

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 2214 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
PRABHAKAR S/O KESHAV GAJAKOSH

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Appearance:
MS JIRGA JHAVERI ADDITIONAL PUBLIC PROSECUTOR for the
Appellant(s) No. 1
BAILABLE WARRANT SERVED for the Opponent(s)/Respondent(s) No. 1
JURIS LEGAL PRACTITIONERS(17818) for the Opponent(s)/Respondent(s)
No. 1
MR HARSHAD O JOSHI(11428) for the Opponent(s)/Respondent(s) No. 1
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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK**

Date : 23/09/2026**JUDGMENT**

1. The appellant - State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order dated 20.08.2009 passed by the learned Additional Sessions Judge, Bhavnagar (hereinafter be referred to as "the appellate Court") in Criminal Appeal no. 24 of 2009 with Criminal Appeal nos. 19 of 2009 and 20 of 2009 whereby the appellate Court has acquitted the original accused (respondent herein) in Criminal Appeal no. 24 of 2009 and rejected Criminal Appeal nos. 19 of 2009 and 20 of 2009.

2. Short facts of the prosecution case are that, the accused who were not government servants nor they have obtained any sanction from forest department, which is necessary under sec. 11 of The Wild Life Protection Act, by committing breach of this section with a view to kill lion covered at Sr. No. 13 as Indian Lion (*Panthera leo persica*) of Schedule - I of sec. 49 (A) (B) of The Wildlife Protection Act, 1972 in village Bhandaria in sim of village Sankaliya, where farmer namely Jagubhai Oghadbhai having its account no. 32, Survey No. 12 PK, where arrangement of trap was made to kill lion by using sharp edged weapons and sticks and further by hunting and taking them away which is a government property and as per Col. No. 1 of Supplementary charge sheet for preserving and keeping skin of forest animal, offence being CR No. 210/07 was registered at Hubli Police Station in Karnataka, CR No. 126/07 was registered with Haliyal Police Station, where complaint was registered on 13.12.2007.

2.1 That, accused persons arrested in this offences were brought through transfer warrant from Hubli Babaria Range, as they were found involved in commission of offence of FIR No. 2/07 and out of accused arrested, accused - Hardila W/o. Maharaja Karelal K. was arrested on 12.4.2007 and from said accused, slips containing Mobile No.9880100242 and another No.08284220215 were found, which shows that present respondent - Prabhakar was having close connection with other arrested accused. That, with a view to get skin of forest animal, mobile number and telephone numbers were given and said numbers were used for unauthorisedly bringing skin of forest animal. That, complainant had given complaint before Jesar Police Station, being CR No. 7/2007.

2.2 That, during trial, evidence of all four cases were consolidated and recorded by separate order and Criminal Case No. 1256/08 was registered.

2.3 At the end of trial, all the accused persons were held guilty for the offences with which they were charged and so far as present respondent-accused is concerned, he was convicted for the offences under sec. 429 r.w.s. 120(b) of IPC and ordered to suffer imprisonment for a period of four years and fine of Rs. 1000/- i/d. further simple imprisonment for a period of four months. He was further convicted for the offences under Sections 9, 11, 39, 40, 43, 49 and also sec. 51 and 52 of the The Wildlife Protection Act and ordered to suffer simple imprisonment for a period of five years and fine of Rs.1000/- i/d. further simple imprisonment of six months.

2.4 Being aggrieved and dissatisfied with aforesaid judgement and order of conviction dated 26.02.2009 passed by learned Chief Judicial Magistrate, Bhavnagar (hereinafter referred to as "the trial Court") in Criminal Case Nos. 1256/2008, 5209/2007, 5210/2007 and 6041/2007, the present respondent along with other accused persons had preferred Criminal Appeal Nos. 19/2009, 20/2009 and 24/2009 before the learned Additional Sessions Judge, Bhavnagar.

