
(2025) 11 GUJ CK 1848
In the Gujarat High Court
Case No : R/Criminal Appeal No. 184 Of 2001

State Of Gujarat	Vs	APPELLANT
Devkaran Surabhai Thakor & Ors		RESPONDENT

Date of Decision : 19-11-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 114, 307, 323, 324, 325, 504
Bombay Police Act, 1951 — Section 135
Code Of Criminal Procedure, 1973 — Section 313, 378

Citation : (2025) 11 GUJ CK 1848

Hon'ble Judges : Ilesh J. Vora, J;R. T. Vachhani, J

Bench : Division Bench

Advocate : Maithili Mehta

Final Decision : Dismissed

Judgement

Ilesh J. Vora, J

1. Here is the Appeal by the State against the judgment and order of acquittal.
2. Being dissatisfied by the judgment and order passed by the learned Sessions Judge, Deesa, Palanpur, passed in Sessions Case No.123 of 1999, dated 01.12.2000, acquitting the respondents from the offence under Sections 307, 323, 324, 325, 504, 114 and 34 of the IPC and Section 135 of Bombay Police Act, the State has preferred instant appeal under Section 378 of the Cr.P.C.
3. This Court has heard Ms.Maithili Mehta, learned Additional Public Prosecutor. Though served, none appears for and on behalf of the respondent-accused.
4. Brief facts giving rise to file the present appeal are that, the complainant party and accused belong to one family and residing in the same area of Village: Radhanpur. There was a grievance on the part of the accused that, they suffered injustice on the aspect of partition of land. On 06.09.1998 at about 9:00 p.m., one Lakhubhai raising dispute of partition of the land, hurled abusive and the complainant party requested him not to hurled abusive and on that issue, fight

arose between the parties, as a result, Ganpat Viram bite the complainant on his ear and after hearing the shouting, the accused-respondents came at the place of incident in support of Ganpat Viram and during the scuffle, the accused Devukaran gave a stab wound on the head of Viram Lakhamji and witness Ganesh Viram was assaulted with stick by accused Bhagwan Thakor and the accused Madhu Thakor gave a bite on the lips of the complainant. In these background facts, the FIR being disclosed for the attempt to murder and causing voluntary injuries to the complainant and witnesses against three persons and at the end of investigation, they were chargesheeted and put on trial.

5. In the course of trial, the prosecution adduced the following oral as well as documentary evidence in support of his case:

Oral evidence - 14

PW 1 – Exh.8

Ganpatbhai Virmbhai Thakor, Complainant

PW 2 – Exh.11

Ganeshbhai Virmbhai

PW 3 – Exh.12

Kantibhai Mandas

PW 4 – Exh.15

Dr. Kishorkumar Karsanlal Panchal, Medical officer

PW 5 – Exh.23

Ambabhai Dharmabhai Pandya, Panch witness

PW 6 – Exh.25

Popatbhai Hirabhai, Panch witness

PW 7 – Exh.26

Narsangji Nagji, Panch witness

PW 8 – Exh.28

Dr. Mahesh Ratilal Jivrani, Medical officer

PW 9 – Exh.33

Raichandji Kalaji, Panch witness

PW 10 – Exh.34

Virmbhai Lavjibhai

PW 11 – Exh.36

Sardarbhai Lavjibhai Karanbhm, PSI

PW 12 – Exh.41

Rupaji ditaji

PW 13 – Exh.44

Ranjitsinh Hadhisinh Jadeja, PSI

PW 14 – Exh.50

Dr. Sureshbhai Minbhai Nayak

Documentary evidence - 14

Exh.9

Complaint

Exh.10

Panchnama of place of offence

Exh.13

Panchnama of state of body of accused Devkaran

Exh.14

Panchnama of state of body of accused Madhuben

Exh.16

Injury certificate of Virmbhai Lavjibhai

Exh.29

Injury certificate of Kanti Mandas

Exh.30

Injury certificate of Ganesh Virm

Exh.31

Injury certificate of Ganpat Virm

Exh.32

Yadi for treatment of injured by Radhanpur police to

Radhanpur medical officer

Exh.35

Panchnama of state of body of Virmbhai Lavjibhai

Exh.37

Order for investigation

Exh.38

Panchnama of state of body of Bhagwanbhai Surabhai

Exh.17

Yadi by Raghanpur PSO to Medical officer Raghanpur

Exh.24

Article Knife

6. On conclusion of oral evidence, the trial Court recorded further statements of the accused as provided under Section 313 of the Code, wherein, they claimed their innocence.

7. The learned Sessions Judge after appreciating and examining the oral as well as documentary evidence acquitted the accused herein of all charges as the trial court found major contradictions on the aspect of injuries and role attributed to the accused herein.

8. In view of the aforesaid facts and circumstances, this acquittal appeal has been preferred by the State.

9. Oral Evidence adduced by the prosecution:

9.1 Ganpat Virambhai (PW.1)

This witness being an injured witness has stated in his chief examination on the line of the FIR. The witness has stated that, Lakhu Sura raising the dispute of land, came at his house and he was provoked himself and gave a bite on his ear and thereafter, the respondents – accused came in support of Lakhu Sura and assaulted his father and witnesses.

