

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 36 of 2000****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA**

Sd/-

and**HONOURABLE MR.JUSTICE D. M. VYAS**

Sd/-

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Approved for Reporting	Yes	No
		No

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STATE OF GUJARAT

Versus

VIRENDRAKUMAR BHANJIBHAI PATEL & ANR.

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Appearance:

MR J K SHAH, APP for the Appellant(s) No. 1

H B SHETHNA(2436) for the Opponent(s)/Respondent(s) No. 1

MR RAJKUMAR CHAUMAL(3501) for the Opponent(s)/Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR.JUSTICE D. M. VYAS**Date : 27/05/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. This acquittal appeal preferred by the State is directed against the judgment dated 30.11.1999 passed by the Sessions Judge, Nadiad in Sessions Case No.228 of 1997 by which the respondents-accused have been acquitted under Sections 307,

323, 506(2) and 201 read with Section 114 of the IPC.

2. Case of the prosecution, in short is that, the complainant - PW.1 -Nayna Patel is the wife of the accused Virendra Patel. The marriage of the parties was solemnized on 14.02.1989 and out of the said wedlock, they blessed with daughter. The parties are residents of Nadiad, District: Kheda. The accused no.2 - Parvatiben is the mother-in-law of the complainant. According to case of the prosecution, the complainant was subjected to mental and physical cruelty and harassment by the husband and mother-in-law and there was a matrimonial dispute on the issue of daily household work and other things. On 28.01.1997, the complainant Naynaben was busy with the water heater as she was trying to turning on the manual water heater with the help of wooden logs. At that time, due to matrimonial dispute, in order to kill the complainant - Naynaben, the accused husband caught hold her and the mother-in-law - accused Parvatiben took the plastic cane from the house and sprinkled the kerosene oil upon her and set on fire. It is further case of the prosecution that, after the incident, the husband-accused tried to extinguish the fire which flamed on her and also sustained burn injuries. The complainant - PW.1 taken to Karamsad Hospital. The Medical Officer - PW.2 after noting the

case history, admitted the complainant for further treatment. In the history, the complainant disclosed that, she burnt accidentally while boiling the hot water and her husband was helping in the said act of boiling water also sustained injuries. The complainant - PW.1 sustained serious injuries which likely to cause her death and treating doctor had also opined that, the injuries were likely to cause death. The Kheda Police immediately i.e. on the next day of the incident, recorded the statement of PW.1-complainant and her statement was also recorded by the Executive Magistrate. The complainant in both the statements, disclosed that, she sustained burn injuries while turning on water heater. It is further case of the prosecution that, on 10.04.1997, the complainant-PW.1 made a complaint to the police, inter alia, alleging that, due to matrimonial dispute, her husband and mother-in-law attempted to kill her by pouring kerosene oil on her. It was the explanation of the complainant that due to continuous presence of the in-laws and due to fear of them, she did not disclosed the true facts before the police when her statements were recorded and after the moral support of the community leader, the complaint in question came to be filed. The offence under the aforementioned provisions of the Criminal Code, came to be registered with Kheda Police Station. The I.O. -

PW.4, recorded the statement of the complainant and other witnesses, arrested the accused, drew the panchnama of place of incident, collected and obtained the medical treatment case papers and thereafter, the chargesheet for the act of attempt to murder came to be filed against the accused. The case was committed to the court of sessions.

3. After due framing of charge and upon accused pleaded not guilty, the trial commenced before the Sessions Court, Kheda at Nadiad.
4. In the course of trial, prosecution examined in all 4 witnesses namely PW.1-complainant - Naynaben Patel, PW.2-Doctor Nila Nanavati, PW.3-Panch Witness Babu Patel and PW.4 - Mr. R.H. Pachani - Investigating Officer. The prosecution had produced and proved the panchnama of place of occurrence (Exh.10), complaint-Exh14, Injury certificates along with case papers (Exh.19 and 20), the injury certificate of the accused (Exh.21).
5. After closure of the prosecution evidence, the respondents - accused were questioned under Section 313 of the Cr.P.C. to which they stated that the incident is nothing but an accident as at relevant time, the husband wife were trying to turn on water

heater and while firing the wooden logs, they sustained burn injuries by accident. The PW.1 at the initial stage before the doctor as well as the police and the person who recorded the statement, made a disclosure that, she sustained burn injuries while turning on the water heater. It was further pleaded that, after 3 months, the wife changed her version and surprisingly made a false allegation that, the accused set her on fire by sprinkling kerosene. It was further pleaded that the entire medical expenses were being borne by him and he had sincerely served the PW.1 and if he would have other intention like kill her etc., then he could not have paid the medical expenses and served her 24X7.

6. Trial court after hearing the parties and upon appreciation of the evidence, acquitted the respondents-accused from all charges observing that the prosecution miserably failed to prove the case beyond reasonable doubt by adducing cogent, acceptable and reliable evidence. The trial court while acquitting the accused, recorded that, the delay of 3 months in lodging the FIR and that too without any explanation is fatal to the prosecution.
7. We have heard Mr. J.K. Shah, learned APP appearing for the appellant-State, Mr. H.B. Shethna, learned

counsel appearing for and on behalf of the respondents-accused and Mr. Rajkumar Chaumal, learned counsel appearing for the complainant - PW.1.

