

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/CRIMINAL APPEAL NO. 130 of 1996**

**With**

**R/CRIMINAL REVISION APPLICATION NO. 18 of 1996**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS.JUSTICE HARSHA DEVANI      Sd/-**

**and**

**HONOURABLE MR.JUSTICE A.S. SUPEHIA      Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

STATE OF GUJARAT  
 Versus  
 AJITSINH JORUBHAI JADEJA

**Appearance:**

**PUBLIC PROSECUTOR(2) for the PETITIONER(s) No. 1**  
**MR MJ BUDDHBHATTI(209) for the RESPONDENT(s) No.**  
**1,10,11,12,13,2,3,4,5,6,7,8,9**

**CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI**  
**and**  
**HONOURABLE MR.JUSTICE A.S. SUPEHIA**

**Date : 28/03/2018**  
**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE A.S. SUPEHIA)**

1. By way of this appeal, the appellant – State has challenged the judgment and order passed by Additional Sessions Judge, Jamnagar (for short the “trial court”), dated 19.10.1995 rendered in Sessions Case No.7 of 1992, whereby the learned trial judge acquitted the original accused – the respondents herein of the charges for the offences punishable under sections 120(b), 143, 144, 145, 147, 148, 302, 506(2) read with 149 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”), section 37(1) read with section 135 of the Gujarat Police Act, 1951 and section 7 read with section 25(1-a) of the Arms Act, 1959. The complainant has challenged the same in Criminal Revision Application No.18 of 1996.

2. The brief facts of the prosecution case are that on 11.10.1991, at about 07.00 – 7.30 hours in the morning, the complainant – Lalubha Bhupatsinh was going towards his field on a tractor following his brother Juvansinh, who was riding bullet motor-cycle, and when they reached in front of the field of Bahadursinh Jorubha, after crossing crematorium and river, at that time the accused – Naranji Bahadursinh fired from a gun. He was accompanied by Suleman Mamad, Mohan Ratna, Ajitsinh Jorubha and Umedsinh Jorubha.

Amongst them, Saleman Maman, who was also having a gun, fired it on Juavansinh and pursuant to that Javansinh received injury and fell down from the motor-cycle. While the brother of the complainant – Juvansinh tried to flee towards the village, Mohan Ratna inflicted spear blow on him and at that time, Ajitsinh Jorubha was having gun and Umedsinh Joribha was having axe. They followed Juvansinh towards crematorium and near the hedge towards the village, he was cordoned by Vikramsinh Bahadursinh Jorubha, Vallabh Mohan Patel, Umar Mamad Sindhi, Ali Mamad Jusab Safiya, Bahadursinh Jorubha, Bhagwanji Bahadursinh, Hanif Jusab Safiya, and Kasam Hasam Safiya. When Juvansinh tried to run towards village, Bahadursinh Jorubha inflicted a sword blow on him as a result of which, Juvansinh fell down and all the aforesaid five accused and Vikramsinh Bahadursinh Jorubha, Vallabh Mohan Patel, Umar Mamad Sindhi, Ali Mamad Jusab Sindhi, Bahadursinh Jorubha, Bhagwanji Bahadursinh, Hanif Jusab Safiya, Kasam Hasam Safiya having sticks, axe, spear, pipe in their hands attacked, as a result Juvansinh fell down. At that time, persons from the neighbor fields viz. Bhoja Dhana Aahir, Kara Raja Patel, and one another person, whose name he does not know witnessed the said incident. Upon seeing that his brother was beaten, he stopped his tractor near the hut of the crematorium and

alighted from it, at that time, Ajitsinh, Bahadursinh Jorubhai and Mohan Ratna threatened him by saying "If he wants to live, he should run away". After saying these words, all the persons chased him. On being scared, he took his tractor and went towards the village and informed his family members, and thereafter, he lodged the complaint before the Lalpur Police Station in respect of the murder of his deceased brother - Juvansinh. The motive assigned by the complainant in his complaint is that, the relationship between his family and the family of the accused had turned sour because of the case lodged against him, Hasem Tayeb and Juvansinh by Ajitsinh Jorubha 20 days prior to the incident.