3. It appears from the records that to prove the case, the prosecution has examined the following witnesses and produced the following documentary evidences:

1. Witness No. 1, Vitthalbhai Janiyabhai Rathwa, has been examined vide Exhibit-34.

2. The muddamal slip has been produced vide Exhibit-35.
3. The receipt regarding seizure of the muddamal found from accused Jashmatilal Jabars has been produced vide Exhibit-36,
4. The muddamal receipt has been produced vide Exhibit-37.
5. The articles found from the accused have been produced vide Exhibit-41.
6. The complaint has been produced vide Exhibit-42.
7. The panchnama has been produced vide Exhibit-43.
8. A xerox copy of the receipt bearing the signatures of the panchas and affixed on the muddamal, regarding the muddamal having been found from accused Hardila, wife of Maharja Karelal Pawar, has been produced vide Exhibit-44.
9. A xerox copy of the receipt bearing the signatures of the panchas and affixed thereon, regarding the muddamal found and seized from accused Jaypatri Chhatesinh, has been produced vide Exhibit-45.
10. Witness No. 2, Hemantbhai Vishandas, has been examined vide Exhibit-48.
11. Witness No. 3, Vikrambhai Hathibhai, has been examined vide Exhibit-59.
12. The original panchnama regarding seizure of the body parts of a lion from the outskirts of Bhandariya village has been produced vide Exhibit-60.
13. The panchnama of the place of incident has been produced vide Exhibit-61.
14. Witness No. 4, Ashokbhai Naranbhai, has been examined vide Exhibit-62.
15. The panchnama of the place pointed out by accused Maharaja Karelal as the place where he had descended has been

produced vide Exhibit-63.

16. Panch Witness Najubhai Bhabhlubhai has been examined vide Exhibit-64.
17. Panch Witness Gambhirsinh Dolatsinh has been examined vide Exhibit-65.
18. The panchnama regarding seizure of the CD has been produced vide Exhibit-66.
19. Witness Jagubhai Oghadbhai has been examined vide Exhibit-67.
20. The panchnama regarding the body parts of a lion having been found buried in the field of Jagubhai Oghadbhai has been produced vide Exhibit-68.
21. Witness Kanubhai Jivabhai has been examined vide Exhibit-71.
22. The panchnama of the place of offence pointed out by the accused in the present case has been produced vide Exhibit-72.
23. The panchnama of the place of offence pointed out by the accused in the present case has been produced vide Exhibit-73.
24. The panchnama of the place of offence pointed out by the accused in the present case has been produced vide Exhibit-74.
25. The panchnama of the place pointed out by accused Harkishlal Chhatesinh, where he had laid the snare, has been produced vide Exhibit-75.
26. The arrest panchnama of the accused has been produced vide Exhibit-76.
27. The panchnama regarding the arrest of accused Kalyansing Gullusing has been produced vide Exhibit-77.
28. The arrest panchnama of the accused has been produced vide Exhibit-78.
29. The arrest panchnama of accused Killol alias Natwarlal has been

produced vide Exhibit-79.

30. The panchnama prepared in respect of the place in the forest where accused Irakha alias Bantulal and Anand Minter had stayed has been produced vide Exhibit-80.
31. The panchnama of the place pointed out by accused Killol, where he had descended, has been produced vide Exhibit-81.
32. Witness No. 9, Dipaksinh Baldevsinh, has been examined vide Exhibit-83.
33. The panchnama regarding the identification parade has been produced vide Exhibit-84.
34. Witness Panchubhai Mulubhai has been examined vide Exhibit-85.
35. The panchnama regarding the identification parade of the accused has been produced vide Exhibit-86.
36. Panch Witness No. 11, Hanifbhai Ismailbhai, has been examined vide Exhibit-87.
37. The panchnama regarding the identification parade has been produced vide Exhibit-88.
38. Witness No. 13, Jagubhai Oghadbhai, has been examined vide Exhibit-89.
39. Witness No. 12, Apabhai Rajabhai, has been examined vide Exhibit-90.
40. Witness No. 14, Popatbhai Bhagvanbhai, has been examined vide Exhibit-91.
41. Witness No. 15, Devjibhai Popatbhai Vaghela, has been examined vide Exhibit-97.
42. Witness No. 16, Ilaben Kumarbhai Chauhan, has been examined vide Exhibit-103.
43. The list of the identification parade has been produced vide

Exhibit-104.

