

**(2009) 10 GUJ CK 0014**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 617 of 1999**

State of Gujarat

APPELLANT

Vs

Shivabhai Mangalabhai and Others

RESPONDENT

**Date of Decision :** 29-10-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 378  
Penal Code, 1860 (IPC) — Section 114, 143, 147, 148, 149

**Citation :** (2009) 10 GUJ CK 0014

**Hon'ble Judges :** Z.K. Saiyed, J

**Bench :** Single Bench

**Advocate :** H.L. Jani, APP 1, for the Appellant; Roopal R. Patel, for Opponents 1-5, for the Respondent

**Final Decision :** Dismissed

## Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 4.5.1999 passed by the learned Judicial Magistrate, Limdi in Criminal Case No. 225 of 1991, whereby the accused has been acquitted of the charges leveled against him.

2. The brief facts of the prosecution case are as under:

2.1 As per the case of the prosecution, on 17.8.1990, at about 21:00 hrs. , the accused have formed unlawful assembly and accused No. 2 inflicted blow of sword to witness Lavji Ramji and caused injuries on fingers, accused No. 1 has inflicted blow of dharia on the head of the complainant and caused fatal injuries, accused No. 4 had inflicted blow of knife to witness Valji Ramji and caused injuries and accused No. 3 and 5 inflicted numbers of blows of stick to witness Ramjibhai Mangala and Hari Dungar and thereby committed offence with which they are charged.

2.2 Therefore, a Criminal Case with respect to the aforesaid offence was filed

against the learned Judicial Magistrate, Limbdi, for the offences punishable under Sections 143, 147, 148, 149, 326, 232, 324, 114 of the Indian Penal Code. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondents were charged.

2.3 To prove the case against the present accused, the prosecution has examined, in all 16 witnesses and also produced documentary evidence.

2.4 At the end of trial, after hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondents of all the charges leveled against him by judgment and order dated 4.5.1999.

2.4 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned trial Court, the appellant State has preferred the present appeal.

3. It was contended by learned APP Mr. H.L. Jani that the judgment and order of the learned Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present respondent. Learned APP has also taken this Court through the oral as well as the entire documentary evidence.

4. 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 Apex Court in a catena of decisions. In the case of *M.S. Narayana Menon @ Mani Vs. State of Kerala and Another*, the Apex Court has narrated about the powers of the High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex 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 judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

4.1 Even in a recent decision of the Apex Court in the case of *State of Goa v. Sanjay Thakran and 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 judgment 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 re-appreciate 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.

4.2 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR 2007 SCW 5553 and in Girja Prasad (Dead) by LRs v. State of MP reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5. I have gone through the judgment and order passed by the trial court. I 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. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Overtake is not also proved beyond reasonable doubt. Presence of the respondents was also doubtful. Before the learned Judge, the material evidence regarding injury and medical evidence is totally contrary to the version of the oral evidence of witnesses.

6. Mr. H.L. Jani, 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 illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

7. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondents of the charges leveled against him.

8. I find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

9. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is required to be dismissed.

10. In view of the aforesaid observation, appeal fails and is hereby dismissed. Bail bond, if any, stands cancelled.