3. After completion of the investigation, a charge sheet was filed before the Magistrate Court. As the case was exclusively triable by the Court of Sessions, the Magistrate Court, under section 209 of the Code of Criminal Procedure, 1973 (herein after referred to as the "Cr.P.C"), committed the said case to the Court of Additional Sessions Judge, Jamnagar, which was, thereafter, numbered as Sessions Case No.7 of 1992. Since the respondents - accused did not plead guilty and claimed to be tried, there were tried for the alleged offences.

4. At the time of trial, in order to bring home the charge leveled against the original accused, the prosecution examined 21 witnesses as well as the prosecution also produced documentary evidences on record.

5. At the end of the trial and after recording the statements of the accused under section 313 of the Cr.P.C. and hearing the arguments on behalf of the prosecution and the defence, the trial court **acquitted** the accused of all the charges levelled against them. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the trial court, the appellant - State has preferred the present criminal appeal.

6. Mr. L.B. Dabhi, learned Additional Public Prosecution for the respondent - State vehemently submitted that the judgment and order recorded by the trial court deserves to be set aside, as the relevant depositions of the witnesses have been ignored. Learned Additional Public Prosecutor has submitted that the trial court has failed in appreciating the evidence on record. He has submitted that as per the complainant, who is the eye-witness and the brother of the deceased has clearly deposed that his brother was assaulted by the accused. He has submitted that the injuries, as reflected in the *postmortem* report would go to

show that the deceased was severely beaten and assaulted by the various weapons. Referring to the *postmortem* report, he has submitted that the pellets were recovered from the body of the deceased hence, the say of the complainant cannot be overlooked. The deposition of the complainant regarding the firing by the accused on the deceased is more than enough to bring home the charge against the present accused. Referring to the various testimonies of the witnesses, he has submitted that the trial court has miserably failed in appreciating the evidence and the testimonies. In view of the aforesaid submissions, the learned Additional Public Prosecutor further submitted the criminal appeal is required to be allowed and the impugned judgment and order passed by the trial court is required to be quashed and set aside.

7. Supporting the judgment, Mr. Buddhabhatti, learned advocate for the respondents – accused has submitted that the complainant is a solitary eye-witness and interested witness. He has submitted that the complainant had engaged two lawyers, and he has deposed as per the guidance of the advocates. He has submitted that the complainant i.e. brother of the deceased is unreliable witness and he creates story to suit the prosecution case. Moreover, he pointed out

that the lodging of half of the F.I.R. as deposed by the complainant is not palatable. The medical evidence also is inconsistent to the deposition of complainant. He has submitted that the complainant did not think fit to call the police party, who was present in the village on that day. He has submitted that because of rivalry against the accused due to the election contested by them against each other, the complainant has involved the whole family of the accused in the crime. He submitted that accused nos.6, 7, 8 and 9 have no concern with the crime and the complainant has tried to rope as many as persons from one community.

8. Mr.Buddhbhatti, learned advocate for the respondents - accused supported the judgment and order of the trial court and contended that the same was passed after appreciating the evidence adduced on record by the prosecution and hence, no interference is called for by this court. He has therefore, urged that the criminal appeal is required to be dismissed and the impugned judgment and order passed by the trial court is required to be confirmed.

9. We have heard the learned Additional Public Prosecutor for the appellant - State and the learned advocate for the accused and perused the

material on record with their assistance. Learned Advocate Mr.Munshi has adopted the arguments advanced by the learned Additional Public Prosecutor.

10. In view of the above, we have to appreciate the facts in this case from the touchstone of the decisions of the Apex Court laying down the guidelines for acquittal appeals.

