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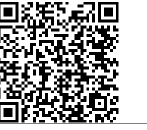

2026:GUJHC:28829-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 697 of 2003

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
FILLIPBHAI MAGALBHAI MISTRY & ORS.

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Appearance:
JIRGA JHAVERI APP for the Appellant(s) No. 1
HL PATEL ADVOCATES(2034) for the Opponent(s)/Respondent(s) No. 1,2,3,4,5

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 18/04/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE NIRZAR S. DESAI)

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 05.03.2003 passed by the learned Additional Sessions Judge, Vadodara in Sessions Case Nos.97 of 2002 and 170 of 2002, whereby the respondents accused came to be acquitted for the offences under Sections 143, 147, 436, 302 and 108 of Indian Penal Code, the appellant – State has

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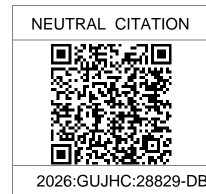

preferred present appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. Brief facts of the case are as under;

2.1 The case of the prosecution, is that in the aftermath of the incident of burning of the Godhra train dated 27.02.2002, which led to widespread communal disturbances across the State of Gujarat, a Gujarat Bandh was observed on 28.02.2002.

2.2. It is alleged that on the said date, the accused persons, along with approximately 200 other individuals, formed an unlawful assembly with the common object of committing the murder of the deceased, Samsuddin @ Kasamkhan, and to set ablaze Muslim residential colonies and shops situated opposite Khodiarnagar in the city of Vadodara.

2.3. According to the prosecution, at about 23:00 hours on 28.02.2002, the said unlawful assembly commenced rioting. It is alleged that all the accused persons, along with other members of the assembly, actively participated in the said unlawful gathering and the acts committed pursuant thereto.

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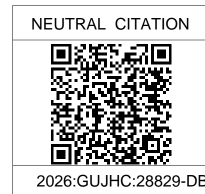

2.4. The prosecution further alleged that the accused and other members of the unlawful assembly forcibly entered the house of the deceased, Samsuddin @ Kasamkhan. Thereafter, they removed household articles from the shop belonging to the deceased and his brother and set the same on fire. It is further alleged that the deceased was apprehended by the mob, assaulted, and ultimately thrown alive into the fire, resulting in his death. The accused thus alleged to have committed the murder of the deceased and caused extensive damage to the household articles and the goods kept in the shops of the deceased and his brother.

3. In pursuance of the complaint lodged by the complainant at Baroda Police Station, being C.R. No. 50 of 2002, for the offences punishable under Sections 143, 147, 436, 302 and 118 of the Indian Penal Code, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of offence, discovery and recovery of weapons and obtained FSL report for the purpose of proving the offence. On the basis of the aforesaid allegations, two charge-sheets came to be filed before the learned Judicial Magistrate First Class, Vadodara, being Criminal Case Nos. 1435 of 2002 and 2986 of 2002. The learned Magistrate, having found the offences to be triable exclusively by the Court of Sessions, committed both the cases

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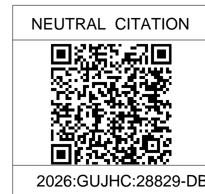

to the Sessions Court, resulting in Sessions Case Nos. 97 of 2002 and 170 of 2002 arising out of the same incident dated 28.02.2002.

4. Upon committal of the case to the Sessions Court, Vadodara, learned Sessions Judge framed charge at Exh.5 against the respondents accused for the aforesaid offences. The respondents accused pleaded not guilty and claimed to be tried.

5. In order to bring home charge, the prosecution had examined 8 witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in para 4 and 5 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondents accused so as to obtain explanation/answer as provided u/s 313 of the Code. In the further statement, the respondents accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and false case has been filed against them.

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7. We have heard learned APP Ms.Jhaveri for the appellant – State and minutely examined oral and documentary evidence adduced before the learned Trial Court.

8. Submission of learned APP.

8.1. Learned Additional Public Prosecutor appearing for the appellant–State has vehemently submitted that the impugned judgment and order of acquittal passed by the learned trial Court is contrary to the law and the evidence on record and, therefore, deserves to be quashed and set aside.

8.2. It is submitted that the learned trial Judge has committed a grave error in holding that the prosecution has failed to prove its case beyond reasonable doubt. According to the learned APP, the findings recorded by the trial Court are perverse and not borne out from the evidence on record.

8.3. It is further submitted that the learned trial Court has failed to properly appreciate the evidence of the complainant, who is an eyewitness to the incident. The complainant has, in her deposition, specifically named the accused persons and had also identified them in Court. It is contended that such

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substantive evidence has been erroneously discarded without justifiable reasons.

