gitaben, suggests that panchnama was drawn in the residential house and muddamal articles were also recovered from the residential house which is inconsistent with the prosecution case as regards the place of incident. So, such evidence would raise strong doubt about new under construction house to be the place of incident and it cannot be said that the residential house of Mr. Harsan Lakha would not be the place where, the incident took place. Therefore, the place of incident as tried to be projected by the prosecution, cannot be accepted with reasonable certainty.

12. Now, this takes us to consider the occurrence of the incident. To prove it, there are dying declarations, written as well as oral. Written dying declarations are available at Exhs. 30, 42, statement made before P.W.14 and recorded in case papers Exh. 53 and also statement in case paper at Exh. 54. The oral dying declarations are the statements made before P.Ws. 1, 3 and 5.

13. Before taking up each of the dying declarations for consideration, we will briefly set out the prosecution case as emerging from the evidence of P.Ws. 1, 3 and 5 so as to appreciate the worth of dying declarations. We would also set out as to who reached to the spot of the incident and what is seen by each of the witnesses so as to find out reliability of the prosecution witness Nos. 1, 3 and 5

or any of them and also, the condition of deceased-Ms. Gitaben after the incident i.e. during the time when she said to have made dying declarations, oral as well as written.

14. The prosecution case opened with the statement of P.W.1 - Ms. Shakuntlaben Ratanbhai, who is the maternal aunt of deceased - Ms. Gitaben, whose evidence recorded below Exh. 11. As far as her evidence is concerned, it has been stated by her that on the way to civil hospital, she asked deceased-Ms. Gitaben as to what had happened and Ms. Gitaben said to have told her that at 12:00 noon, accused No. 1 - Mr. Rajesh Nathia had come to her and told her to get ready at 3:30 p.m. to go to movie to which, said Ms. Gitaben declined and so, accused No. 1 returned enraged. Thereafter, at 3:30 p.m., she had gone to her new house to urinate and accused No. 1 - Mr. Rajesh Nathia came with match-box in the new house with Mr. Prabhat, Mr. Anil, Ms. Madhu and Ms. Manekben i.e. accused Nos. 2 to 5 and thereafter, accused No. 1 had applied cotton bandage on her eyes and one of the remaining four accused persons, sprinkled kerosene on her and accused No. 1- Mr. Rajesh Nathia set her to fire. Upon appreciation of her deposition, it could be noticed that P.W.1 went to the new house of deceased-Ms. Gitaben at 3:30 p.m. and found her sitting in the new house with burn injuries on her whole body and meanwhile, one Mr. Jaichand came and ambulance van was called for and deceased-Ms. Gitaben was removed to the civil hospital. It is relevant to note here that at the place of incident, P.W.1 did not ask deceased-Ms. Gitaben as to what had happened to her. P.W.1 accompanied deceased-Ms. Gitaben to civil hospital and in the emergency ward, P.W.9 - Mr. Zahed Hussain Gulamhussain - constable on duty, tried to elicit information about the incident. The said witness did not depose that he succeeded in his attempt to get the information about the incident and naturally, P.W.9 has no reason to tell false-hood and if P.W.1 was told by deceased-Ms. Gitaben in the ambulance van on the way to civil hospital, P.W.1 would certainly tell P.W.9 about the incident if told to her by deceased-Ms. Gitaben. It is significant to note here that in the statement Exh. 30, deceased-Ms. Gitaben did not refer to P.W.1 - Ms. Shakuntlaben at all but, she has named two persons having reached the place of incident at the earlier and those persons were Mr. Ashok Bachu and Ms. Sunia Bachu and others were referred to as "etc."

