NEUTRAL CITATION
2025:GUJHC:32563-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 492 of 1999

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI
and
HONOURABLE MR.JUSTICE UTKARSH THAKORBHAI DESAI

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
KALIDAS ALIAS NARAYAAN SHANABHAI FULMALI & ORS.

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Appearance:
MS JIRGA JHAVERI, ADDL PUBLIC PROSECUTOR for the Appellant
ABATED for the Opponent(s)/Respondent(s) No. 2
ADVOCATE NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 3

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CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**
and
HONOURABLE MR.JUSTICE UTKARSH THAKORBHAI DESAI

Date : 18/06/2025

ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI)

1. Heard Ms. Jirga Jhaveri, the learned APP for the appellant State at length.

2. The present appeal is filed under Section 378 of

NEUTRAL CITATION
2025:GUJHC:32563-DB

the Code of Criminal Procedure, 1973 against the judgement and order dated 24.03.1999 passed by the Additional Sessions Judge, Vadodara in Sessions Case No. 104 of 1998 whereby, the accused were acquitted for commission of the offences under Sections 302, 294, 452 and 34 of the Indian Penal Code.

3. Brief facts leading to the filing of the present appeal are that on the day of the incident i.e. on 29.01.1998, the deceased Shardaben's husband had gone for labour work in the morning. He returned at 11 am, had his lunch, and immediately returned to work. The deceased had not gone to work. At around 1 pm, while she was plastering her house with cowdung, her elder sister-in-law (jethani) - accused no. 3 who lived nearby and her sister-in-law (nanand) – accused no. 2 as well as husband (nandoi) of sister-in-law – accused no. 1 who also lived nearby, came to her house and started abusing her. It is the case of

NEUTRAL CITATION
2025:GUJHC:32563-DB

the prosecution that, they started chiding her by saying that, even though she had been asked to go away, she would frequently return.

3.1 It is the case of the prosecution that, accused no. 1 rushed inside the house and came running outside with a can of kerosene. Accused no. 1 tried to pour kerosene on the deceased but she tried to run away. At that time, accused nos. 2 & 3 tried to stop her from running and caught hold of her and accused no. 1 lighted a match stick and set her on fire. At this time, the deceased started screaming and the accused ran away from the scene of offence. Hearing the scream, the deceased's mother-in-law rushed to her and covered her with a blanket. The deceased's mother-in-law took the deceased in an autorickshaw to the hospital, however, she succumbed to the burn injuries in the hospital. On these facts, a complaint was filed with the police and the police after investigation,

charge sheeted the accused for the aforesaid offences.

4. Upon committal of the case to the Sessions Court, the Additional Sessions Judge framed charge against the respondents accused for the aforesaid offences. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution led evidence and during the course of trial, had examined in all 9 witnesses and had submitted 11 documentary evidence. The details of the aforesaid evidence led by the prosecution is reproduced in the tabular form as under :-

~:: Oral Evidence ::~

Sr. no.	Particular	Exh.
1.	Maniben Shanabhai - PW-1	12
2.	Bhupatsinh Somsinh – PW-2	13
3.	Ganpatbhai Shanabhai Rathod – PW-3	14
4.	Champaklal Hargovandas Panchal – PW-4	16

5.	Dr. Kishore Desai - PW-5	19
6.	Dr. Meenaben Christian -PW-6	22
7.	Ajaysinh Mahendrasinh Mahida - PW-7	24
8.	Manilal Dhanjibhai Damor – PW-8	28
9.	Meghjibhai Valjibhai Damor - PW-9	36

~:: Documentary Evidence ::~

Sr. no.	Particular	Exh.
1.	Complaint by the deceased	37
2.	Panchnama of scene of offence	29
3.	Panchnama of body condition of deceased	30
4.	Inquest Panchnama	31
5	Hospital Vardhi	26
6	Dying Declaration	17
7	Panchnama of body condition of Revaben	32
8	Post Mortem Report	20
9	Despatch note intimation	33
10	Receipt of FSL of receiving muddamal	34
11	FSL report	35

4.1 Upon conclusion of oral evidence on the part of the prosecution, the trial Court recorded further statements of accused as provided u/s 313 of the

NEUTRAL CITATION
2025:GUJHC:32563-DB

Code of Criminal Procedure, wherein, the accused herein denied their involvement in the offence and stated that, false case had been filed against them. After hearing both the sides and after appreciating evidence adduced by the prosecution, the learned Trial Judge acquitted the accused herein, from the offences so charged.