11. 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 the catena of decisions. In the case of **M.S. Narayana Menon @ Mani v. State of Kerala & Anr.**, 2006 (6) S.C.C. 39, the Apex Court has narrated the powers of the High Court in appeal against the order of acquittal. In Paragraph No.54 of the decision, the Apex Court has observed as under:

*"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well settled principles of law that where two view are*



*possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."*

12. Even in the case of **STATE OF GOA Vs. SANJAY THAKRAN & ANR. (2007 (3) S.C.C. 75)**, the Apex Court has reiterated the powers of the High Court in such cases. In Paragraph No.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."*

Thus, it is a settled principle that while exercising the appellate powers, even 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.

13. Primarily, the prosecution has placed reliance on three eyewitnesses PW-3, Lalubha Bhupatsinh, PW-4, Bhojabhai Ghanabhai, and PW-6, Gufarsha Bachusha Fakir. Out of these three eyewitnesses, PW-4 and PW-6 have turned hostile to the prosecution.

14. We have gone through the evidence of the Medical Officer, (PW-2), Dr.Bansidhar Ganpatlal Gupta, who was examined at Exh.28. In his deposition, he has stated that total 28 injuries were caused to the deceased. He has submitted

that x-ray shows that there were pellets found in the body of the deceased. While referring to the injury Nos.4 and 5 he has deposed that the same are inflicted by a gun shot. Referring to the various injuries, he has submitted that maximum injuries were caused by sharp edged weapons. Referring to the injury no.4, he has submitted that the same can be caused by firing from the distance of 10 feet. The *postmortem* report Exh.31 reveals that the fragmented pellets fired from the gun were recovered from the left hand. There are stab wounds on the body of the deceased. Thus, the *postmortem* report as well as the deposition of the doctor reveals that the deceased was assaulted by various weapons and the presence of gun shot injury is also established. Adverting to the testimony of PW-3, brother of the deceased Juvansinh, viz. Lalubha Bhupatsinh, who was examined at Exh.34, it is deposed by him that on 11.10.1991, at about 07.00 - 7.30 hours in the morning, he went towards his field on a tractor following his brother Juvansinh, who was riding a bullet motor-cycle and when they reached in front of Bahadursinh Jorubha's field after crossing the crematorium center and river, accused no.4 - Ranji Bahadursinh fired from a gun, but the same did not hit him and hence, accused no. 6 - Suleman Mamad fired again from his gun on his elder brother, which hit on his

left hand as a result he fell down from his motor-cycle and thereafter, he ran away towards the village. At that time, accused - Ajitsinh Jorubha, Umedsinh Jorubha and Mohan Ratna were also present there. Thereafter, his brother ran towards the village and these five persons followed him till the hut, which was adjoining to the crematorium, at that time, the accused - Vallabh Mohan Patel, Umar Mamad Sindhi, Ali Mamad Jusab Sindhi, Bahadursinh Jorubha, Bhagwanji Bahadursinh, Hanif Jusab Safiya, Kasam Hasam Safiya, Ali mammad, Umar Mamad came behind from the thorny bushes, and when his brother was laying down, Bahadursinh Jorubha inflicted a sword blow on the head of his brother and his brother fell on his face, then, Umar Mamad inflicted a stick blow on the back-side of the head of his brother, and thereafter, all the accused had assaulted his brother one after other. Then, he reached there on the tractor and alighted from it by saying "don't beat, don't beat", and then accused - Ajitsinh Jorubhai, Suleman Mamda and Mohan Ratna told him "if he wants to live, he should leave or else he would also be killed, like his brother is killed." Therefore, he turned his tractor and went to his home and informed his mother as well as his sister-in-law (bhabhi). It is further deposed by him that prior to the incident, the accused -