44. The panchnama regarding the identification parade has been produced vide Exhibit-105.
45. The list for the identification parade has been produced vide Exhibit-106.
46. The list for the identification parade has been produced vide Exhibit-107.
47. The panchnama of the identification parade has been produced vide Exhibit-108.
48. The panchnama of the identification parade has been produced vide Exhibit-109.
49. Dr. Maheshbhai Nathabhai Sheta has been examined vide Exhibit-111.
50. The office copy of the letter written by the Police Sub-Inspector, L.C.B., to the Veterinary Officer has been produced vide Exhibit-112.
51. The office copy of the letter written by the Police Sub-Inspector, L.C.B., to the Veterinary Officer has been produced vide Exhibit-113.
52. The original letter written by the Veterinary Officer to the Police Inspector, "C" Division, has been produced vide Exhibit-114.
53. The post-mortem note has been produced vide Exhibit-115.
54. Witness Banesingh Arjanbhai has been examined vide Exhibit-116.
55. The receipt affixed on the muddamal has been produced vide Exhibit-117.
56. Witness Vijaybhai Ajitbhai Rathod has been examined vide Exhibit-118.
57. Amitaben Dipeshkumar Shukla has been examined vide Exhibit-

120.

58. The form prepared for obtaining the consent of accused Anant Minter for giving him for interrogation in the Department of Forensic Psychology has been produced vide Exhibit-121.
59. The consent letter given by accused Bantulal alias Irakha after interrogating the accused has been produced vide Exhibit-122.
60. The questionnaire prepared for interrogating accused Satya has been produced vide Exhibit-123.
61. The questionnaire prepared for interrogating accused Satya has been produced vide Exhibits-124 and 125.
62. The questionnaire prepared for interrogating accused Bantulal has been produced vide Exhibit-126.
63. The questionnaire prepared for interrogating accused Bantulal has been produced vide Exhibit-127.
64. The original report submitted by Smt. A.D. Shukla regarding the interrogation conducted of accused Anant Minter Pawar alias Satyakari Kumar and accused Irakha alias Bantulal has been produced vide Exhibit-128.
65. The letter written by the Deputy Director and the Forensic Psychology Department to the Detective Police Inspector has been produced vide Exhibit-129.
66. Nareshbhai Hiralal Mori has been examined vide Exhibit-130.
67. The original fax sent by the Karnataka D.G.M. has been produced vide Exhibit-131.
68. The office copy of the letter written by the D.E., Vigilance Officer, Bhavnagar, to the Vigilance Officer, Karnataka, has been produced vide Exhibit-132.
69. The original letter written by the D.E., Vigilance, Bharat Sanchar Nigam, Bhavnagar, to Mr. B.B. Gohil, Detective Police Inspector,

has been produced vide Exhibit-133.

70. Kishorsinh Balvantsinh Parmar has been examined vide Exhibit-134.
71. A xerox copy of the Information Form filled in by the customer in respect of mobile number 9880100242 has been produced vide Exhibit-169.
72. A xerox copy of the form filled in by the accused and bearing the signature of the accused has been produced vide Exhibit-167.
73. A xerox copy of the election card of the accused has been produced vide Exhibit-168.
74. A xerox copy of the ration card of the accused has been produced vide Exhibit-169.
75. A xerox copy of the declaration made by accused Gajkoshe to Airtel Company has been produced vide Exhibit-170.
76. Balabhai Mohanbhai has been examined vide Exhibit-138.
77. The office copy of the letter written to the Forensic Science Laboratory, Junagadh, has been produced vide Exhibit-139.
78. The receipt issued by the Deputy Director, Regional Forensic Science Laboratory, regarding receipt of the muddamal in sealed condition has been produced vide Exhibit-140.
79. The original letter written by the Assistant Director, Office of the Forensic Science Laboratory, Gandhinagar, to the L.C.B., P.I., has been produced vide Exhibit-141.
80. The office copy of the letter written by Police Inspector Mr. B.M. Rajpara to the F.S.L., Gandhinagar, has been produced vide Exhibit-142.
81. The office copy of the letter relating to the specimen of the seal impression affixed thereon, of the muddamal sent to the H.S.S.