15. P.W.3-Mr. Manojbhai Nandubhai Chhara, before whom, deceased-Ms. Gitaben alleged to have made oral statement, does not refer to P.W.1- Ms. Shakuntlaben nor does P.W.5 -Mr. Dharmendra Harsanbhai Chhara before whom, deceased-Ms. Gitaben alleged to have made statement at the place of incident, refers to P.W.1. P.W.5-Mr. Dharmendra Harsanbhai Chhara deposed that Ms. Sunia Bachu attempted to extinguish the fire with quilt. The story of deceased-Ms. Gitaben having gone to the new house for urinating is said to have been stated to P.W.1 on the way to the hospital but, the same is not found in Exh. 30. It is relevant to note here that P.W.3 deposed that on 19.06.1992, police had come to the house of Mr. Harsan Lakha and his statement was recorded and till he informed the police, he did not tell anyone about the incident. The incident took place at 3:30

on 18.06.1992 and the statement of P.W.3 has been recorded almost after 24 hrs. of the incident. The said witness stays opposite the place of incident and it is not suggested from the evidence as to how the police knew that P.W.3 could provide any clue to the prosecution case or it is not suggested from the evidence as to how P.W.3 came to be contacted by the police. Normally and naturally, when P.W.3 was in possession of such vital information about the incident, he would divulge the same to someone before his statement was recorded on 19.06.1992. Therefore, it is very difficult to understand that when P.W.3 had not spoken about the incident to anyone before his statement was recorded then how, the police knew that P.W.3 had important information to part with.

16. Now, so far as declaration made before P.W.5 -Mr. Dharmendra Harsanbhai Chhara is concerned, he was not in the house of Mr. Harsan Lakha as per statement made by deceased - Ms. Gitaben Exh. 30 before the incident and at the time of incident. However, it is deposed by P.W.5 that while he was in his residential house at about 3:30 p.m., he heard the cries "save save" and so, he went inside the new house and found deceased-Ms. Gitaben in burnt condition. Upon asking her, she told him that she had come to pass urine and accused No. 1 - Mr. Rajesh Nathia had come with match-box and tied bandage on her eyes and one out of accused Nos. 2 to 5 poured kerosene on her and accused No. 1 lighted the match-stick and set her to fire. Said P.W.5, who happens to be the brother of deceased - Ms. Gitaben, did not accompany her to civil hospital nor he go to the hospital to inquire about her health till she died or feel it necessary to inform the police by telephone that five persons have burnt alive his sister. Apart from the conduct of P.W.5 being unnatural, he did not make any attempt to extinguish the fire or to help the injured. So, the conduct of P.W.5 makes his presence at the place of incident at-least not free from doubt and the statement in Exh. 30 is to the effect that at the time of incident, P.W.5 was not in the house. So, in view of the inconsistency about the presence of the witnesses suggested from Exh. 30 and the conduct of the witnesses, it cannot be said with reasonable certainty that P.W.5 was present at the place of incident and that, he was told anything by deceased-Ms. Gitaben about the incident. In nutshell, we have noticed from the evidence of P.Ws. 1, 3 and 5 that neither of P.Ws. 1, 3 and 5 told about the presence of each other at the place of incident and deceased-Ms. Gitaben having made statements implicating the accused in their presence to either of the other witness.

17. As can be seen from the record, deceased-Ms. Gitaben made 7 dying declarations on 18.06.1992 i.e. the day of incident which are pressed by learned A.P.P. Mr. Soni as reliable so as to provide basis for convicting the accused persons which are as under:--

Oral dying declarations:

Written dying declarations:

18. Before considering the reliability and truthfulness of individual dying

declaration, we would place on record the physical and mental condition of deceased - Ms. Gitaben soon after the incident and during the time she alleged to have made declarations, as aforesaid. It is not deposed by any prosecution witnesses, more particularly, P.Ws. 1, 3 and 5 that when deceased - Ms. Gitaben made disclosure about incident, she was conscious and in a fit state of mind to say something about incident. From the medical papers, it is evident that deceased - Ms. Gitaben had 90% burns and severe burn injuries on neck and face. Admittedly, P.W.12-Executive Magistrate did not contact the doctor attending the patient or staff nurse before recording statement Exh. 42 and further, the said witness did not find it necessary to obtain certificate of the doctor about change, if any, in the mental and physical condition of the patient after 6:35 p.m. and he started recording statement Exh. 42. Perusal of Yadi Exh. 41, suggests endorsement therein reads:

19. It appears from dying declaration Exh. 42 that P.W.12 started recording the statement at 19:45 hrs. and concluded at 20:45 hrs. No attempt was made by him to know about mental and physical condition of the patient between 6:35 p.m. till about 20:45 hrs. when the patient had 90% 1st, 2nd and 3rd degree burns and whose general condition as per the case papers Exh. 54 was poor. From the case papers Exh. 54, it appears that since admission of deceased-Ms. Gitaben in the hospital, her condition did not improve even slightly till she succumbed to injuries at 7:30 a.m. on 22.06.1992. At or around the same time, P.W.8 recorded the complaint of deceased-Ms. Gitaben which ultimately admitted as dying declaration Exh. 30. It is pertinent to note that Exh. 30 purports to have thumb mark impression of deceased-Ms. Gitaben at three places whereas, Exh. 42 purports to have thumb mark impression of deceased-Ms. Gitaben at one place. The learned trial Judge noticed and found that all these thumb mark impressions could be seen with naked eyes to be absolutely clear. According to P.W.14 -Dr. Digant Kalidas Dixit, both the hands of deceased-Ms. Gitaben were 18% completely burnt from nail to shoulder and in case of burns less than one degree, lines on the hands would get disappear and the patient had burns between one degree to three degrees on both the hands. The learned trial Judge examined thumb mark impressions of deceased-Ms. Gitaben on Exhs. 30 and 42 with magnifying glass and found that the lines of the thumb are clearly visible in the thumb mark impressions obtained on declaration Exhs. 30 and 42. Whereas, according to P.W.14 -Dr. Digant Kalidas Dixit, the injuries on the hands were such that clear impression of thumb of the patient would not be possible.

20. The aforesaid condition of deceased-Ms. Gitaben has been noted by the learned trial Judge and also dealt with in great detail in his judgment. We will refer back to this aspect and its effect and also credibility of dying declarations when necessary.

21. Now, we will take up each of the dying declarations so as to examine which of the 7 dying declarations should be believed by us, along with the other prosecution witnesses, attending circumstances, condition of deceased at the

relevant time, medical evidence, genuineness of the statement made by deceased and possibility of the deceased being tutored or not, in view of the submissions made at bar by the learned advocates for the respective parties.

22. Upon analysis of dying declarations Exhs. 30 and 42, we have noticed the following difference in complaint Exh. 30 and dying declaration Exh. 42:--

23. Similarly, upon analysis of statement of deceased-Ms. Gitaben made at civil hospital before the doctor concerned, it is noticed that in the case papers Exh. 53 written by P.W.14 reads "H/O given by Pt. herself that "My engagement has been solemnized. That boy named Mr. Rajesh and his other four friends (Ms. Madhu, Ms. Manek, Mr. Anil and Mr. Prabhat) poured kerosene on me and burnt me by lighting a match-stick." The case papers Exh. 53 prepared at 4:50 p.m. and deceased-Ms. Gitaben shifted to the unit at 5:05 p.m. The case papers Exh. 54 suggest that deceased-Ms. Gitaben was conscious and history given by herself was alleged history "As a quarrel took place with my "Parnetar" (would be husband), he burnt me by pouring kerosene at 3:30 p.m. at Chharanagar, Ahmedabad on 18.06.1992." In the statement Exh. 54, the accused is not named nor is it suggested that more than one person were involved in the incident. The only reference is to "Parnetar" (would be husband). Both the statements made by deceased-Ms. Gitaben and recorded by the doctors on duty in case paper Exhs. 53 and 54, were made between 4:50 p.m. to 6:00 p.m. As far as the statement of deceased-Ms. Gitaben in case paper Exh. 54 is concerned, person before whom, the statement is alleged to have been made, namely, doctor or the staff nurse of the unit, has not been examined.