8.4. Learned APP has further submitted that the trial Court erred in placing undue emphasis on the fact that the Investigating Officer did not recover bones of the deceased from the place of incident on the next day. It is submitted that the remains were in fact recovered after a period of seven days, which has not been properly appreciated by the trial Court.

8.5. It is contended that, considering the nature of the incident involving extensive burning of shops and household articles, it was quite natural that the remains of the deceased may not have been immediately traceable at the spot on the following day. The trial Court, therefore, erred in drawing an adverse inference against the prosecution on this count.

8.6. Learned APP has also submitted that the trial Court committed an error in attaching undue importance to the medical opinion indicating that certain bones recovered were of a person aged between 15 to 17 years, while some were of a person aged above 17 years. It is argued that such evidence in the nature of the opinion is merely advisory in nature and

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cannot override the direct and cogent testimony of the eyewitness. The complainant has categorically deposed that the accused persons threw the deceased into the fire, thereby causing his death and committing an offence punishable under Section 302 of the Indian Penal Code.

8.7. It is further submitted that the evidence of witness Shahbuddin Rastambhai Ray also lends support to the prosecution case, inasmuch as he had stated that his sister-in-law, namely the complainant, was acquainted with the accused persons involved in the offence. This circumstance corroborates the identification of the accused by the complainant.

8.8. In view of the aforesaid submissions, it is contended that the impugned judgment and order of acquittal is illegal, erroneous, and unsustainable in law, and the same deserves to be interfered with by this Court.

9. Findings.

9.1. I have heard the learned APP for the appellant–State and have carefully considered the evidence on record. It has been contended by the learned APP that the bones recovered from the place of occurrence were of a person aged between 15 to 17 years and could also belong to a person above 17 years.

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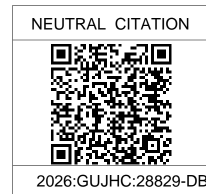

However, the medical evidence on record, in the form of the certificate produced at Exhibit 12, clearly indicates that it cannot be ascertained from the said bones whether they belonged to a male or a female.

9.2. Further, in the deposition of Dr. Bhupendra Bhikhabharathi Gosai at Exhibit 11 he categorically stated that the bones examined by him cannot be conclusively linked to the deceased. The aforesaid evidence has not only been duly considered but also elaborately discussed by the learned Sessions Judge. Therefore, the findings recorded by the learned Sessions Judge with regard to the said medical evidence cannot be said to be erroneous or perverse.

9.3. Further, the evidence of the original complainant, Ramkor Gyansing, indicates that she had expressed complete ignorance regarding the identity of the rioters. She had also deposed that the complaint at Exhibit 16 was merely shown to her and that it bears her signature.

9.4 Further, the learned Sessions Court has considered the evidence of Shahbuddin Rustambhai Rai at Exhibit 17, wherein the said witness has categorically stated that the incident occurred during the night in darkness and, therefore, he was

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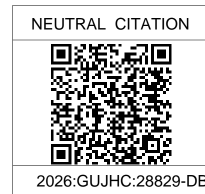

not in a position to identify any of the persons. He has also stated in his deposition that he did not personally know any of the persons involved. Similarly, the evidence of other witnesses, namely, Alihussain Rustambhai Rai (Exhibit 18), Majid Alihussain Rai (Exhibit 19), and Najbun Alihussain Rai (Exhibit 20), has been considered. All these witnesses have deposed on similar lines and have categorically stated that they did not know the identity of the persons who committed the offence, as the incident was carried out by a large mob comprising approximately 400 to 500 persons.

9.5. The evidence of the eye-witness, Fatima Shamsuddin Rai, who is the wife of the deceased Shamsuddin, at Exhibit 23, has also been considered by the learned Sessions Judge. In her deposition, she had identified certain accused persons, namely, Raju Bharwad, Prakash Sharma, Karsan Driver, Tino Thakkar, and Fillip, and had also identified accused Nos. 1, 2, 3 and 5. However, such identification would only indicate the presence of the said persons in the mob. Even in her cross-examination, the witness had not stated anything beyond the mere presence of the accused persons at the place of occurrence. Her deposition is conspicuously silent with regard to any specific overt act or participation of the accused in the commission of

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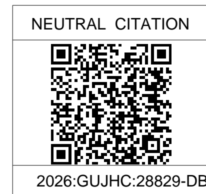

the offence in question.

10. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. **(Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225).** In the instant case, the learned APP for the applicant has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

11. 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*

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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."

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

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view.

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

14. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed.

(NIRZAR S. DESAI,J)

(D.N.RAY,J)

BHAVIN MEHTA

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