Ajitsinh Jorubha had filed a false complaint against him, whereas the other accused and he had contested an election against each other, which is the cause of the incident that had taken place. He has further deposed that he is able to say what the weapons were carried by the accused. He has stated that accused - Naranji Bahadursinh was having a gun, Suleman Mamad was having a gun, Ajitsinh Jorubhai was having a gun, Bahadursinh Jorubhai was having a sword, Mohan Ratana was having a spear, Bhagwanji Bahadursinh was having a pipe, Umedsinh Jorubhai was having an axe, and the rest of the accused were having sticks. In the cross-examination, it is elicited that he does not remember what police had asked when he lodged the complaint. He submitted that whatever he has stated today was dictated by him in his complaint. He has also submitted that in his case, he has engaged two private lawyers. It also emerges from his cross-examination that the firing took place twice on the day of the incident and in the second firing, the bullet hit the left hand of the deceased. He had seen the person, who had fired on his brother. He has asserted that his brother was injured on the left hand because of firing and not on the right hand. He further stated that his brother ran almost 3 feet and when he reached at the hut, the second assault took place. He further deposed that when

his brother was hit in the firing, he was on his tractor near the place of the scene of offence, at that time, the accused continued their assault on his brother for at least 10-15 minutes. He has stated that there was distance of 750 feet between them. He has stated that when the second firing took place; he was around 20-25 feet away from the hut. He has further deposed that he rushed to his home after taking the tractor. It also emerges from his cross-examination that he had gone to Lalpur for lodging the complaint, though there was a police surveillance in the village. It is further deposed by him that at least 04 police constables used to remain present in the village in the police surveillance. The policemen had also come at the place of scene of offence. He has submitted that neither the police personnel asked him anything nor he spoke with them. He has submitted that when he rushed to the village, his brother - Navalsinh came to the place of incident. Both of them did not interact with each other. It further comes out from his testimony that he had remained at his home for half an hour, and thereafter, he went for Lalpur in a rickshaw for lodging the complaint. It is deposed by him, that when he went to Lalpur Police Station, he informed the PSO, who had written down the facts narrated by him, but then the PSO said to him that rest will be done after

his superior arrives. He has stated that after some time, his Superior arrived, who recorded his complaint. After lodging the complaint at Lalpur, he immediately rushed in his rickshaw to his home. Further, in the cross-examination, he has deposed that when he alighted from his tractor, he did not know that his brother was alive or not? From the cross-examination, it comes out that there was a prior enmity between the accused and complainant and his brother since they had contested election against each other.

15. We have also gone through the evidence of PW-21, Kalabhai Maldevbhai Varu, Investigating Officer, who is examined at Exh.83. He has submitted that after lodging the complaint, he went to the scene of offence and after carrying out the inquest panchnama, the dead-body was sent for *postmortem* at Irvin Hospital. After collecting necessary samples, the same were sent for examination. In his testimony, he has deposed that a single barrel load gun was recovered from the accused - Ajitsinh Jorubha. The Investigating Officer, in his testimony reproduced the entire statements of the witnesses - Bhojabhai Dhanabhai, Hasam Taiyab and Gafarsha Bachusha, which is impermissible in law. In the cross-examination, he has submitted that when he visited the scene of offence, policemen, who were

in the police surveillance, were also present there. He did inquire from them whether the brother and complainant went towards the field or not ? He deposed that before he reached at the place of occurrence, the policemen were already having the information regarding the incident. It also comes out in his deposition that PSO, Kanabhai, did not inform about the ruckus at Nana Khadbha. He has stated that when he was at Lalpur Police Station, he got the information about the incident at 11 a.m., and he immediately reached Nana Khadbha within 20 to 25 minutes, and after reaching the spot, within five minutes, he started recording the complaint. He has also deposed that he has not taken the half of the F.I.R. at the Lalpur Police Station and rest of at the scene of offence. He also deposed that the complainant has not informed him about the fact that his brother was injured on left hand in the firing while recording his statement. He has asserted that the complainant has stated that Suleman Mamad was also carrying a gun, who fired at his brother. It is also referred by him that the complainant has not stated in his statement about any threaten given by the accused to him after the murder of his brother and in is complaint, he has only named Bahadursinh Jorubha, who threatened him. It also comes out from the deposition that there was prior enmity between



the deceased and the accused.

