

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2381 of 2026**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA **sd/-**

and
HONOURABLE MR. JUSTICE R. T. VACHHANI **sd/-**

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Approved for Reporting	Yes	No
		no

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STATE OF GUJARAT
Versus
SAYABABHAI SARTANBHAI BARIYA & ANR.

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Appearance:
MR LB DABHI ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s) No.
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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 21/10/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Being aggrieved and dissatisfied by the judgment and order dated 01.07.2025 passed by the learned Additional Sessions Judge, Limkheda at Dahod in Sessions Case No.24 of 2024, whereby the learned Sessions Judge by extending the benefit of doubt under Section 235(1) of the Code of Criminal Procedure (for short, 'Cr.P.C.'), 1973, acquitted the accused of the offences punishable under Sections 304, 114 of the Indian Penal Code (for short, 'I.P.C.'), 1860, the present appeal under Section 419 of the Bharatiya Nagarik Suraksha Sanhita (for short, 'B.N.S.S.'), 2023, has been preferred by the appellant herein.

2. For brevity and convenience, the parties are referred to as per their original status before the learned Sessions Court.

2.1 Brief facts of the case are as under:

3. The complainant, Salubhai Rupsingbhai Baria, resident of Guna, Shikari Faliyu, Taluka Devgadhi Baria, had a son named Ramanbhai, who had three children, namely Mayur (aged 13 years), Ketan (aged 11 years) and Nayan (aged 7 years). On 28.12.2023, the complainant, his wife Champaben, his daughter-in-law Tinaben and his grandchildren were present at their house. Ketan was found missing from the house, and at about 18:00 hours, the complainant searched for him in the neighboring houses and, on not finding him, in the adjoining agricultural fields, Ketan was found lying face down on the ground at the boundary of a maize field belonging to the respondents – accused, namely Saybabhai Sartanbhai Baria and Gopsingbhai Sartanbhai Baria, residents of Guna, Baria Faliyu. Both of his legs were entangled in a fence of thin iron wire tied over wooden poles planted along the boundary of the field. He did not respond when called and was found unconscious. Both his legs had been burnt and blackened by electric current.

3.1 According to the complainant, the respondents – accused, being the owners of the said maize fields, had planted wooden poles along the boundaries of both fields, fixed an iron wire fence over them and passed electric current through the fence, thereby endangering the lives of others. It was alleged that Ketan died as a result of electrocution caused by such current. The complainant, accompanied by his nephew Narvatbhai Limbabhai Patel and one Abhesingbhai Jhalabhai Baria, left the dead body

of Ketan at the Government Hospital, Piplod, and on 29.12.2023 lodged a complaint at Piplod Police Station. On the basis of the said complaint, an offence came to be registered as Part-A C.R. No.11821052230612/2023 for the offences punishable under Sections 304 and 114 of the I.P.C..

3.2 The investigation was entrusted to the Investigating Officer, who drew the inquest Panchnama of the dead body and the Panchnama of the place of incident in the presence of Panchas. The wire was seized from the place of incident under a Panchnama. The dead body was sent for post-mortem, and the post-mortem note was made part of the investigation. The clothes of the deceased, which were taken by the doctor at the time of the post-mortem, were produced before the Investigating Officer and seized under a Panchnama. The statements of the concerned witnesses were recorded, and the accused were arrested. On completion of the investigation, the Investigating Officer found sufficient material against the accused and filed the charge-sheet before the learned Judicial Magistrate First Class, Devgadh Baria. After ensuring that copies of the charge-sheet and the connected documents had been furnished to the accused free of cost, and as the case was triable exclusively by the Court of Session, the learned Magistrate, in exercise of powers under Section 209 of the Cr.P.C., committed the case to the learned Sessions Court by an order dated 15.05.2024. The case was registered as Sessions Case No.24 of 2024.

3.3 The learned Sessions Court framed the charge against the accused at Exh.5, and the accused, having pleaded not guilty, their pleas were recorded at Exh.6 and Exh.7. The prosecution,

in order to bring home the guilt of the accused, adduced oral as well as documentary evidence, and thereafter closed its evidence by filing a pursis at Exh.56. The further statements of the accused under Section 313 of the Cr.P.C. were recorded, wherein they denied the allegations and stated that they were innocent and had been falsely implicated. Upon conclusion of the trial, the learned Sessions Court, by the impugned judgment and order, acquitted the respondents – accused, namely (1) Saybabhai Sartanbhai Baria and (2) Gopsingbhai Sartanbhai Baria, under Section 235(1) of the Cr.P.C. of the offences punishable under Sections 304 and 114 of the I.P.C., giving them the benefit of doubt.

