

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 814 of 2003**

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR. JUSTICE M. R. MENGDEY
and
HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

Approved for Reporting	Yes	No

**STATE OF GUJARAT
Versus
GULABCHAND JOHRILAL JAYSWAL & ANR.**

Appearance:
PUBLIC PROSECUTOR for the Appellant(s) No. 1
MR ANKIT Y BACHANI(5424) for the Opponent(s)/Respondent(s) No. 2
UNSERVED EXPIRED (R) for the Opponent(s)/Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY
and
HONOURABLE MR.JUSTICE MOOL CHAND TYAGI
Date : 07/02/2026**

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE MOOL CHAND TYAGI)

1. The present Appeal is filed by the Appellant - State of Gujarat under the provisions of sub-sections (1) & (3) of Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter be referred to as Cr.P.C.*) challenging the Judgment dated 07.04.2003 passed by the learned Principal Judge, City Sessions Court No.1, Ahmedabad City (*hereinafter be referred to as the Ld. Trial Court / Ld. Sessions Judge*) in Sessions Case No.104 of 2002, whereby the Respondents herein were ordered to have been acquitted of the charges for the



offences punishable under Sections 143, 147, 148, 149, 188, 323 and 302 of the Indian Penal Code, 1860 (*hereinafter be referred to as IPC*) and Section 135(1) of the Bombay Police Act.

2. The facts and circumstances giving rise to the filing of the present appeal are as follows: During the months of February and March, 2002, communal riots broke out in the city of Ahmedabad. In the course of the said riots, persons belonging to one community attacked the properties of the other community and caused damage to both property and individuals. On 12.03.2002, one such incident occurred near Idga Masjid, wherein members of an unlawful mob entered the mosque, caused injuries to several persons, and ransacked the property. According to the prosecution case, the accused persons sprinkled kerosene upon the deceased and set him on fire, thereby causing his death.

3. Accordingly, FIR being I.C.R.No.107 of 2002 was lodged at Madhavpura Police Station, Ahmedabad City, and investigation was carried out and ultimately, charge-sheet came to be filed against the accused under Section 302 r/w Sections 143, 147, 148, 149, 188, 323 and 302 of the *IPC* and Section 135(1) of the Bombay Police Act before the Metropolitan Magistrate, Court No.17. As the case was exclusively triable by the Court of Sessions, learned Metropolitan Magistrate under Section 209 of the Cr.P.C. committed the said case to the Court of Sessions Court i.e. City Sessions Court, Ahmedabad, which came to be numbered as



Sessions Case No.104/2002.

4. On 13.09.2002, the learned Trial Court framed the charges at Exh.3 under Sections Sections 143, 147, 148, 149, 188, 323 and 302 of the *IPC* and Section 135(1) of the Bombay Police Act. Since, the accused did not plead guilty and claimed to be tried, they were tried for the said offences.

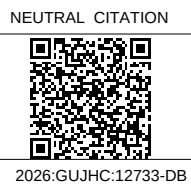
5. In order to bring the home the guilty of the accused, the prosecution has led following oral and documentary evidences:-

ORAL EVIDENCES

Sr.No.	P.W.NO.	WITNESS	Exh.
1.	1.	Deposition of Dr.Jayeshbhai Balwantsinh Rupala	10
2.	2.	Deposition of witness - Complainant - Kallubhai Abdullabhai Shaikh	13
3.	3.	Deposition of witness - Allauddin Abdula Shaikh	15
4.	4.	Deposition of witness - Mehboob Mohammadhanif Ghanchi	22
5.	5.	Deposition of witness - Investigating Officer - Girishchandra Chhaganlal Ravat	23

DOCUMENTARY EVIDENCES

Sr.No.	EXH	Description
1.	11.	P.M.No.436/02
2.	14.	Complaint
3.	16.	Panchnama of Scene of Offence
4.	17.	Panchnama of dead-body of unknown person
5.	18.	Panchnama of seizure of empty cartridges fired during police firing.
6.	19.	Notification of prohibition of weapon