- for examination, has been produced vide Exhibit-147.
82. The original report given by Mr. P.P. Upadhyay, F.S.L. Officer, has been produced vide Exhibit-144.
 83. The forwarding letter written by the Deputy Director, Regional Forensic Science Laboratory, Junagadh, has been produced vide Exhibit-145.
 84. The serological analysis report of the Regional Forensic Science Laboratory, Junagadh, has been produced vide Exhibit-146.
 85. The letter written by the D.N.A. Department, Gandhinagar, to Police Inspector Mr., L.C.B., has been produced vide Exhibit-147.
 86. The analysis report sent by the Director of F.S.L., Gandhinagar, has been produced vide Exhibit-148.
 87. The original letter written by the Deputy Director, Forensic Psychology Department, Forensic Science Laboratory, to the Detective Officer has been produced vide Exhibit-149.
 88. Witness Manjurhusein Anvarmiya Khokhar has been examined vide Exhibit-151.
 89. Witness Bharatsinh Balvantsinh Gohil has been examined vide Exhibit-157.
 90. A xerox copy of the letter written by the Circle Inspector, Palitana, to the Taluka Officer has been produced vide Exhibit-158.
 91. The map of the place where the dead body of the lion was buried has been produced vide Exhibit-159.
 92. The letter and report written by the Deputy Director and Technical Manager, Forensic Psychology Department, Gandhinagar, have been produced vide Exhibit-160.
 93. Riyazhusein Ahmedbhai Munshi has been examined vide Exhibit-162.

4. After closure of the evidence, the statement of the accused under section 313 of the Criminal Procedure Code, 1973 was recorded wherein he denied of having committed any offence and has stated that he is innocent.

5. After hearing both sides and considering the evidence on records, the appellate Court by order dated 20.08.2009 quashed and set aside order of conviction passed by the learned Chief Judicial Magistrate, Bhavnagar, in Criminal Appeal no. 24/2009 and acquitted the present respondent-accused, whereas rejected Criminal Appeal Nos. 19/2009 and 20/2009.

6. Being aggrieved and dissatisfied with the aforesaid judgment and order reversing the conviction of the present respondent, the appellant – State of Gujarat has preferred this appeal.

7. Heard Ms. Jirga Jhaveri, learned Additional Public Prosecutor for the appellant – State of Gujarat and Mr. Harshad Joshi, learned counsel for the respondent – accused at length.

8. Ms. Jhaveri, learned Additional Public Prosecutor appearing for the appellant – State of Gujarat has submitted the same facts which are narrated in the memo of appeal and has also submitted that the prosecution has examined witnesses and produced documentary evidence, despite this fact, the appellate Court has not considered the same in its true and proper perspective in passing the judgment and order of acquittal. Ms. Jhaveri, learned Additional Public Prosecutor, while referring to the entire oral as well as documentary evidence, has assailed the impugned judgment and order and submitted that

the appellate Court has not taken into consideration the evidence connecting the accused to the alleged offence in its proper perspective and even the prosecution has been able to prove the charges levelled against the accused. While referring to the evidence of the witnesses and the material collected against the accused, Ms.Jhaveri, learned Additional Public Prosecutor has submitted that the prosecution has established the case against the accused by examining the witnesses, who have supported the case of the prosecution, however, the appellate Court has discarded and disbelieved the evidence of these witnesses. She has submitted that the witnesses have fully supported the case of the prosecution, however, the appellate Court has not appreciated the same and passed the judgment and order acquitting the respondent-accused which is illegal and unjust. She has submitted that it is settled legal position that the evidence of a single witness is sufficient for conviction if the same is reliable and trustworthy and in the present case, though the evidence of all the witnesses are reliable and trustworthy, without any cogent reason, the appellate Court has disbelieved and discarded the evidence of the witnesses.

8.1 According to Ms.Jhaveri, learned Additional Public Prosecutor, the appellate Court ought to have convicted the accused and ought to have imposed necessary sentence. She has prayed to allow the present appeal and to quash and set aside the impugned judgment and order.

9. Per contra, Mr.Joshi, learned counsel for the respondent - accused has supported the impugned judgment and order and has submitted that the appellate Court has not committed any error of law and fact in acquitting the accused from the charges levelled against

him. He has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore, the appellate Court has rightly acquitted the accused as the complainant has failed to prove the charge levelled against the accused. He has also submitted that there is no iota of evidence to connect the accused with the alleged crime in question. He has prayed to confirm the impugned judgment and dismiss the present appeal.

