

(2025) 12 GUJ CK 1776
In the Gujarat High Court
Case No : R/Criminal Appeal No. 2444 Of 2009

State Of Gujarat	Vs	APPELLANT
Mukesh Himmatlal Rathod & Ors		RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 378, 378(1)(3), 379
Indian Penal Code, 1860 — Section 399, 401, 402
Bombay Police Act, 1951 — Section 135(1)

Citation : (2025) 12 GUJ CK 1776

Hon'ble Judges : Sanjeev J.Thaker, J

Bench : Single Bench

Advocate : Yuvraj Brahmabhatt, Nishith P Thakkar

Final Decision : Dismissed

Judgement

Sanjeev J.Thaker, J

1.1 This appeal is filed by the appellant – State under Section 378(1)(3) of the Criminal procedure Code, 1973 (the Code), against the judgment and order dated 07.09.2009, passed by the Additional Sessions Judge, Court no.15, Ahmedabad in Sessions Case No.45 of 2007, acquitting the respondents - original accused for the offence punishable under Sections 399, 401, 402 of the Indian Penal Code, 1860 (IPC), Section 135(1) of the Bombay Police Act.

1.2 The Coordinate Bench of this Court by an order dated 05.07.2025 has passed order that in view of the fact that respondent no.4 has expired, the appeal abates against respondent no.4, moreover, it has also come on record that respondent nos.3 and 5 have also expired and therefore the present appeal proceeded against respondent nos.1 and 2 in view of the order passed by the Coordinate Bench dated 05.07.2025.

2.1 The brief facts of the prosecution case are that the complainant P.S.I. Mr.J.M.Bharwad, Striking Force, Sector-2, Ahmedabad while investigating the

offence committed in respect of property, received secret information from his informant to the effect that one party would pass through industrial estate, State Bank of India, Bapunagar with a huge amount and persons of Chhara Gang would loot him dashing the scooter.

2.2. The informant gave description of these persons of Chhara Gang and on receiving the information the police along with squad persons in Government as well as private vehicle kept watch. When the police reached near bank in private vehicle, informant again called and police found described persons. Therefore, the complainant called two panchas and made them understand about the facts, who, in turn, shown their willingness for being panchas.

2.3. Thereafter, the complainant asked squad persons to catch those Gang persons. However, the police arrested three persons and other two accused ran away on scooter, which was without number plate.

The police person followed those two accused, but could not and succeed. Thereafter, in the presence of panchas, the accused were seized and searched and the inquest panchnama was drawn. The first accused person disclosed himself as Mukesh Himmatlal Rathod, who was armed with sharp steel knife, accused no. 2 disclosed himself as Deepak Arjun Sonkar, who was also having knife kept in wood cover and the third accused disclosed him as Kapsion Ratilal Netalkar (Chhara), however, when this accused was searched nothing could be found. Thereafter, the accused were interrogated and during the interrogation they disclosed names of other accused who were to commit loot as per the information.

2.4. On filing of the complaint with Bapunagar Police Station, offence was registered and statements of accused were recorded. Further, investigation was handed over to P.I. Mr.Chaudhari. At the end of the investigation, after being satisfied that there are ample evidences and material against the accused-respondents, he prepared charge-sheet and submitted the same on 03.01.2005 before the the Metropolitan Magistrate, Ahmedabad. The Metropolitan Magistrate, Ahmedabad as per Section 209 of the Code of Criminal Procedure committed the case to the Sessions Court as the offence was exclusively sessions triable and ultimately case was transferred to the court for its final disposal.

3. After usual investigation, sufficient prima facie evidence was undefined found against the accused person/s and therefore charge-sheet was filed in the competent criminal Court. Since the offence alleged against the accused person/s was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court where it came to be registered as Sessions Case No.45 of 2007. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution has examined the witnesses and also produced various documentary evidence before the trial Court, which are described in the impugned judgment.

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which they were charged, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. Learned APP for the appellant – State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by the learned trial Court and has submitted that the learned trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. I have heard the submissions made by the learned advocates for the respective parties and also gone through the oral and documentary evidence, independently and dispassionately.

9. In the aforesaid background, considering the oral as well as documentary evidence on record, and considering the impugned judgment and order of the Trial Court, the following aspects weighed with by the Court:

9.1. The Trial Court has held that, no independent witness has been examined. Moreover, the guard who was present at the place of incident has also not been examined by the prosecution.

9.2. The witness vide Exhibit -13 Mukesh Mangalal Patel has also not supported the prosecution's Case. The P.W.-Jagubhai Malabhai Bharwad who has been examined vide Exhibit-28 has also stated that he had information, though the said incident has happened in an open place, where there were lot of persons but no independent witness has been examined by the prosecution.

9.3. In the entire case, a scooter has been used, the alleged scooter has not been recovered by the prosecution. The prosecution has not produced any

evidence of the alleged scooter and or the fact that the other accused ran away in a rickshaw.

9.4. Moreover, the other three accused ran away from the incident and the prosecution has tried to prove their case only by the Police Witness. The P.W. Shankarbhai Chaudhari and Babubhai Chaudhari who had completed the further investigation have also not been able to recover any other evidence with respect to the said incident.

10. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

11. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

12. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

"... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary* (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

13. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

14. In the case of *Ram Kumar v. State of Haryana*, reported in AIR 1995 SC 280, 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."

15. 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 trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the 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.

16. In the case of *Chandrappa v. State of Karnataka*, reported in (2007) 4 SCC 415, the Hon'ble Apex Court has observed as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed

and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

17. 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, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

18. In view of above facts and circumstances of the case, on our careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondents - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

19. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove its case and the same deserves to be dismissed and is dismissed, accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.