



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 534 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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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

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STATE OF GUJARAT
Versus
SUHEL ISMAIL IBRAHIM VORA PATEL

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Appearance:

MS. JIRGA JHAVERI, APP for the Appellant(s) No. 1

ADVOCATE NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1

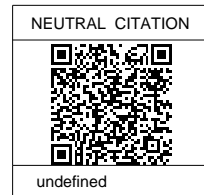
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CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 21/05/2024

ORAL JUDGMENT

1. This appeal is filed at the instance of the State under Section 378(1) (3) of the Code of Criminal Procedure, 1973 (for short, "the Code"), challenging the judgment and order dated 15.06.2007 passed by learned Additional Sessions Judge, Fast Track Court No.2, Bharuch



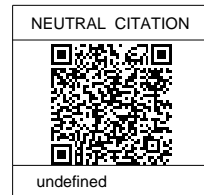
(for short, "the learned Judge") in Sessions Case No.103 of 2006. By the said judgment and order, the learned Judge has recorded acquittal of the present respondent-accused for the offence alleged under sections 397 and 34 of the I.P.C.

2. The brief facts of the prosecution case are that:

2.1 The complainant- Dineshbhai Vallabhbai Amin is engaged in the business of wholesale Kerosene and along with his family members is also managing ORO Petrol Pump at Bhrauch.

2.2 It is the case of the complainant that the complainant used to collect money derived from the business of petrol pump and used to deposit the same in the bank. On 03.11.2003 at around 8:00 a.m. in the morning, the complainant had went to the petrol pump on his scooter bearing registration no.G-UN-9955 and the amount of Rs.4,18,945/- was collected by him from the petrol pump.

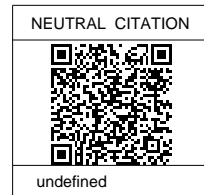
2.3 It is the case of the complainant that the aforesaid bundles of notes were put by him inside violate colour bag and he had went to depot of Kerosene of M. Patel & Co. at around 9:00 a.m., where the notes were classified into different bundles and stamps were affixed on it. At around 11:00 a.m., the complainant had proceeded to the bank along with witness namely Bhupendrabhai Chhaganbhai Patel on



his scooter to deposit the aforesaid amount. On his way, two unknown persons came on Hero Honda Splendor bike and intervened them. The complainant had, therefore, stopped the vehicle. The driver of the motorcycle handed over his bike to pillion rider and pointed knife to the complainant.

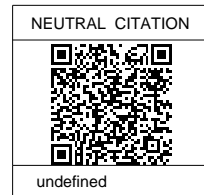
2.4 It is the case of the complainant that the blunt part of the knife was hit on his head. The said accused had caught hold of him, and thereafter, hit second blow on his right side of the face, causing injury on his face. Noticing the aforesaid assault, the witness Bhupendrabhai Chhaganbhai Patel, who was sitting as pillion rider on scooter ran away from the spot, whereas the co-accused who was sitting as pillion rider kept started motorcycle on the stand and had forcefully removed the bag carrying bundles of money from the basket of the scooter of the complainant and had proceeded towards the bike.

2.5 It is further alleged that the accused who was caught hold by the complainant escaped from his arms and shifted to his bike. Both the accused persons left the place of the incident with bag carrying bundles of money. It is alleged by the complainant that the driver of the bike wore black colour helmet with shadow glass. It is further alleged that both the accused persons wore sky blue full size/sleeve shirts and brown colour pants. According to the complainant, the



second person was having mustache and was of medium built up. The accused who was sitting as pillion rider was having brown colour skin. The complainant could not notice the registration number of the bike, because of sudden incident. However, he has expressed that he can identify the accused with regard to the money lost in the aforesaid incident. It was alleged that the bundles were carrying stamp of ORO petrol pump as well as seal of Bank of Baroda. Since the complainant had received injuries on the head, he was brought to Civil Hospital, Bharuch and while he was under treatment, the complaint was recorded and FIR came to be registered. With such allegations made in the complaint, the FIR being C.R. No.I-240 of 2003 was registered with the Bharuch City "A" Division Police Station for the offences punishable under sections 397, 34 and 120 (B) of the I.P.C. and section 135 of the Bombay Police Act, against two unknown persons.

2.6 Investigation was conducted by the Police Sub-Inspector, Vagara Police Station, Bharuch. During the course of investigation, the vehicle involved in the alleged offence i.e. Hero Honda Splendor bike was recovered. The bag consisting of "Rs.100" denomination notes carrying slip of Bank of Baroda and stamp of the ORO petrol pump were also recovered. Around 12 bundles of such notes and 44 notes in all total 1244 notes of an amount of Rs. 100 i.e. total amount of Rs.1,24,400/- were recovered by the Investigating Agency. At the end



of the investigation, charge-sheet came to be filed against the respondent-accused for the offence alleged sections 397 and 34 of the I.P.C. as well as section 135 of the Bombay Police Act. Initially the charge was framed at Exh.4 against the respondent-accused; however, noticing the addition of charge under section 120 (B) of the I.P.C., pursuant to the order passed below Exh.6, the charge was also framed against the respondent-accused for the offence punishable under sections 397 and 120(B) of the I.P.C. as well as under section 135 of the Bombay Police Act.

