

(2025) 11 GUJ CK 1849
In the Gujarat High Court
Case No : R/Criminal Appeal No. 212 Of 2001

State Of Gujarat	Vs	APPELLANT
Parbatsinh Chhagansinh Zala		RESPONDENT

Date of Decision : 19-11-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 323, 324, 504
Code Of Criminal Procedure, 1973 — Section 313, 378

Citation : (2025) 11 GUJ CK 1849

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

Bench : Division Bench

Advocate : Maithili Mehta, Harnish V Darji

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, Himmatnagar, Sabarkantha, passed in Sessions Case No.1 of 1999, dated 06.12.2000, acquitting the respondent from the offence under Sections 323, 324, 307 and 504 of the IPC, 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, learned advocate Mr.Harnish Darji, for the respective parties.
4. Brief facts giving rise to file the present Appeal are that, the complainant Laxmansinh Jagatsinh – PW:1 and accused herein being a farmer knowing each other and according to the prosecution case, the accused had illegally trespassed into farm of the complainant and damaged his crops and that incident was prior to the registration of the FIR. The complainant, on 21.09.1991, he was in his farm and doing agricultural work and at that time, the respondent accused came

to the field where the complainant scolded him about the earlier occasion of taking away the crops and illegally entered into the field. The matter escalated further and after heated exchange of words, the respondent accused stabbed the complainant with the knife. On account of hue and cry, the respondent accused fled away. The complainant injured taken to the Talod CHC and after preliminary treatment, he was referred to the higher center at Ahmedabad. The complainant admitted in the Civil Hospital and on the next day, he was operated for the injury and on the basis of registration of MLC case, he lodged an FIR against the accused. The FIR came to be registered with Talod Police Station for the offences punishable under Sections 323, 324, 504 of IPC and after filing the chargesheet, and upon addition of Section 307 of IPC, the case was committed to the Court of Sessions at Himmatnagar.

5. The learned Sessions Judge, Sabarkantha at Himmatgar framed charge under Sections 307, 323, 324 and 504 of IPC, against the accused to which, he pleaded not guilty and claimed trial.

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

Oral evidence - 10

PW 1 – Exh.10

Laxmansinh Jagatsinh Thakor, Complainant

PW 2 – Exh.12

Arajsinh Jagatsinh Thakor

PW 3 – Exh.13

Mohabatji Mohanji Solanki

PW 4 – Exh.14

Amarsinh Jagatsinh Thakor

PW 5 – Exh.15

Balaji Laxmanji Solanki, Panch witness

PW 6 – Exh.17

Nathusinh Fatehsinh Zala

PW 7 – Exh.18

Jagatsinh Dursinh Rathod

PW 8 – Exh.20

Dr. Deepakbhai Purushottamdas Rathod, Medical officer

PW 9 – Exh.22

Dr. Vinodkumar Lajjaram Gupta, Medical officer

PW 10 – Exh.25

Ganpatsinh Vakhatsinh Chouhan, IO

Documentary evidence - 6

Exh.11

Complaint

Exh.16

Panchnama of place of offence

Exh.21

Injury certificate of complainant by Dr. Rathod

Exh.23

Case papers of Injured person at Ahmedabad Civil hospital

Exh.24

Certificate by Doctor at Ahmedabad Civil hospital

Exh.26

Panchnama of recovery of article

7. 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.

8. The learned Sessions Judge after appreciating and examining the oral as well as documentary evidence acquitted the accused herein for the offence under Sections 307, 504 of IPC, and convicted under Sections 323, 324 of the IPC.

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

10. Oral Evidence adduced by the prosecution:

10.1 Laxmansinh Jagatsinh (PW:1):

This witness being an injured witness has stated in his chief examination on the line of the FIR at Exh.11. The witness has stated that prior to the incident, the accused illegally entered into his field and took away the crops for which he had cautioned him. The witness has further stated that on 21.09.1991 at about 06:30 p.m., when he was in the field doing agricultural process, the accused came before him and entered into heated exchange of words on the aspect of earlier

incident and took out his knife and stabbed him on his stomach. In the cross examination, nothing being brought on record about the credibility of the witness.

10.2 Arjansinh Thakore, Mohabbatji Solanki and Amarsinh Thakore (Pws:2, 3 and 4):

These witnesses have supported to the prosecution case and have stated that in their presence, the accused stabbed the complainant.

10.3 Dr.Deepak Rathor (PW:8):

This witness was serving as Medial Officer with the private trust hospital at Talod and according to him, the complainant was brought before him for treatment and during the treatment, he found a stab wound in the abdomen and he was referred to Ahmedabad for further treatment.

10.4 Dr.Vinod Gupta (PW:9):

This doctor was on duty with the civil hospital at Ahmedabad and he performed operation on the complainant as there was injury found in the abdomen.

11. 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 stabbed in the abdomen and as per the medical evidence, the injury was serious and it was likely to cause death. 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.

12. 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.