10. I have heard the learned counsel for the respective parties and perused the materials on record. Before parting with the judgment, the facts of the case are required to be looked into. The facts of the case put forth by the prosecution are that, a complaint was lodged against the accused persons before the 'C' Division Police Station, Bhavnagar, stating that the he had received information that the original accused were poachers and were illegally poaching protected animals, namely, lions. The said information was received on 12.04.2007, and on the basis of that, he proceeded to investigate the matter. He reached Palace Talkies near the Railway Yard, where some unknown persons were found running around in panic. All the persons were rounded up and were thereafter taken to the 'C' Division Police Station. It appears that during their interrogation and personal search no incriminating material was found, however, certain objectionable articles were found in a cloth bundle. Upon searching the cloth bundle, certain disputed articles were recovered from the possession of seven persons, and on the basis thereof, the complaint was lodged. Criminal Case No. 5209 of 2007 was registered, wherein a charge-sheet was filed against 11 persons. During the course of further investigation, other accused were found and, therefore, other cases were registered as Criminal Case Nos. 5210 of 2007, 6041 of 2007

and 1256 of 2008.

11. The present respondent was arrested on 15.01.2008 and thereafter was charged by the trial Court for the offences punishable under Sections 429 and 120(b) of the Indian Penal Code and Sections 9, 11, 39(1)(a)(b)(d), 39(2), 39(3), 40(1)(2), 43(1)(a), 51, 52, 2(1)(14) (16)(18)(20)(35)(36)(37) and (49) of the Wildlife Protection Act, 1972, Section 135 of the Bombay Police Act and Sections 41 and 42 of the Juvenile Justice Act. After conclusion of the trial, the trial Court vide judgment and order dated 26.02.2009 held the accused guilty of the alleged offences and ordered the accused to undergo four years imprisonment and also imposed a fine of Rs.1000/-, and in default of payment of fine, to undergo further simple imprisonment for four months. The accused was also convicted for the offences punishable under the Wildlife Protection Act under Sections 9, 11, 39, 40, 43 and 49 read with Section 51 and 52 thereof and was sentenced to undergo five years simple imprisonment and to pay a fine of Rs.1000/-, and in default of payment of fine, to undergo further simple imprisonment for six months. All the sentences were ordered to run concurrently.

11.1 Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction, all the accused persons preferred appeals before the appellate Court being Criminal Appeal Nos. 19 of 2009, 20 of 2009 and 24 of 2009. However, the present appeal has been filed against the judgment and order passed in Criminal Appeal No. 24 of 2009, whereby the present respondent was acquitted of the charges levelled against him. So far as the other accused persons are concerned, the order of conviction passed by the trial Court was confirmed by the appellate Court, and the appeals preferred by those accused persons were dismissed.

12. It appears that the present respondent was originally not named in the FIR and he was subsequently implicated only on the basis of the fact that a chit containing his telephone numbers, both landline and mobile, was allegedly found in the cloth bundle among the many chits found.

12.1. The findings recorded by the appellate Court in paragraph 197 of the judgment reads as under:

“(197) Ld. Chief Judicial Magistrate has given following finding to convict the accused Prabhakar Keshav Gajkosh for the charged offense:

“Present Accused Nos. 1 to 15 are from Madhya Pradesh. The accused are involved in criminal activity. There is no explanation by the present accused as to under what circumstances and how the telephone numbers written on the slips which were recovered from these accused, and particularly from accused female Hardila were obtained. There is no explanation by the accused regarding the reasons for the telephonic communications between this accused and Accused Nos. 1 to 15, or as to how the accused got the numbers of Accused No. 16.

In the prevailing circumstances, the criminal activities and the method of criminal activities have changed. Different kind of offenses are being committed.

Generally, in offenses of such a nature, procuring direct evidence is extremely difficult. Obtaining circumstantial evidence and a link connecting the accused with the crime is much difficult. Presently, the incidence of Cyber crime is also gradually on the rise. In the present electronic age, any individual situated at any corner of the world can abet the commission of a crime of any nature, and under normal circumstances, an Investigating Officer cannot ordinarily apprehend offenders of such a kind.

After committing an offense, the accused meticulously and

with utmost caution destroy the evidence, owing to which it becomes difficult to obtain direct evidence or circumstantial evidence linking the offenders with the crime. In the present case, considering the circumstances and the charge leveled against accused Prabhakaran, it is extremely difficult to hold the accused directly culpable for the crime or to establish guilt on the basis of circumstantial evidence.

In the present case, the accused, in his statement recorded under Section 313, state that the landline number is his residential number. Furthermore, he admits that the mobile phone belongs to him, while stating that the said phone was being used by his brother. Thus, during cross-examination, the accused firstly denied owning the phone; however, when this fact was established by documentary evidence, he stated that he was not using the phone himself.