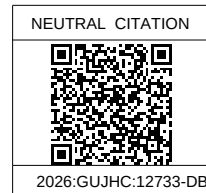


- 7. 20. Panchanama of
- 8. 25 Special Report

6. After recording all the evidences, statements of the accused under Section 313 of Cr.P.C., were recorded and all the incriminatory evidences were put to them. They denied all the incriminatory evidences and took the plea that they have been false implicated in the crime. Thereafter, the case was fixed for the evidence of accused persons, but they had not led any oral and/ or documentary evidences. Thereafter, hearing the arguments on behalf of the prosecution and the defence and having considered the arguments and evaluating the oral as well as documentary evidences, the Ld. ASJ acquitted all the accused of all the charges levelled against them by the Judgment dated 07.04.2003.

7. Being aggrieved by and dissatisfied with the judgment dated 07.04.2003 passed by the learned Sessions Judge, Ahmedabad, the appellant-State has preferred the present Criminal Appeal.

8. We have heard Mr. Tirthraj Pandya, learned APP for the appellant-State. Learned APP vehemently submitted that the learned Sessions Judge has not appreciated the oral testimony of witness-Allauddin Abdula Shaikh and witness-Mehboob Mohammadhanif Ghanchi and the Investigating Officer. He submitted that these witnesses have supported the case of prosecution. He further submitted that the Doctor has proved



the cause of death. Therefore, considering the testimony of these witnesses, the learned Sessions Judge ought to have convicted the accused persons/respondents herein. He further submitted that the impugned judgment is not sustainable. Therefore, the same is liable to be set aside and accused persons/respondents herein are to be held guilty.

9. In order to appreciate the submissions of learned APP, it would be apt to appreciate the oral as well as documentary evidence led by the prosecution before the learned Trial Court.

10. The prosecution has examined in all five witnesses. P.W.1 Dr. Jayeshbhai Balwantsinh Rupala, was examined at Exh.10. He deposed that he conducted the post-mortem examination of the dead body and proved the post-mortem note at Exh.11. He opined that the deceased died owing to burn injuries. According to him, the cause of death was shock resulting from extensive burns over the entire body. Thus, P.W.1 has established that the victim died due to burn injuries.

11. P.W.2, Kallubhai Abdulla Shaikh, was examined at Exh.13. He deposed that he lodged the complaint at Exh.14 in respect of the incident at the concerned police station. In his cross-examination, he admitted that the complaint was lodged after a delay of about 11 to 12 days. He further admitted that he lodged the complaint on the basis of information provided by the friends of the deceased, namely Mehboob Mohammadhanif Ghanchi and Jhamilbhai. He also admitted that prior to lodging



the complaint, he was not aware of the names of the accused persons and that he came to know their names only after filing the complaint. He further admitted that at the time of the incident, curfew was imposed in the city. He also stated that he had never seen accused Manoj prior to the incident and that he saw him for the first time in Court. The sum and substance of his deposition is that he is not an eye-witness to the incident and that the complaint is based on hearsay evidence. Therefore, no further detailed discussion of his testimony is required.

12. The prosecution has also examined P.W.3, Allauddin Abdul Shaikh, at Exh.15, who is the brother of the deceased. He is also not an eye-witness to the incident, and his deposition is based on hearsay evidence. Hence, no further discussion of his testimony is necessary.

13. The prosecution examined Mehboob Mohammadhanif Ghanchi as P.W.4 at Exh.22, who is projected as an eye-witness to the incident. He deposed that accused Gulab and his son set Yasin ablaze and thereafter fled from the place of occurrence. He further stated that the police arrived at the scene and used tear gas, following which the unlawful assembly was dispersed. He also deposed that he was assaulted by members of the unlawful assembly and sustained injuries on his back and head; however, he subsequently went home. In his cross-examination, he admitted that a group of about 200 to 250 persons had gathered at the place of