9.2 Ganesh Viram (PW.2):

The witness in his chief – examination, stated that, the accused assaulted his father and also gave a stick blow on his hand and leg because Lakhu Sura by hurling abusive on the issue of land, raised the dispute and in his support, the accused came at the place and assaulted them.

9.3 Kantibhai Mandas Thakor (PW.3):

This witness has stated that in the said incident, he was assaulted by Bhagwan Sura and he could not identify the weapon which allegedly used by Bhagwan Sura.

9.4 Dr. Kishor Panchal (PW.4):

This doctor was on duty with the Radhanpur CHC and he had given primary treatment to Virambhai and upon examination, he found "V" shape bond deep

wound in the nature of CLW. According to opinion of the doctor, the injuries could be possible by blunt substance and also possible by knife.

9.5 Dr.Mahesh Jivrani (PW:8):

This witness was on duty with Radhanpur CHC and had examined injured Kantimandas, Ganesh Virambhai. The doctor had found the injury of abrasion on the body of Kantimandas, whereas so far Ganesh Viram is concerned, the abrasion injury being found on the body of Ganesh.

9.6 Viram Lavjibhai (PW:10):

The witness has stated that in a family dispute, he sustained stabbed injuries allegedly inflicted by Devkaran Sura and he sustained head injuries and had taken treatment at the Government Hospital. In the cross examination, witness has admitted that Lakhusura was died on the same occurrence and the murder case is going on against his sons.

9.7 Sardar Lavjibhai Karan (PW:11):

The witness being Investigating Officer of the case has stated in detail about the investigation undertaken by him. In the cross examination, he admitted that in the same incident, Lakhusura being killed and the FIR of murder being registered against the complainant party. On the aspect of contradiction and improvement with regard to use of weapon and allegedly used by the respective accused being taken on record.

10. Ms.Maithili Mehta, learned Additional Public Prosecutor appearing for the appellant – State, assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material. The injured witness and eyewitnesses have categorically stated that the accused Devkaran stabbed Viramlavji by the accused Devkaran and the same has been corroborated by the medical evidence. Despite of clear evidence, proving the ingredient of Section 307 of IPC, the Trial Court disbelieved the charge of attempt to murder and ignored and discarded the substantial evidence. It is further submitted that the accused gave a bite injury to the complainant and on this aspect, there is no contradiction in the deposition of the witnesses and police statement, the Trial Court ignoring the evidence of injured eyewitness gave a clean chit to all the accused and acquitted them from all the charges.

11. In such circumstances, as referred above, it has been submitted that while acquitting the respondent accused, the trial Court has discarded and ignored the truthful, reliable and acceptable evidence and as such, no cogent reasons being assigned while discarding such evidence. Therefore, it is submitted that the conclusion of acquittal recorded by the Trial Court is contrary to the evidence on record and upon erroneous understanding of law. Thus, it is prayed that the prosecution has succeeded in proving the charge against the respondents accused and the judgment and order of acquittal be set aside and accused may

be convicted and sentenced for the offence as referred above.

12. Before proceeding to address the rival submissions, we would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. 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 judgment of acquittal. The Appellate Court should bare in mind the presence of innocence of the accused and further that, the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there are reasons for interference.

13. In the present case the issue falls for our consideration as to whether the trial Court was justified in acquitting the accused?

14. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court. In the case on hand, Viramlavji – PW:10 had sustained and knife injury on his head. All the witnesses have categorically stated about the role attributed to the accused Devkaran. The Trial Court did not have believed the charge of Section 307 and/or Section 324 of IPC, so far as the injury sustained by PW:10 is concerned. In the facts of the case, the opinion given by medical witnesses rule out all possibilities whatsoever injuries taking place in the manner alleged by eyewitnesses and on that ground, the testimony of eyewitnesses being thrown out on the ground of alleged inconsistency between it and medical evidence. We have carefully examined the findings recorded by the Trial Court. We are in complete agreement with the conclusion arrived at by the Trial Court as the oral evidence is totally irreconcilable with the medical evidence. So far evidence of injured eyewitness Ganpat Virambhai and other witnesses are concerned, their evidence on the aspect of injuries and role attributed to the accused in causing the injury on the particular part of the body having not been believed by the Trial Court. We have minutely examined the evidence of eyewitnesses who have received the simple injuries and after careful examination of it, they had not specifically stated that on which part of the body, the blows were given by the accused. It is required to be noted that the one of the relatives of the accused Lakhusura being killed by the complainant party in the same incident and trial at the relevant time was pending against the complainant party and witnesses. Thus, in our opinion, we do not find any perversity in the findings recorded by the Trial Court and view taken by the Trial Court seems to be reasonable and plausible view.

15. Thus, therefore, the view of the Trial Court as to the credibility of the witnesses is possible and plausible view and the Trial Court while analyzing the evidence has assigned cogent and sound reasons and therefore, findings of acquittal are reasonable and based on the evidence on record and we do not find any perversity in the findings of acquittal so as to interfere. Thus, in our considered opinion, the Trial Court was justified in acquitting the accused and we are in complete agreement with the findings, ultimate conclusion and resultant

order of acquittal recorded by the Court below and hence finds no reason to interfere with the same.

16. With the observations as aforesaid, the appeal is accordingly dismissed. The Registry is directed to send back the R & P to the Trial Court. Bail bonds are cancelled, if any, and surety is discharged.