3.4 Being aggrieved, the appellant has preferred the present appeal.

4. Submissions made on behalf of the appellant – State are as under:

4.1 It is submitted that the impugned judgment and order of acquittal is contrary to the evidence on record and suffers from errors of law and appreciation. It is submitted that the learned Sessions Court has failed to appreciate the consistent and cogent evidence of the prosecution witnesses, which establishes beyond reasonable doubt that Ketan, aged 11 years, died of electrocution on account of a live electric wire fence erected along the boundary of the field of the respondents – accused.

4.2 It is submitted that PW-1 complainant (Exh.9) categorically deposed that he found the deceased lying face down at the boundary of the field of the respondents – accused, who are real

brothers. PW-3 Abhaysingh Zalabhai Bariya (Exh.13), an independent neighbour-cum-eyewitness, deposed that, on hearing the hue and cry of the family members, he reached the place of the incident and found that the respondents – accused had applied live electric current to the fence to protect their crops from wild boar. The evidence of PW-4 Bhopatbhai Kalubhai Bariya (Exh.14), PW-6 Champaben (Exh.17) and PW-7 Tinaben (Exh.18), who are close relatives of the deceased, supports the prosecution case and shows that the death occurred due to electrocution at the field of the respondents – accused.

4.3 It is further submitted that PW-8 Surajbhai Dhudabhai Bariya (Exh.20), the Panch Witness to the Panchnama of the place of the incident, and PW-12 Pratapsingh Madhusingh Bariya (Exh.29), the Panch Witness to the recovery of the Muddamal, have supported the prosecution and confirmed the existence of live electric fencing around the agricultural field. PW-13 Dr. Jigneshkumar Selot (Exh.36), who conducted the post-mortem, has opined that the deceased sustained fatal injuries on both legs due to electric shock and that the cause of death was electrocution.

4.4 According to him, nothing material has been elicited in the cross-examination of any of these witnesses.

4.5 It is submitted that the learned Sessions Court committed a patent error of law in holding that the ownership of the field had to be proved exclusively by documentary evidence, such as certified copies of revenue records or survey maps. There is no such requirement in law, and ownership or possession of

agricultural land, for the purposes of a criminal trial, can be established by credible and consistent oral evidence of witnesses having personal knowledge. PW-1 (Exh.9), PW-3 (Exh.13), PW-6 (Exh.17), PW-7 (Exh.18) and PW-12 (Exh.29) have identified the field as belonging to, and jointly owned or occupied by, the respondents – accused. The respondents – accused did not examine the Sarpanch, the Talati or any other person to dispel this evidence. In any case, it is submitted that the prosecution was required to prove only the occupation of the field and the installation of the live wire by the respondents – accused, and the question of title has no bearing on the cause of death.

4.6 As regards the offence, it is submitted that Section 304A of the I.P.C. applies only where there is neither intention nor knowledge to cause death. In the present case, the respondents – accused had clear knowledge that even a minor touch of a live wire by any person could prove fatal, and that such a fence near human habitation was likely to cause death or grievous injury. The act therefore falls within Section 304 of the I.P.C. It is lastly submitted that, as the respondents – accused jointly cultivated the crops and had reason to protect their common crop, the fence must be taken to have been erected in furtherance of their common design, making both liable with the aid of Section 114 of the I.P.C..

4.7 Upon aforesaid submissions, it is urged to quash and set aside the impugned judgment and order and the respondents – accused be convicted for the offences with which they were charged.

5. We have heard learned APP for the State, at the stage of admission, and carefully perused the oral as well as documentary evidence adduced before the learned Sessions Court.

6. In the present case, two questions arise for determination: (i) whether the death of Ketan was unnatural, caused by electrocution?; and (ii) whether the prosecution has proved beyond reasonable doubt that the electrified fence was erected and charged by the respondents – accused?.

7. On the first question, we find no infirmity in the finding of the learned Sessions Court, and the same is not disputed before us. PW-13 Dr. Jigneshkumar Selot (Exh.36) noted electric scar marks on both legs of the deceased. He opined that the injuries were ante-mortem and that death was caused by electric shock, which the post-mortem note (Exh.38) corroborates. The suggestion that death was due to electrocution was not challenged in his cross-examination. The evidence of the family witnesses and the Panchas also shows that the deceased was found entangled in the wire fence along the boundary of the field. The finding that the death was unnatural and caused by electrocution is therefore affirmed.

8. The real controversy is the second question. The offence under Section 304 read with Section 114 of the I.P.C. cannot be sustained merely by showing that the child died from a live wire. The prosecution must prove, by cogent evidence, that the accused erected the fence, charged it with current, and did so with the knowledge required by Section 304 of the I.P.C..

9. We accept the legal submission of the learned APP that ownership or possession of agricultural land need not be proved exclusively by revenue records, and that credible oral evidence of witnesses with personal knowledge may suffice. To that extent, any observation of the learned Sessions Court suggesting otherwise cannot be sustained. However, the learned Sessions Court did not acquit the accused merely for want of documents. It found that the oral evidence itself was neither consistent nor precise on ownership and possession. On our own appreciation, we find that finding to be a plausible and reasonable view.