2.7 Charge-sheet was filed before the learned Judicial Magistrate First Class, Bharuch. Since the offences committed by the accused were exclusively triable by the court of Sessions, the learned Magistrate was pleased to commit the case to the court of Sessions and the case was transferred and placed for trial before the learned Additional Sessions Judge, Fast Track Court No.2, Bharuch, which was registered as Sessions Case No.103 of 2006. Before the trial court, the accused had pleaded not guilty to the charge alleged and hence, claimed to be tried for the offences alleged. The prosecution had proceeded with leading of evidence. In all, the prosecution examined 13 witnesses and has also produced on record documentary evidences to prove their case. The details of the oral as well as documentary evidences led by the prosecution are reproduced hereunder:



ORAL EVIDENCE OF COMPLAINANT, EYE WITNESS AND OTHER WITNESSES:

P.W. No.	Name of Witnesses	Particulars	Exh.
01	Dineshbhai Vallabhbai	Complainant - victim	10
02	Bhupendrabhai Chhaganbai	Eye witness	12
09	Anilkumar Kantilal Rana	Clerk serving in the M.Patel & Company	25

PANCH WITNESSES

P.W. No.	Name of Witnesses	Particulars	Exh.
03	Ismailbhai Ahmedbhai Patel	Witness of place of offence	13
05	Daubhai Yusufbhai Patel	Panch witness of Arrest Panchnama of the accused.	18
06	Yogesbhai Kanaiyabhai Patel	Panch witness of Panchnama of place of incident wherein amount was collected.	20
07	Shailesbhai Sukhlal Mistri	Panch witness of Panchnama of place of incident wherein amount was collected.	22
08	Ismailbhai Umarjibhai	Panch witness	23



	Aadam	of Panchnama of recovery of muddamal.	
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DOCTOR WITNESS

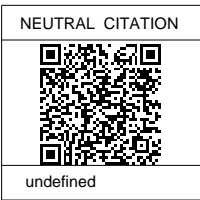
04	Dr. Lalitbhai Bhagubhai Patel	Medical Officer who treated the complainant	15
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POLICE WITNESS

P.W. No.	Name of Witnesses	Particulars	Exh.
10	Pradipbhai Jamnadas Sarnag	Investigating Officer who prepared the charge sheet	26
11	Kalubava Mohmadbhai Thakore	PSO	28
12	Mangalsinh Deshalsing	PSI	30
13	Raghunath Pandurang Pavar	Police Officer	33

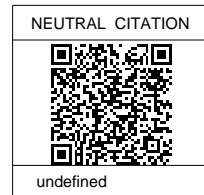
DOCUMENTARY EVIDENCE

Exh.	Particulars
Complaint	11
Panchanama of place of incident	14
Yadi sent by PSO for medical treatment of complainant	16
Medical certificate of complainant	17
Arrest Panchnama of accused	19



Panchnama of recovery of muddamal	21
Panchnama of identified of articles muddamal by complainant	24
Diary entry of Bharuch City "A" Division Police Station	29
Extract of station diary of Vagara Police Station	31
Extract of station diary of Vagara Police Station	32
Order of investigation	34
Extract of registration book of Hero Honda Motor Cycle bearing Registration No.GJ 16-P 737	35

2.8 The pursis came to be filed by the prosecution disclosing their intention about closure of their evidence stage. Further statement of respondent-accused under section 313 of the Code was recorded at Exh.5, wherein the respondent-accused has raised specific defence that he has been wrongly roped in the FIR. The amount, which is recovered from the accused, does not bear the seal of bank or the stamp of the petrol pump. With regard to recovery of money, it was further explained by the respondent-accused that such amount was to be distributed amongst poor people on the eve of Ramjan. With regard to the arrest of the respondent-accused and the recovery of muddamal vehicle, it was explained that the Investigating Agency has



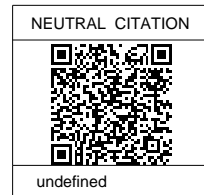
wrongly arrested him and has wrongly seized his motorcycle. It was stated that motorcycle recovered was released by the court's order.

2.9 The learned Judge upon appreciation of the submissions made by learned advocates for the respective parties and upon over all appreciation of the evidence brought on record by the prosecution arrived at a conclusion that prosecution had failed to prove his case beyond reasonable doubt and has acquitted the respondent-accused for the offence alleged. Hence, this appeal at the instance of the State.