13. Mr.Harnish Darji, has submitted that the High Court in a case of Appeal against the acquittal, can interfere only when there are compelling substantial reasons for doing so and more particularly, the findings are without reasons and unreasonable and contrary to the evidence. In the facts of the present case, the eyewitnesses are related and interested witnesses and prior to the FIR, admittedly, there was a dispute about the illegally trespass into field and taking away the crops of the complainant. Thus, therefore, the intention to kill has not been established and therefore, the Trial Court has rightly taken a view that the

prosecution failed to prove the charge of attempt to murder beyond reasonable doubt.

14. In such circumstances, referred to above, learned counsel appearing for the respondents accused, has submitted that the Trial Court while discarding the evidence of oral testimonies of the witnesses have assigned cogent and sufficient reasons while acquitting the accused and therefore, the judgment of acquittal passed is well reasoned, legally sustainable and does not suffer any infirmity warranting interference by this Court.

15. 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.

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

17. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court. The respondent accused was convicted and sentenced for the offences under Sections 323, 324 of the IPC. So far as charge of attempt is concerned, the Trial Court has disbelieved the charge. In order to appreciate the contentions, it is relevant to refer the provisions of Section 307 which reads as under:

"307. Attempt to murder.--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life convicts.--When any person of ending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

18. In order to prove the charge of attempt to murder, the prosecution, is obliged to prove the essential ingredients of the offence, which are :

(i) that the death of a human being was attempted:

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused and

(iii) that such act was done with the intention of causing death or that it was

done with the intention of causing such bodily injury as:

(a) the accused knew to be likely to cause death or

(b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury. The first part makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years. The second part makes such an act punishable with imprisonment for life if hurt is caused thereby. Thus even if the act does not cause any injury it is punishable with imprisonment up to 10 years. If it does cause an injury and therefore hurt, it is punishable with imprisonment for life."

A bare reading of the provision would provide that to justify the conviction under Section 307, it is necessary to prove that the act was done with such intention or knowledge and under such circumstances that, if he or she by that act cause death. In the case of Hari Singh Vs. Sukhbir Singh (1988 (4) SCC 551), the Supreme Court held that while examining whether a case of commission of offence under Section 307 is made out, the Court is required to see whether the act, irrespective of its result, was done with the intention or knowledge or under circumstances mentioned in the section. It is also settled that, the proof of grievous or life threatening hurt is not sine-qua-none. The intention of the accused can be gathered from the actual injury, nature of the weapon used, manner in which the incident took place, motive for the crime, severity of the blow, the part of body where the injuries inflicted. In addition to that, for the conviction under Section 307, more important has been given to mens-rea.

19. In AIR 1982 SC 2013, Kundan Singh Vs. State of Punjab, the Hon'ble Apex Court has observed as under:- "We are of the view that having regard to the facts and circumstances of the present case and particularly in view of the fact that P.W. 6 and P.W. 7 were in the courtyard of their house when the appellant fired gun shots and he could not, therefore, have intended to injure them, the conviction of the appellant under Section 307, I.P.C. was not justified. We think that the conviction of the appellant could be maintained only under Section 324 of the I.P.C. since P.W. 6 and P.W. 7 received simple injuries. We accordingly allow the appeal and alter the conviction of the appellant to one under Section 324 of the I.P.C. for causing simple injuries to P.W. 6 and P.W. 7 and since the appellant has already suffered imprisonment for about 16 months, we direct that the sentence imposed on the appellant be reduced to that already undergone by him and that he may be set at liberty forthwith."

20. The Apex Court in AIR 1996 SC 3236, Merambhai Punjabhai Khachar and others vs. State of Gujarat, wherein in an attempt to commit murder by fire-arm, victim has suffered a pallet injury, the Apex Court held that Section 307 I.P.C.

cannot be held to have been satisfied and the conviction was altered to Section 324 of IPC.

21. In *Ramesh vs. State of U.P.*, AIR 1992 SC 664, wherein the injury was found on the back of the injured. Accused was tried along with two other was convicted under Section 307/34 I.P.C. and sentenced to undergo rigorous imprisonment for four years, while the 9 two others were acquitted. The Apex Court altered from section 307 of IPC into Section 324 of I.P.C. and sentence was reduced to the period already undergone with fine of Rs. 3000/-, which was to be paid to the complainant as compensation.

22. The facts of this case are to be considered on the touchstone of the law which has been laid down by the Apex Court. In the case on hand, the injuries though serious one but the intention of the accused required to be considered as the complainant had alleged against the accused that he made a theft from his farm and on this ground, this scuffle took place and single knife blow being inflicted. In such circumstances, in our opinion, the ingredients of Section 307 are not satisfied. Thus, the prosecution evidence accepted as it is, the case against the accused does not travel beyond Section 324 of IPC for which the Trial Court has found guilty him and so far as sentence is concerned, neither the State nor the complainant have challenged it by preferring appropriate proceedings. 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.

23. 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.