8. Mr. J.K. Shah, learned APP appearing for and on behalf of the appellant-State while assailing the impugned judgment, has submitted that, the judgment of acquittal suffers from legal infirmities, perversity and fundamental error in appreciation of evidence. That, the learned trial court despite of acceptable and convincing explanation of delay in lodging the FIR, did not consider it and failed to assign sound reasons on it and on that ground, the judgment of acquittal is not sustainable. That, the PW.1 was the injured witness and throughout her treatment as indoor patient, the respondent-husband was with her and therefore, naturally she was under pressure of the accused which itself give rise to infer that she could not lodge an FIR with utmost promptness and after she got courage from the community leader, the FIR came to be filed. Thus, it has been urged that, the testimony of the PW.1 is of sterling quality and she had no motive to falsely implicate her husband and the manner in which she sustained burn injuries, the defense of accidental injuries cannot be accepted and therefore, the trial court failed to appreciate this

aspect in its true prospective and on technical ground of delay, which otherwise in eye of law, cannot be a sole ground to create a doubt on the prosecution case, has acquitted the accused.

9. In such circumstances as referred above, Mr. J.K. Shah, learned APP prayed that, there being merits in this appeal as the findings of acquittal are contrary to the evidence on record and same may be allowed and the accused be convicted and sentenced for the offences for which they were tried.
10. On the other hand, learned counsels appearing of the accused have supported the findings recorded by the Trial Court and contended that there is no sufficient evidence adduced by the prosecution to establish the charge of attempt to murder. That, the PW.1 herself stated before the Executive Magistrate that she sustained burn injuries due to accident and thereafter, the same facts being reiterated by her before the police also. Thus, after 3 months, without any justifiable reasons, she lodged an FIR alleging that, the accused burnt her. In such circumstances, it is submitted that, the court below has rightly appreciated the oral as well as documentary evidence and does not committed any error either on law or facts while recording the acquittal. Thus, therefore, it

would urge that the view taken by the Trial Court is a possible view and the prosecution miserably failed to point out the compelling reason warranting inference in the order and judgment of the acquittal.

11. Mr. Rajkumar Chaumal, learned counsel appearing for the complainant-wife referring to her affidavit, stated that, matter has been compromised and since then, the parties are residing together and therefore, Court may not entertain this acquittal appeal.
12. It is necessary to analyze the evidence of the complainant-PW.1. She has categorically stated that, after the incident, she was taken to Karamsad Hospital for further treatment and her treatment was continued for long and she was under constant supervision of her in-laws. She has further stated that, the theory of accidental injuries were being disclosed because of fear factor and continuous presence of her in-laws and she got courage from the community leader to file a complaint. She has further stated that, the case was not accidental injuries but the accused burnt her with intention to kill. In the cross-examination, she admitted that during the period of 3 months, she had opportunity to lodge an FIR, but she did not do so.

13. Dr. Neela Nanavati - PW.2 had produced all the treatment case papers and injury certificate. The witness was Medical Officer with Karamsad Hospital and according to her say, the injured gave a history that, while turning on the water heater, she as well as her husband sustained burn injuries. The witness has also produced the treatment certificate of accused-husband at Exh.21.
14. PW.4 - Investigating Officer Mr. R.H. Pachani, in his testimony has stated that, after the incident i.e. 28.01.1997, the hospital person had informed the police station and based on the information, the entry being registered as "Janvajog". The witness has further stated that for twice i.e. on 31.01.1997 and 08.04.1997, he recorded the statements of the injured and in both the statements, she did not disclose the act of the accused and disclosed the theory of accident. In the cross-examination, the witness has admitted that the statement of the injured was recorded by the Executive Magistrate wherein also she disclosed the theory of accident.
15. Before venturing into the merits of the case, we would like to refer the scope of Section 378 of the Cr.P.C. while deciding an appeal against the judgment and order of acquittal. The Supreme Court in its various

pronouncements has persistently emphasized that there are limitations while interfering with an order against acquittal. 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 order of acquittal. The Appellate Court should bear in mind the presumption of innocence of the accused and further that the acquittal by the Lower Court bolsters the presumption of his innocence. Interference in routine manner, where the other view is possible should be avoided, unless there are good reasons for interference.

16. Applying the said principles and after going through the oral as well as documentary evidence and the reasons recorded by the Trial Court in its judgment, we are of the considered opinion that the learned Trial Court has not committed any error while disbelieving the prosecution case on the aspect of delay in lodgement of the FIR. The victim PW.1 though for sometime she was under the treatment, but thereafter when she was out of danger, she did not disclose the factum of prosecution case before the police, nor, called the police for change of her version. In such circumstances, when the accused had sustained the burn injuries in the same incident and was throughout stood by the victim, the theory of

accidental sustaining of the injuries seems to be convincing, acceptable and believable. We are conscious about the settled position of law that the delay in lodging the FIR by itself cannot be a ground to doubt the prosecution case and same necessarily depends upon the facts and circumstances of each case whether the unexplained inordinate delay in lodging the FIR may cast doubt about the veracity of the prosecution case. In such circumstances, the explanation offered by PW.1 for delay in lodging the FIR is not convincing and acceptable and therefore, we are of the firm view that, the PW.1 consulted the community leaders and after due deliberation, she made a change in her earlier versions and lodged the FIR.

17. For the reasons recorded, the prosecution has not adduced sufficient evidence to prove the charge of attempt to murder against the accused. On careful examination of the findings of the trial court, we do not find any compelling reason warranting interference in the judgment of the acquittal as the findings of acquittal based on the evidence on record and the view of the Trial Court is possible view which do not warrant any interference.
18. Resultantly, in absence of any compelling reasons to

interference with the judgment of acquittal, this acquittal appeal preferred by the State stands **dismissed**. The bail bonds if any stands cancelled. Surety, if any, given stands discharged. R & P to be sent to the Trial Court concerned.

Sd/-

(ILESH J. VORA, J)

Sd/-

(D. M. VYAS, J)

TAUSIF SAIYED