3. This Court, vide order dated 10.04.2008 had admitted the appeal and had issued bailable warrant upon the respondent-accused, which has been duly served. Even thereafter, when the matter was notified for final hearing on 20.10.2022, once again, fresh bailable warrant was issued upon respondent-accused.

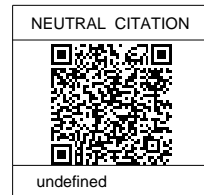
4. From the record, it has been confirmed that bailable warrant has been duly served; however, for the reasons best known, the respondent-accused has not entered his appearance. The matter has been taken up for hearing in absence of the respondent-accused, noticing the fact that the appeal relates to year-2008.

5. Learned Additional Public Prosecutor Ms. Jirga Jhaveri has



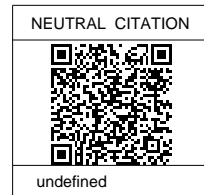
appeared for the appellant-State. At the outset, learned APP has referred to the findings recorded and the reasons assigned by the learned Judge while recording the impugned order of acquittal. Learned APP has read the charge framed against the respondent-accused and the grounds raised in the memo of appeal. She has relied upon the evidence of the original complainant- Dineshbhai Vallabhbhai Amin, who has been examined as prosecution witness no.1 at Exh.10. While referring to his version as recorded in the original complaint, in light of his evidence before the trial court, the learned APP has submitted that the complainant had struck to his case as narrated before the police officer in his complaint. She has, therefore, submitted that he was reliable witness.

5.1 While referring to the evidence of P.W. No.2- Bhupendrabhai Chhaganbhai Patel, who has been examined as Exh. No. 12, she has submitted that he was the eye witness of the incident alleged. The evidence of the complainant gets corroborate from his evidence as regards the manner in which the incident had taken place. She had, therefore, submitted that the said witness had fully supported the case of the prosecution and there was no reason to disbelieve him. Learned APP has relied upon the evidence of Dr.Lalitbhai Bhagubhai Patel who has been examined at Exh.15 by the prosecution. The fact



of the complainant having taken treatment has been brought on record through the said witness. The nature of injury sustained by the complainant has also been corroborated through the evidence of said witness, even the medical certificate is brought on record at Exh.17.

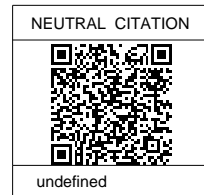
5.2 Apart from the aforesaid witnesses, the learned APP has referred to the arrest panchnama of the respondent-accused, which is produced on record at Exh.19. By referring to the aforesaid panchnama, the learned APP has submitted that the respondent-accused was found in possession of the muddamal notes, even Hero Honda Splendor motorcycle was also recovered from the respondent-accused. The aforesaid panchnama has been established through the evidence of the Investigating Officer/P.W. No.12-Magal Sing Deshal Sing who has been examined at Exh.30. The said witness was the Police Sub-Inspector at Vagara Police Station and as per the case of the prosecution, pursuant to the message received from Bharuch Control Room, he being in-charge at the relevant point of time, had immediately reached Vilayat Chokdi and in the process of checking of vehicles, he had noticed the respondent-accused with the Hero Honda Splendor motorcycle. Initially on suspicion, the respondent-accused was interrogated. The respondent accused had failed to produce any ownership papers of the vehicle, which led the Investigating Officer to



inquire into his dicky, from which, the bag containing bundles of notes of denomination of "Rs.100" were noticed. As per the evidence of the said witness around 13 bundles were recovered out of which 12 bundles bear the seal of Bank of Baroda and the stamp of ORO petrol pump was also noticed. It was marked in English language and the word '100' being endorsed. Accordingly, total amount of Rs.1,24,400/- were recovered from the respondent-accused.

5.3 Upon investigation, the respondent-accused had failed to give proper explanation and by doing panchnama in presence of two independent witnesses, Hero Honda Splendor motorcycle and bag containing the aforesaid denomination notes were recovered. The respondent-accused was arrested after following procedure envisaged under section 41(1)(d) of the Code, which could be noticed from the relevant entry no.31 recorded in the station diary as produced on record at exh.13. The arrest of the respondent-accused was reported to Bharuch City "A" Division Police Station, which is evident from entry no.14 entered in station diary, which is produced at exh.32.

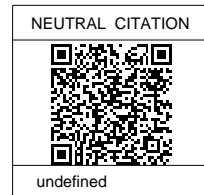
5.4 By referring to the evidence of the aforesaid witness, the learned APP has submitted that the recovery of notes were though established through the said witness before the court; however, it was



noticed that the bank slips and the stamps of ORO petrol pump were missing on muddamal notes. In such circumstances, the said witness has refused to identify the muddamal notes as alleged to have been recovered by the Investigating Agency.