16. PW-18, Kanabhai Jethabhai, P.S.O is examined at Exh.78. He has deposed that he knew the complainant. He has denied that the complainant had come on that day at the Police Station and he had asked him to wait. In his cross-examination he has asserted that the complainant has never met him on that day. He has also stated that there were numerous complaint filed against the complainant.

17. All the panch-witnesses examined on behalf of the prosecution have declared turned hostile to the case of the prosecution.

18. The entire case of the prosecution hinges on the testimony of the PW-3, the brother of the deceased. The evidence reveals that there was prior enmity between the deceased, his brother and the accused and there were numerous cases registered against him. In these circumstances, the complainant being an interested witness, his evidence has to be scrutinized with due care and caution in the light of the earlier statement in the F.I.R. It is pertinent to note that deposition of PW-3 - complainant - Lalubhai Bhupatsinh has been recorded after the medical evidence was adduced. It appears that PW-3

deposed accordingly to suit the medical evidence. As per the deposition of the doctor from the examination of the *postmortem* report, it comes out that the deceased had received severe multiple injuries. It also comes out that the deceased has also received gunshot injury. The Ballistic Report (Exh.64) signifies that "no opinion can be given whether this LEAD (Exh.B) are fired from Exh.4 or not ?". PW-7, panch witness of the seizure of gun has been declared hostile to the case of the prosecution. As per the prosecution case, the gun is recovered from accused - Ajitsinh. In the complaint filed by the complainant, he has stated that Naranji Bhadursinh (A-4), Ajitsinh Josrubha, (A-1) and Suleman Mammad (A-6) were carrying guns. In his deposition, he has that the accused - Suleman had fired from his gun hitting the left hand of his brother. The evidence on record does not suggest any recovery of gun from the accused - Suleman or Naranji Bahadursinh. The defence has brought out material omission in the testimony regarding the deceased being shot in left hand. It also comes out from the record that there was already police surveillance in the village due to election in the village. Surprisingly, the complainant did not inform the police personnel, who were already present in the village, instead the complainant went to his home and again returns to the scene

of occurrence. At that time, the police personal including a Head Constable were present, despite that the complainant did not reveal anything to them. His deposition further reveals that when he returned to the scene of offence, his brother Navalsinh had arrived, but neither he asked him anything nor he said anything to him. The complainant is also inconsistent as regards the time and place of lodging the F.I.R. The cross-examination also reveals that he does not remember at what hours he went to lodge the complaint at Lalpur whether in the morning, afternoon or in the evening. The complainant in his deposition, has stated that some of his complaint was recorded at Lalpur Police Station and some of the details, which were asked by the police, were not recorded in his complaint. He has stated that the complaint was not read over to him. It deserves to be noted that, if the complainant was not knowing the contents of the F.I.R., he would not have known the facts which were not noted by the police. No details are given by him in his deposition. As per the testimony of the PW-3 he had lodged the complaint at the Lalpur Police Station and not at Khadbha Village before the Police Sub-Inspector. In Paragraph No.22 of his cross-examination, he has stated that he went to the Lalpur Police Station since his complaint was not recorded. When he

went to the Lalpur Police Station, at that time PSO met him. He has stated that he does not remember that whether the PSO informed him to wait till his superior arrived. In his cross-examination, he has stated that the half F.I.R. was written in the Police Station, and thereafter, rest of the contents were recorded at village Nana Khadbha. He has stated that he does not know why the complaint was recorded in half. It appears from his deposition that the complainant PW-3 has improved his version after recess before the trial court. He has admitted that he had engaged two advocates in the case. The testimony of the complainant is in contradiction with the testimony of the Investigating Officer, PW-21, who has stated that on receiving the information of the incident at 11 a.m. at the Lalpur Police Station, he immediately rushed to Nana Khadhba village, and after reaching at the scene of occurrence he recorded the complaint. Necessary entry was made in the station diary. The Investigating Officer (PW-21), has asserted that the complainant did not meet him at the police station as he did not come to the Police Station. PW-18, Kanabhai Jethabha, P.S.O in his testimony has also stated that the complainant never met him on that day when he was present in the Lalpur Police Station. Thus, substantial contradiction and improvement

