

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 666 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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STATE OF GUJARAT - Appellant(s)**Versus****JAJARSINH KISHORSINH RATHOD - Opponent(s)**

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Appearance :

MR HL JANI APP for Appellant(s) : 1,

MR MS JAYSWAL for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 28/09/2007****ORAL JUDGMENT**

1.0 This appeal is directed against the judgment and order dated 30th March, 1995 passed by the learned Metropolitan Magistrate, Court No. 3, Ahmedabad in Criminal Case No. 233 of 1993 whereby, the respondent – accused was acquitted of the

offences punishable u/s. 279, 338, 304-A of Indian Penal Code and Sections 177, 184, 119-B of the Motor Vehicles Act.

2.0 The brief facts of the prosecution case are as under ;

2.1 On 03.12.1992, at around 1500 hrs., the respondent, who was driving a Fire-brigade vehicle bearing registration no. GJ-1-T-7854, dashed an Auto-rickshaw bearing registration no. GRU-1010. As a result of the said accident, the Driver of the Auto-rickshaw and a passenger died on the spot and three other passengers suffered severe bodily injuries. Subsequently, the respondent dashed a two-wheeler [Scooter] bearing registration no. GJ-1-B-6704 and, thereafter, another two-wheeler [Scooter] bearing registration no. GJ-1-P-236 on account of which the riders of both the two-wheelers fell down and sustained severe bodily injuries.

2.2 A complaint for offences punishable u/s. 279, 337, 338, 304-A of Indian Penal Code and Sections 177, 184, 119-B of Motor Vehicles Act came to be filed against the respondent with Saherkotda Police Station by the rider of the two-wheeler bearing registration no. GJ-1-P-236. On the basis of the said complaint, the respondent – accused was arrested. Subsequently, he was released on bail pending trial. Charge was framed against the respondent and trial was initiated. At the end of trial, the learned Metropolitan Magistrate, Court No. 3, Ahmedabad acquitted the respondent of the offences alleged against him. Being aggrieved by the same, the appellant – State has approached this Court by

way of this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings, in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

“16. From the aforesaid decisions, it is apparent that 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 any of the accused is connected with the commission of the crime he is charged with”.

[Emphasis supplied]

4.0 In the present case, the trial Court, after considering the entire evidence on record, has acquitted the respondent by giving him the benefit of doubt. It is not in dispute that when the accidents in question took place, the respondent was on duty and that he was driving the Fire-brigade vehicle in order to attend an emergency. It is borne out from the record that at the relevant point of time, the respondent had also switched on the alarm-bells of the said vehicle thereby, fulfilling the necessary requirements while proceeding to attend an emergency.

5.0 From the record, it appears that while the respondent was proceeding with the said vehicle to attend the emergency, an S.T. Bus was in front of it and that when the said Bus halted at a place, the respondent tried to over-take the same and in the process dashed the vehicles in question. Looking to the facts and circumstances of the case and keeping in mind the fact that the respondent was proceeding to attend an emergency situation, the trial Court has granted him the benefit of doubt. In my opinion, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings,

ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

6.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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