5. We are informed that the accused no. 2 has expired and therefore, the appeal shall stand abated qua her. In view thereof, the impugned judgement is required to be tested qua accused nos. 1 & 3.

6. Ms. Jirga Jhaveri, the learned Additional Public Prosecutor for the appellant - State of Gujarat has submitted the same facts which are narrated in the memo of appeal. She has taken us through the relevant evidence of the witnesses and the documentary evidence and has submitted that, the

NEUTRAL CITATION
2025:GUJHC:32563-DB

impugned judgment and order is illegal, unjust and against the facts of the case.

7. Having heard the learned advocates for the respective parties and considering the depositions of the prosecution witnesses which are produced on record, it emerges that P.W. 5 – Dr. Meenaben Christian was the Medical Officer who treated the deceased, when she was brought to the hospital after having sustained burns. This witness has deposed below Exh. 23. In her deposition she has stated that, she was on duty on 29.01.1998, when, at around 1445 hours, the deceased Shardaben was brought by her mother-in-law to the hospital in a burnt condition. She has stated in her deposition that, Shardaben was conscious when she was brought to the hospital and therefore, upon asking her, she had informed her that, at around 1 pm, the accused persons, namely, Revaben Chimanbhai, Manjulaben Naranbhai, and

NEUTRAL CITATION
2025:GUJHC:32563-DB

Naranbhai who were her elder sister-in-law (jethani), sister-in-law (nanand) and her sister-in-law's husband (nandoi) respectively, poured kerosene on her and set her ablaze. This witness has stated that, after recording the statement of the deceased, she examined her and found that she had sustained burns on her chest, stomach, back and both hands as well as both thighs. The deceased was shifted to the surgery department for further treatment. The case history is duly produced at Exh. 23. A complaint came to be thus filed by the deceased Shardaben against the accused being C.R. No. 104/1998.

7.1 Having considered the arrest panchnama of accused nos. 1 & 2 below Exh. 30, it is borne out that, the same does not support the case of the prosecution. Similarly, arrest panchnama of accused no. 3 Revaben below Exh. 32 also does not support the case of prosecution. From the said panchnama at

Exh. 32, it is borne out that nothing unusual was found from the body and clothes of the accused no. 3.

7.2 Considering the case of the prosecution which is mainly with respect to the dying declaration of deceased Shardaben, the competent court holds that, the same was a cyclostyled document, and that, only the endorsement of the doctor is taken thereupon. It further emerges from the record that, the said dying declaration was also found to be faulty. Exh. 23, the case history recorded by Dr. Meenaben was not believed by the competent court in view of the fact that, the doctor who performed the post mortem i.e. P.W. 5 – Dr. Kishore Desai, Exh. 19 had admitted in his cross examination that, had the deceased been treated properly, she could have been alive. He had further admitted that, the deceased had sustained burns and that there was bandage on her hands and fingers. The inquest panchnama also corroborated

NEUTRAL CITATION
2025:GUJHC:32563-DB

the said fact and the death having happened due to severe burns. P.W. 6 – Dr. Meenaben had also admitted in her cross examination that, the deceased had sustained burns on both her hands and fingers. All these evidences do not lend credence to Shardaben's dying declaration.

7.3 Considering the aforesaid, the competent court held that, the prosecution was unable to prove beyond reasonable doubt that, the accused poured kerosene on the deceased Shardaben, and set her ablaze. The competent court had not ruled out the possibility of a previous animosity between the deceased and the accused, and the inference that therefore, the deceased could have named the accused perpetrators of the alleged crime. There are no eye witnesses to the incident in question to corroborate the dying declaration.

NEUTRAL CITATION
2025:GUJHC:32563-DB

8. It is a settled law that, when dying declaration is doubtful of being voluntary and truthful, conviction cannot be based on same without corroboration, and that the court cannot in all cases presume, that dying person would not make a false statement.