24. At this stage, we have seen as deposed by P.W.14-Dr. Digant Kalidas Dixit that right from the time, deceased-Ms. Gitaben was brought to the hospital and her general condition was poor. According to P.W.14, because of burns, deceased-Ms. Gitaben would inhale carbon dioxide and carbon monoxide which would lead to impurity in the blood and 2/3rd of the blood in human body goes to the brain and because of impurity of which, the patient's mental orientation would be affected. P.W.14 does not say in his evidence as to what time would be taken before the mental orientation of a patient, who has inhaled carbon dioxide and carbon monoxide would take effecting the mental orientation of such patient. In the case on hand, by the time, P.W.14 examined the patient and nearly 1 hour 20 minutes appeared to have taken/lapsed. Looking to the general condition of deceased-Ms. Gitaben, answers given to P.W.14, as reproduced above and also history given to the other doctor/staff nurse in the case papers Exh. 54, show that before P.W.14, deceased-Ms. Gitaben gave names of five accused persons whereas, to other doctor/staff nurse, she gave name of only her would be husband i.e. accused No. 1. This mental state or condition of deceased-Ms. Gitaben would raise suspicion about her mental orientation when she made such statement before P.W.14 and other doctor/staff nurse. Under these circumstances, P.W.14 though was aware that he was examining the medico-legal case and that it was part of his duty to make a note about consciousness

and state of mental orientation of the patient, the same has not been done in Exh. 53. So, in our opinion, note about consciousness and mental state would lend assurance that the patient was conscious and mentally fit and capable to make statement.

25. As recorded hereinabove, we have considered the oral dying declarations made by deceased-Ms. Gitaben before P.Ws. 1, 3 and 5 and we have found that neither P.Ws. 1, 3 and 5 tell about the presence of each other at the place of incident and deceased-Ms. Gitaben having made statements implicating the accused in their presence to either of the other witnesses. So, the evidence of P.Ws. 1, 3 and 5, does not inspire any confidence in our mind about their presence and such declaration having been made by deceased-Ms. Gitaben to any of them. At this stage, it is also relevant to consider the submission made by learned Senior Counsel Mr. Lakhani that material witnesses have been deliberately suppressed by the prosecution. In the statement Exh. 30, it is stated that upon raising cries to save, neighbours, namely, Mr. Ashok Bachu and Ms. Sunia Bachu etc. reached the place of incident. It appears from Exh. 30 that Mr. Ashok Bachu and Ms. Sunia Bachu probably the first to reach deceased-Ms. Gitaben after the incident. No other person has been specifically named in Exh. 30. It is also suggested in Exh. 30 that Mr. Ashok Bachu and Ms. Sunia Bachu extinguished the fire from the clothes put on by deceased-Ms. Gitaben by throwing quilt. So, it is quite likely that Mr. Ashok Bachu and Ms. Sunia Bachu must be the first to reach at the place of incident because their house is just opposite to the alleged place of incident. It is surprising that despite the specific reference to arrival of Mr. Ashok Bachu and Ms. Sunia Bachu, the Investigating Agency, for the reasons best known to it, did not think of making any inquiry from the said two persons and did not record their statements about incident. Even on the point of place of incident and culprits, they would be the best persons to throw light being the first reached at the place of incident, saw injured and extinguished her fire by throwing quilt. Similarly, P.W.1-Ms. Shakuntlaben Ratanbhai stated that she knew Mr. Navnitbhai Jayantilal Chhara and when she reached the place of incident, at that time, Mr. Navnitbhai had already come to the new house of Ms. Kapilaben (mother of deceased-Ms. Gitaben). So, it means that said Mr. Navnitbhai had reached the place of incident prior to P.W.1. Whereas, P.W.5- Mr. Dharmendra Harsanbhai Chhara has denied that he has seen Mr. Navnitbhai at the place of incident whereas, both the panchnamas Exhs. 23 and 38, show that it is Mr. Navnitbhai, who had shown the place of incident. No investigation was made as to how Mr. Navnitbhai was in know of the place of incident. Therefore, it was necessary on the part of the Investigating Agency to record his statement and cite him as witness. Thus, neither Mr. Ashok Bachu, Ms. Sunia Bachu nor Mr. Navnitbhai Jayantilal have been cited as witnesses nor their statements were recorded during the course of investigation. In our considered opinion, all these witnesses are the material witnesses and they could have thrown light on the point of place of incident and involvement of the culprits. Furthermore, we have noticed that all these three