10. The close-relative witnesses, namely PW-1 (Exh.9), PW-6 (Exh.17) and PW-7 (Exh.18), did not see the accused erect the fence or pass current through it. In cross-examination, PW-1, PW-2, PW-3 and PW-6 admitted that they did not know the survey number of the field or in whose name it stood in the revenue records. PW-3 (Exh.13), the so-called independent witness, stated that the field belonged to Saybabhai and to other co-owners, including Bhimsingbhai and Gopsingbhai. PW-12 (Exh.29) described the place as the field of Gopsingbhai alone, without disclosing the basis of that knowledge. Thus the evidence variously attributes the field to accused No.1 alone, to both accused, or to several co-owners. It does not establish that the field was owned or cultivated exclusively by the respondents – accused. The Investigating Officer admitted that the Panchnama did not mention the survey number, that he did not call the Talati to the spot, and that he did not obtain any revenue record or map. In these circumstances, the prosecution cannot claim the benefit of the respondents' failure to examine

the Sarpanch or the Talati. The burden lay on the prosecution and did not shift to the accused.

11. The prosecution has also not established the source or mode of the electric connection. No witness has stated from which pole or line the electricity power was drawn, or who made the connection. The Investigating Officer did not identify the pole, and no evidence of any examination of the electric supply is on record. The two pieces of wire produced by accused No.1 and seized under a Panchnama were not recovered under Section 27 of the Indian Evidence Act from a place disclosed by the accused during custody. There is also no evidence that those pieces were used to carry current to the fence. The seizure therefore has no incriminating value.

12. The evidence also shows inconsistencies in the prosecution case on how the deceased came to be at the spot. PW-1 stated in cross-examination that the deceased had come to his house at about 17:00 hours and that the incident occurred an hour later. PW-6 and PW-7 stated that the deceased was heating water at home before he went missing. PW-2 stated that the deceased had gone to the field to collect a kite. PW-2 was not present at the place of the incident and spoke only from what he was told over the telephone. These discrepancies do not by themselves destroy the prosecution case, but they reduce the weight of the testimony of interested witnesses.

13. The evidence that the fence was electrified to protect the crop from wild boar, spoken to by PW-3 and the Panchas, establishes the existence of a charged fence. It does not establish

that the respondents – accused were the persons who made it so. The finding that the field was jointly owned by several persons raises the real possibility that someone other than the respondents – accused erected the fence. Likewise, as no common intention or abetment has been established against any particular accused, Section 114 of the I.P.C. has no application. Since the foundational fact of the accused's authorship of the fence is not proved beyond reasonable doubt, the question whether the act falls under Section 304 or Section 304A of the I.P.C., does not arise for decision, and we express no opinion on it.

14. Here it would be useful to advert to the dictum in the case of *Syad Akbar Vs. State of Karnataka* in which this Court proceeded on the basis that doctrine of res ipsa loquitur stricto sensu would not apply to a criminal case as its applicability in an action for injury by negligence is well known. In *Syad Akbar* (supra), this Court opined:

...“29. Such simplified and pragmatic application of the notion of res ipsa loquitur, as a part of the general mode of inferring a fact in issue from another circumstantial fact is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are: Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstances should make a chain so

complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt.

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12. For bringing home the guilt of the accused, prosecution has to firstly prove negligence and then establish direct nexus between negligence of the accused and the death of the victim. Perusal of the record reveals that out of various witnesses arrayed by the prosecution, there are no eye witnesses. Any evidence brought on record is merely circumstantial in nature. We are constrained to repeat our observation that it sounds completely preposterous that a telephone wire carried 11KV current without melting on contact and when such current passed through the Television set, it did not blast and melt the wiring of the entire house. It is even more unbelievable that Appellant no. 2 came in contact with the same voltage and managed to get away with a few abrasions. The Appellants therefore are entitled to be given the benefit of doubt; more so, when there is no report of a technical expert to corroborate the prosecution story.” ...

15. 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 consider 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, as the same has been laid down by the Hon'ble Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67.***

16. In our considered view, the learned Sessions Court has taken a reasonable and plausible view of the evidence in giving the benefit of doubt to the respondents – accused. The view is not perverse and calls for no interference.

17. In view of the foregoing, the present appeal *sans merit* and deserves to be dismissed and accordingly, it is ***dismissed***.

18. The impugned judgment and order dated 01.07.2025 passed by the learned Additional Sessions Judge, Limkheda at Dahod in Sessions Case No.24 of 2024 stands confirmed.

19. Record and proceeding, if any, be remitted to the concerned Court forthwith.

sd/-
(ILESH J. VORA,J)

sd/-
(R. T. VACHHANI, J)

PARMAR KRISH