emerge from the testimony of the complainant with regard to lodging of the complaint by him. The relevant feature which emerges from the evidence is that, on the day of the incident, there was already a police surveillance in the village, who were competent to take the complaint despite that the complainant did not inform the police personnel, who were present in the village. If at all the complainant had informed the police personnel, they would have arrested the accused on the spot. This conduct of the complainant cannot be termed as natural conduct. An attempt is being made by the complainant to build a case as per his convenience in order to implicate as many as accused since there was prior enmity between them.

19. Moreover, the testimony of PW-4, Bhojabhai Dhanabhai Aaher, who was examined at Exh.38 has been declared hostile. PW-5, Hasam Taiyab, who was examined at Exh.39, on behalf of the prosecution has also been declared hostile. In his cross-examination, it comes out that the deceased had lodged the complaint against the accused – Ajitsinh for the offence under section 307 of the IPC prior to 12-15 days before the incident. He has submitted that he was released prior 15 days from the death of deceased Juwansinh. PW-19, Vikramsinh Gagubha, Sarpanch of

the Village, who was examined at Exh.80 on behalf of the prosecution. Nothing much is elicited from his evidence. In his evidence, he has stated that on 11.10.1991, at about 09.00 hours in the morning, he saw Umedsinh (A-13) and Ajitsinh (A-1), going on a tractor. They told him that they had murdered Juvansinh. In the cross-examination, it does not come out that the accused have, in fact, told him that they had murdered Juvansinh.

20. As regards the role attributed against (A-6) Suleman Mamad, who is alleged to have fired a gunshot from his gun on the left hand of the deceased, it comes out from the evidence that no gun was recovered from him and it was recovered from (A-1) Ajitsinh Jorubha. The evidence reveals that the complainant has subsequently changed his version that A-6 had fired a shot on the left hand of the deceased to suit the medical evidence. No clear opinion has been expressed by the Ballistic Expert that the pellets found in the body of the deceased were fired from that gun. Hence, it is doubtful to believe the version of the prosecution that (A-6), Suleman Mamad has fired from a gun. There is no evidence involving (A-6) Suleman Mamad, armed with the gun.

21. The trial court has analyzed the medical evidence apropos injuries mentioned in the

*postmortem* report. Though, in our considered opinion, the trial court has not properly appreciated the medical evidence, at the same time, we find that it does not corroborate with the testimony of PW-3. The in-depth analysis of the entire evidence discloses that the accused are not entitled to clean acquittal, but at the same time we find that they are entitled to the benefit of reasonable doubt since the testimonies of the witnesses are not natural and truthful. Thus, we endorse the observations of the trial court, recording that it would be dangerous to convict the accused on the basis of the sole witness i.e. the complainant, who has improved his version frequently in his testimony and which is embellished with omissions and contradictions. The trial court has observed that there are various discrepancies in the evidence produced by the prosecution. The trial court has doubted the veracity of the investigation. There are loopholes in the evidence and investigation, which has been rightly observed by the trial court. Thus, no interference is warranted with the judgment and order of the trial court.

22. In the backdrop of the aforesaid analysis and observations, the appeal and criminal revision application fail and are accordingly, dismissed. The judgment and order of the trial court dated

**19.10.1995** stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. Record and proceedings be sent back to the concerned trial court, forthwith.

**Sd/-**  
**(HARSHA DEVANI, J)**

**Sd/-**  
**(A. S. SUPEHIA, J)**

GIRISH