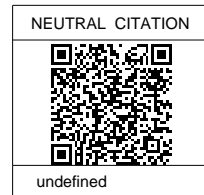
6. This Court had called upon the learned APP for the appellant-State with regard to any Test Identification Parade (T.I. Parade) being conducted by the Investigating Agency. To which, learned APP could not dispute the fact that no T.I. Parade has been conducted to establish the identity of the respondent-accused at the instance of the complainant and his involvement in the alleged offence. She has, therefore, urged this Court to pass appropriate orders.

7. I have heard learned APP appearing for the appellant-State and have perused the record and proceedings. I have also re-appreciated the evidence brought on record in light of the submissions made by learned APP for the appellant-State. Essentially, two factors which go to root of the matter in order to establish the involvement of the respondent-accused, have not been proved by the prosecution before the trial court. Indisputably, no T.I. Parade has been conducted by the Investigating Agency, though in the original complaint, the complainant has alleged involvement of two unknown persons. The obligation was there on the Investigating Agency to carry out the T.I.



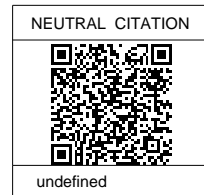
Parade in order to establish the involvement of the accused. Even before the trial court, during the course of recording of evidence of the original complainant, the complainant has failed to identify the respondent-accused. Thus, the prosecution has failed to bring on record any substantial evidence or a corroborating evidence to establish involvement of accused in alleged offence.

8. This brings me to the close appreciation of the evidence to link the involvement of the present respondent-accused in commission of alleged offence. Noticing the charge alleged about robbery of the money in the alleged incident, the arrest panchnama of the respondent-accused was examined. From the appreciation of aforesaid panchnama, what can be noticed as deposed by the Police Sub-Inspector-P.W. No.12, is that the initial investigation was started on suspicion, noticing the fact that the respondent-accused had failed to produce any document of ownership of bike. This led the Investigating Officer to examine dicky of his bike, wherein he noticed the bag containing notes of "Rs.100" denomination. It is the specific case of the prosecution that said notes recovered from the respondent-accused bear the slip of the bank and behind the slip, there was stamp of ORO petrol pump. In all, an amount of Rs.1,24,400/- is alleged to have been recovered from the respondent-



accused, which were forming part of the loot money. However, during recording of the evidence before the trial court in his deposition, the said witness has not been able to identify the muddamal notes as the notes recovered during the course of the investigation, in absence of slip of the bank and the endorsement of stamp of ORO petrol pump. This led the court to appreciate the arguments of the learned APP for the appellant-State. The cross-examination of the said witnesses raises doubt about the manner in which the panchnama was recorded with regard to recovery of the muddamal bike and muddamal money from the respondent-accused. In my view, no fault can be found with the approach of learned Judge in discarding the aforesaid evidence. Even panch witnesses of the said recovery panchnama have not supported the case of the prosecution.

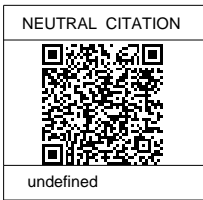
9. I have closely gone through the record and proceedings, more particularly, the list of muddamal and the arrest panchnama of accused at Exh.19 and Exh.21, there is no recovery of knife or any other weapon. The prosecution has maintained silence on such vital aspect. The basic requirement to attract section 397 of the I.P.C. is not fulfilled. In order to establish the charge under Section 397 of I.P.C., the burden was on the prosecution to prove that the offender has put the weapon knife to use.



10. With such evidence on record, the prosecution has failed to establish the case against the respondent-accused for the offence alleged beyond reasonable doubt.

11. Recently, the Hon'ble Supreme Court in the case of **Ravi Sharma vs State(Government Of N.C.T. Of Delhi)** reported in **2022 LiveLaw (SC) 615**, has considered the legal parameters to be examined in the case of appeal under Section 378 of Code against the order of acquittal, the Court observed that Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The Court further observed that the reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused and thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

12. Learned APP appearing for the appellant-State has not been able to point out any perversity in the findings recorded by the trial court. Nothing has been pointed out to suggest that the findings as recorded by the trial court, have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material.



13. In my opinion, even on appreciation of the entire evidence on record, the prosecution has miserably failed to establish the involvement of the respondent-accused for the offence alleged. No fault can be found with the approach of trial court in dealing with evidence and the conclusions arrived upon in absence of any evidence establishing the involvement of the respondent-accused. In my opinion, the trial court has rightly recorded the acquittal of the respondent-accused and the order of trial court does not suffer any infirmity. Therefore, no interference is called for by this Court in the present appeal. Hence, the present appeal stands dismissed.

14. Record & proceedings, if any, be sent back to the concerned court forthwith. Bailable warrant issued upon the respondent-accused stands cancelled.

SUYASH SRIVASTAVA

(NISHA M. THAKORE,J)