The activity of poaching wildlife to illicitly export their body parts, such as meat, claws, fat, and other organs, within the country as well as abroad via smuggling operates on a large scale at an international level. On account thereof, rare species such as lions, tigers, and other wild animals are poached, and their body parts are artfully dispatched overseas. Offenders involved in such activities remain connected with one another across distant locations through telecommunications, and under such circumstances, adducing evidence on record regarding such telecommunications is extremely difficult.

In the present case, the investigating agency could have gathered further information concerning this offense. Although the officers of the detective agency conducted the investigation, printouts pertaining to the communications and the number of telephone calls made between the accused and Accused No. 16 could have been obtained and produced on record; however, no due care was taken by the prosecution to place on record such cogent evidence that could have been produced against accused Prabhakaran. Though, in offenses of such nature, evidence is rarely accessible, crimes are committed artfully, offenders destroy evidence, and no specific explanation has been proffered on behalf of accused Prabhakaran as to under what circumstances and how the accused got his number. Considering all the facts I am of the view that this accused is directly or indirectly involved with the lion-poaching gang, and therefore, I answer Point No. 4 in the affirmative."

In view of the above finding, the Id. Chief Judicial Magistrate, Bhavnagar, held Accused No. 1, Prabhakaran Keshav, guilty of the alleged offense. However, firstly, according to the finding of the Id. Chief Judicial Magistrate, Bhavnagar, holding the accused culpable on the basis of circumstantial evidence is extremely difficult. He had given the finding also that the investigating officer failed to place cogent evidence on record against the accused. However, the Id. Chief Judicial Magistrate held the accused of the present case guilty of the alleged offense merely on the basis of conjecture, suspicion, and surmise."

13. While reversing the order of conviction, the appellate Court has recorded that the prosecution mainly relied upon the evidence relating to the lie-detection test of the present respondent, produced at Exhibit 160. It appears that the Scientific Officer, HR Shah, who had conducted the lie-detection test of the present respondent, was not examined by the prosecution. Therefore, the contents of the said report could not be relied upon or treated as proved against the present respondent. Even so far as the recovery of the chit containing the telephone number from original accused No. 5 in the cloth bundle is concerned, it appears that the panchwitness at Exhibit 48 had not satisfactorily explained in his evidence how the panchnama was drawn or how the said chit was recovered.

14. After considering the aforesaid evidences of the prosecution witnesses and, more particularly, the reasons assigned by the appellate Court in paragraphs 195, 196, 198, 199, 201, 202, 204 and 205 of the impugned judgment and order, the appellate Court recorded the conclusion that, so far as the involvement of the present respondent is concerned, the prosecution had failed to prove the same beyond reasonable doubt. The appellate Court, in the aforesaid paragraphs of the impugned judgment and order, has given cogent and convincing reasons for acquitting the present respondent. So far

as original accused Nos. 1 to 15 are concerned, their convictions were confirmed by the appellate Court, and they have perhaps not challenged the findings of conviction recorded by the appellate Court. Therefore, at this stage, it is not required to be discussed further.

15. Considering the facts of the case and the evidence on record, it appears that the prosecution has miserably failed to prove the charges against the present respondent. The respondent-accused's involvement was based merely on certain circumstances, on the basis of which the trial Court had convicted him and since the circumstances relied upon by the trial Court were not found to be convincing or cogent, the appellate Court has rightly reversed the said findings and acquitted the present respondent. Therefore, after considering the facts of the case and the decisions of this Court as well as the Hon'ble Supreme Court, I am of the view that the appellate Court has rightly passed the impugned judgment and order while reversing the conviction recorded against the present respondent. In view of the above, I am in complete agreement with the findings recorded by the appellate court and I am of the opinion that the appellate Court has not committed any error of facts and law in passing the impugned judgment and order and there is no any illegality and infirmity found in the judgment and order.

16. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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 their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

17. Further, 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 they are charged.

18. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court **Rajesh Prasad Vs. State of Bihar and another**, reported in

[2022] 3 SCC 471, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, I am in complete agreement with the findings recorded by the trial Court.

19. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise 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 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.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

20. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the

evidence on record.

21. On perusal of the impugned judgment and order, it clearly transpires that the appellate Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against him. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the appellate Court is sustainable and the present appeal is liable to be dismissed.

22. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order passed by the appellate Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHAK,J)

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