incident. He also admitted that although he sustained injuries, he did not seek any medical treatment. He further admitted that in his daily routine, he used to sleep at about 11:00 p.m. and wake up at 8:00 a.m., and that Jhamil, who was a rickshaw driver, also used to sleep at around 11:00 p.m. According to the prosecution case, the incident occurred at about 1:00 a.m., at a time when curfew had been imposed in the city. No explanation has come on record as to why this witness, his friend, and the deceased were present at the place of incident at such an hour, particularly when their usual time to retire for the night was 11:00 p.m. Further, in his examination-in-chief, he stated that accused Gulab caught hold of the victim while his son set the victim on fire. However, in his cross-examination, he changed his version and stated that accused Manoj caught hold of the victim and that Gulab set him on fire. He did not state in his cross-examination that the accused had brought kerosene with them or that members of the unlawful assembly were carrying kerosene in a Ken; however, he improved his version by later deposing that accused Gulab and Manoj were carrying kerosene. Thus, there are material contradictions between his examination-in-chief and cross-examination. The very presence of this witness at the place of incident appears doubtful, and his testimony does not inspire confidence. His subsequent conduct is also unnatural, inasmuch as he neither reported the incident to the police immediately nor sought medical treatment for the injuries allegedly sustained by him. The prosecution also examined P.W.5, Girishchandra Chhaganlal Ravat, the Investigating Officer, at Exh.23. He deposed that he conducted the



investigation and, upon completion thereof, filed the charge-sheet. In his cross-examination, he admitted that he was not aware from where the dead body was recovered. He further admitted that the inquest panchnama was drawn at the Civil Hospital and that the FIR was lodged after a delay of 11 to 12 days. He also admitted that there was no explanation on record for such delay. The panchnama of the place of incident was proved at Exh.16. A perusal thereof reveals that nothing incriminating was found or recorded at the scene. The inquest panchnama at Exh.17 indicates that it was drawn on 01.03.2002 at the Civil Hospital.

14. In light of the aforesaid evidence, the prosecution has failed to establish from where the dead body was recovered. The panchnama of the place of incident is devoid of any incriminating material, and the inquest panchnama was drawn at the Civil Hospital. P.Ws.2 and 3 are hearsay witnesses and not eye-witnesses to the incident. As regards P.W.4, there are material contradictions in his testimony, and his presence at the scene is doubtful. In these circumstances, the learned Sessions Judge has rightly appreciated and evaluated the evidence on record and correctly concluded that the prosecution has failed to prove the case beyond reasonable doubt. There is no infirmity in the impugned judgment and order and the learned Sessions Judge has rightly recorded the acquittal of all the accused persons.

15. It is settled proposition of law that 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. Further, 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 the accused are connected with the commission of the crime with which he is charged.

16. In the instance case, learned APP failed to point out any cogent and incriminating evidence against the accused persons, which may connect the accused persons with the commission of the offence beyond reasonable doubt. At this stage, it would be profitable to refer to the judgment of Apex Court in the case of **Chandrappa & Ors. Vs. State of Karnataka** reported in **2007 (4) SCC 415**. The relevant observations made in the said judgment are as under:-

“..... (1) An appellate Court has full power to review,



reappreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The [Code of Criminal Procedure](#), 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 emphasize 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 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. Applying the aforesaid principle as laid down by the Apex Court in the case of Chandrappa (*supra*), it is apparent on record that no credible evidence had been produced by the



prosecution, which may connect the accused persons in the alleged crime. The prosecution has miserably failed to prove the guilt of the accused persons beyond reasonable doubt. Thus, the Trial Court has not committed any error in appreciating the evidence on record and in acquitting the accused persons from the challenges levelled against him.

18. In these facts and circumstances, we are of the considered opinion that the learned Trial Judge committed no error in passing the impugned judgment and order. Hence, the present appeal deserves to be dismissed.

19. In the result, the appeal fails and is ***dismissed***. The judgment and order of the Trial Court dated **07.04.2003** stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. R & P be sent back to the concerned Trial Court, forthwith. No order as to costs.

(M. R. MENGDEY,J)

(MOOL CHAND TYAGI, J)

GIRISH