persons appeared to be independent persons but, the prosecution has chosen to examine P.W.1, who is the maternal aunt, P.W.3, who is the nephew and P.W.5, who happens to be the brother of deceased-Ms. Gitaben though, independent persons were very much available. So, we may conclude that the prosecution has suppressed the material independent witnesses and has examined the witnesses to suit its purpose.

26. Upon our reassessment, reanalysis and re-appreciation of evidence as a whole, though deceased-Ms. Gitaben made 7 dying declarations, we do not find it proper and legal to act solely on the basis of written dying declarations Exhs. 30, 42, 53 and 54 and oral declarations made either before P.Ws. 1, 3 or 5 without any corroboration. We have noticed lot of inconsistencies and contradictory declarations which are at variance to each other to a larger extent. We have not found reliable evidence to infer that deceased-Ms. Gitaben was in the state of mental orientation to give the statement and further, dying declarations Exhs. 30 and 42 cannot be conclusively said to bear thumb mark impression of deceased-Ms. Gitaben, whose both hands were completely burnt from nail to shoulder. The dying declarations relied upon by the prosecution are neither reliable, truthful nor free from any embellishment. Learned A.P.P. Mr. Soni has relied upon various case-laws on the subject of dying declaration but, none of the cases cited by him is helpful to the prosecution in view of the peculiar facts and circumstances of the present case and evidence adduced on record. The Hon"ble Apex Court, in the cases cited at bar, relied upon dying declaration in view of the facts and circumstances of the case before the Hon"ble Apex Court but, upon analysis of evidence on record, we do not find that any of the cases cited at bar by learned A.P.P. Mr. Soni is applicable to the case on hand, on facts. Therefore, we do not find it necessary to narrate the facts of each case cited at bar and to distinguish the same with the facts of the present case and thus, none of the cases cited at bar by the learned A.P.P. is helpful to the prosecution.

27. Reliance placed by learned A.P.P. Mr. Soni on the circumstances of P.Ws. 3 and 5 having seen accused Nos. 1 to 5 running away immediately after the incident from the place of occurrence is not helpful in any manner to the prosecution case. It may be noted here that in the statement Exh. 30, it is stated by deceased-Ms. Gitaben that on raising shouts, her neighbours Mr. Ashok Bachu and Ms. Sunia Bachu reached the place of occurrence and they extinguished the fire from her clothes. We have also recorded the evidence of P.Ws. 3 and 5 in respect of the other aspects of the case, more particularly, their respective conduct after the incident. Therefore, circumstances relied on by the prosecution are not supported by any trustworthy and conclusive evidence, as recorded hereinabove.

28. Learned A.P.P. Mr. Soni gave much emphasis upon the report of F.S.L. inasmuch as smell of kerosene from the clothes of accused Nos. 1, 2 and 4 was found and hairs recovered from the hands of the accused persons were found damaged due to burn. We are not convinced or inclined to accept the evidence in

the form of F.S.L. Report for the simple reason that the prosecution has not proved either arrest panchnama, panchnama of seizure of clothes or panchnama of recovery of hair by leading proper evidence nor the panchas were examined.