9. It is further required to be noted that, the parties had also arrived at a settlement which is at Exh. 10. However, the competent court had considered the case on its own merits and had held that, in absence of any cogent evidence on record pinning the guilt on the accused beyond reasonable doubt, they cannot be held guilty for the offences so charged against them. The learned APP is not in a position to show any reliable and cogent evidence to take a contrary view in the matter or that the approach of the Court below was vitiated by some manifest illegality or that, the decision was perverse or that, the Court below had ignored the material evidence on record. In above

NEUTRAL CITATION
2025:GUJHC:32563-DB

view of the matter, we are of the considered opinion that, the Court below was completely justified in passing impugned judgement and order, whereby, it had acquitted the accused.

10. At this stage, it is appropriate to refer to the ratio laid down by the Hon'ble Apex Court in case of ***Sanjeev v. State of Himachal Pradesh*** reported in ***2022 (6) SCC 294.*** Para 7 of the judgement is reproduced herein below:

> *"7. It is well settled that:-*
>
> *7.1 While dealing with an appeal against acquittal, the reasons which had weighed with the Trial Court in acquitting the accused must be dealt with, in case the appellate Court is of the view that the acquittal rendered by the Trial Court deserves to be upturned (See Vijay Mohan Singh v. State of Karnataka3, Anwar Ali and another v. State of Himachal Pradesh).*
>
> *7.2 With an order of acquittal by the Trial Court, the normal presumption of innocence in a criminal matter gets reinforced (See Atley v. State of Uttar Pradesh).*
>
> *7.3 If two views are possible from the evidence on record, the appellate Court must be*

extremely slow in interfering with the appeal against acquittal (See Sambasivan and others v. State of Kerala).”

11. Similarly, in the case of ***Bhupatbhai Bachubhai Chavda and another*** reported in ***[2024] 4 S.C.R. 322***, the relevant paragraphs read as under:

“6. It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the

NEUTRAL CITATION
2025:GUJHC:32563-DB

presumption of innocence of the 326 [2024] 4 S.C.R. Digital Supreme Court Reports accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.

7. The second error the High Court committed is found in paragraph 23 of the impugned judgment. The High Court has gone to the extent of recording a finding that the appellants have failed to adduce evidence in their support, failed to examine the defence witness and failed to establish falsity of the prosecution's version. This concept of the burden of proof is entirely wrong. Unless, under the relevant penal statute, there is a negative burden put on the accused or there is a reverse onus clause, the accused is not required to discharge any burden. In a case where there is a statutory presumption, after the prosecution discharges initial burden, the burden of rebuttal may shift on the accused. In the absence of the statutory provisions as above, in this case, the burden was on the prosecution to prove the guilt of the accused beyond a reasonable doubt. Therefore, the High Court's finding on the burden of proof is completely erroneous. It is contrary to the law of the land.

...

11. Therefore, the appeal must succeed. We set aside the judgment and order dated 14th December 2018 of the High Court and set aside the conviction of the appellants. The judgment and order dated 5th July 1997 of the Trial Court is restored. The appeal is, accordingly, allowed. The bail bonds of the appellant no.2 are cancelled. The appellant no.1 shall be forthwith set at liberty unless he is required to be

NEUTRAL CITATION
2025:GUJHC:32563-DB

detained in connection with any other case.”

12. It is also a settled legal position that in acquittal appeals, the appellate court is not required to re-write the judgement or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Hon’ble Apex Court in the case of **State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

12.1 Thus, in case the appellate court agrees with the reasons and the opinion given by the competent court below, then the discussion of

NEUTRAL CITATION
2025:GUJHC:32563-DB

evidence at length is not necessary.

13. We have appreciated, re-appreciated and re-evaluated the evidence on the touchstone of latest decisions of the Hon'ble Apex Court. In light of the position of law as referred above and in the facts of the present case, no case is made out to interfere with the impugned judgement and order dated 24.03.1999, passed by the Additional Sessions Judge, Vadodara in Sessions Case No. 104 of 1998, whereby, the accused came to be acquitted.

14. Accordingly, the present appeal is dismissed. R & P, if any called for, to be sent back to the concerned Trial Court forthwith.

(VAIBHAVI D. NANAVATI, J)

(UTKARSH THAKORBHAI DESAI, J)

DIVYA