29. So, in view of our re-appreciation of evidence, it stands proved that deceased-Ms. Gitaben died homicidal death as she sustained 90% burn injuries at 3:30 p.m. on 18.06.1992. But, the prosecution has not been able to establish the new house of Mr. Harsan Lakha to be the place of incident and, therefore, it does not lead us to believe that the incident took place only in the new house of Mr. Harsan Lakha. Therefore, possibility of incident having taken place in the residential house of Mr. Harsan Lakha cannot be ruled out. The evidence do not permit us to rely upon dying declaration Exhs. 30 and 42 having borne thumb mark impressions of deceased-Ms. Gitaben and also answer to question No. 10 having been obtained by putting questions for explanations and P.W.12-Mr. Udesing Karshanbhai Vaghela interpreting the answers given by deceased-Ms. Gitaben and writing in his own way would create doubt and would not inspire us to hold that dying declaration Exhs. 30 and 42, for the reasons recorded hereinabove and length of the statement, not free from doubt. Looking to the condition of deceased-Ms. Gitaben when she was brought to the civil hospital, we have noticed that she might or might not be in a state of mental orientation to give the statement and, more particularly, she made inconsistent statements in the history of medical case papers vide Exhs. 53 and 54 and, therefore, corroboration to the statement made before P.W.14 was necessary. In addition to it, oral dying declarations made before P.Ws. 1, 3 and 5 are not found reliable or trustworthy for the reasons recorded hereinabove and inconsistency in Exhs. 30 and 42 and other evidence on record. Therefore, we cannot act upon such evidence without corroboration and non-examination of material witness would render the prosecution version not free from reasonable doubt. Hence, the learned trial Judge has, on appreciation of evidence, rightly gave benefit of doubt to the respondents - accused and we concur with the view taken by the learned trial Judge and thus, we find no merit in the present appeal as reasons assigned by the learned trial Judge are neither unreasonable, perverse, based on no evidence nor any illegality is committed on any question involved in the case on hand.

30. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi Vs. State of Gujarat, (1996) 4 AD 205 : AIR 1996 SC 2035 : (1996) CriLJ 2867 : (1996) 2 Crimes 194 : (1996) 6 JT 79 : (1996) 4 SCALE 185 : (1996) 9 SCC 225 : (1996) 2 SCR 265 Supp . In the instant case, the learned A.P.P. has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

31. In the case of Ram Kumar Vs. State of Haryana, AIR 1995 SC 280 : (1994) CriLJ 3836 : (1994) 3 Crimes 633 : (1994) 6 JT 502 : (1994) 4 SCALE 484 : (1995) 1 SCC 248 : (1994) 4 SCR 335 Supp , Supreme Court has held as under:

"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."

32. It is well settled principle of law that if two views are possible, the appellate court should not disturb the finding of acquittal recorded by the trial court unless there are compelling reasons to do so. In this regard, broad proposition of law laid down by the Honourable Apex Court in the case of Brahm Swaroop and Another Vs. State of U.P., AIR 2011 SC 280 : (2011) CriLJ 306 : (2010) 11 JT 437 : (2010) 11 SCALE 443 : (2011) 6 SCC 288 : (2011) 2 SCC(Cri) 923 : (2010) 10 UJ 4853 : (2010) AIRSCW 6704 : (2010) 7 Supreme 549 more particularly, paragraph 38 is relevant for the disposal of this appeal. Therefore, the same is reproduced hereinbelow:

"38. 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 with the decision of the trial court in a routine manner, where the other view is possible should be avoided, unless there are good reasons for such interference."

33. It may be noted that this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned trial Judge. As this Court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for acquittal and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial Judge and this is so, in view

of the decisions rendered by the Hon''ble Supreme Court in the case of Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, AIR 1967 SC 1124 : (1967) 1 SCR 93 and State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981) 2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 .

34. On overall reassessment and re-appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned trial Judge for acquitting respondent-accused. Suffice it to say that the learned trial Judge has given cogent and convincing reasons for acquitting the respondent-accused and the learned A.P.P. has failed to dislodge the reasons given by the learned trial Judge and convince this Court to take a view contrary to the one taken by the learned Judge.

35. For the foregoing discussion, it is not possible to sign the judgment of conviction by reversing the order of acquittal passed by the learned trial Judge and, therefore, appeal preferred at the instance of the State deserves to be dismissed and is accordingly, dismissed. Since the respondents-accused are on bail, their bail bonds shall stand cancelled.