IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2233 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI sd/-

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Approved for Reporting	Yes	No
		no

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STATE OF GUJARAT
Versus
KANUBHAI DALABHAI BARIA & ORS.

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Appearance:
MR LB DABHI ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 12/10/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Being aggrieved and dissatisfied by the judgment and order dated 19.04.2025 passed by the learned 4th Additional Sessions Judge, Limkheda at Dahod in Sessions Case No.53 of 2023, whereby the learned Sessions Judge, acquitted the accused from the offences punishable under Sections 302, 201, 34, 120(B) of the Indian Penal Code, (for short, 'I.P.C.') 1860, the present

appeal under Section 419 of the Bharatiya Nagarik Suraksha Sanhita (for short, 'BNSS'), 2023 has been preferred by the appellant herein.

2. For brevity and convenience, parties are referred to as per their original status before the learned Sessions Court.

2.1 Brief facts of the case are as under:

3. The complainant, Mukeshbhai Ramanbhai Bariya, is a resident of Chundadi, Dungarbhit Faliyu, Taluka Singvad, District Dahod. Ramanbhai Sonabhai Bariya (for short, 'the deceased), was his father. According to the prosecution, on 15.12.2022, at about 18:00 hours, the complainant and his relative, Sureshbhai Kanubhai Bariya, went to village Borgota to buy milk and thereafter they returned and sat in the house of Sureshbhai Kanubhai Bariya, which was situated at a distance of about thirty feet from the house of Kanubhai Dalabhai Bariya. At about 19:30 hours, the complainant saw, in the light, his father, along with Rameshbhai Kanubhai Bariya and Saburbhai Dalabhai Bariya, coming out of the house of Kanubhai Dalabhai Bariya, with Saburbhai Dalabhai Bariya carrying a stick in his hand. Thereafter, the complainant heard the shout of his father from the direction of the canal, at a distance of about 100 mtrs. from the house of Sureshbhai Kanubhai. He rushed towards the canal and heard the sound of someone running through dry leaves towards the eucalyptus trees, but nothing could be seen even with the aid of his mobile torch. The complainant then informed his mother, Mangliben, and his brother, Sureshbhai, and, upon inquiry, found that the deceased had not reached home. In the course of the search, the complainant and his

family members did not find Rameshbhai Kanubhai Bariya, Saburbhai Dalabhai Bariya and Kanubhai Dalabhai Bariya at their houses, and inquiry at the house of his paternal uncle, Fulsinghbhai Sonabhai Bariya, also yielded no trace of the deceased.

3.1 On the following morning, at about 06:00 hours, the complainant, his brother Sureshbhai Ramanbhai Bariya and his mother went to the canal and found the dead body of the deceased submerged in the water. Sureshbhai Ramanbhai Bariya gave an information of accidental death at Randhikpur Police Station. When the body of the deceased was taken out of the water, injuries were noticed on the head, from which blood was oozing. The post-mortem examination was conducted, and the doctor opined that the death was caused by injuries sustained on the head. Thereupon, the complainant lodged the complaint on 19.12.2022 at Randhikpur Police Station against Rameshbhai Kanubhai Bariya, Saburbhai Dalabhai Bariya and Kanubhai Dalabhai Bariya, all being residents of Chundadi, Dungarbhit Faliyu, Taluka Singvad, District Dahod, alleging that the three accused, in pursuance of a pre-planned design, had killed his father and thrown the body into the canal. The motive alleged was that the three paternal uncles of the deceased, who were issue-less and were being maintained by the family of the deceased, owned land which, in the event of the deceased being eliminated, would devolve upon Kanubhai Dalabhai Bariya and his sons.

3.2 On the basis of the said complaint, an offence came to be registered at Randhikpur Police Station Part-A G.R.

No.11821001220297 of 2022 for the offences punishable under Sections 302, 201, 120(B) and 34 of the Indian Penal Code (for short, 'I.P.C'), and the investigation was entrusted to the Investigating Officer.

3.3 In the course of investigation, the accused were arrested, Panchnamas were drawn, and the statements of the concerned witnesses were recorded. On finding sufficient material against the accused, the Investigating Officer filed the charge-sheet on 15.03.2023 before the learned Additional Chief Judicial Magistrate, Limkheda, which was registered as Criminal Case No.1107 of 2023, and summons were issued to the accused. Upon appearance of the accused and after ensuring compliance with the supply of copies of the police papers, the learned Magistrate, finding that the case was exclusively triable by the Court of Sessions, committed the case under Section 209 of the Criminal Procedure Code (for short, 'Cr.P.C.'), 1973 by order dated 31.05.2023 to the learned Additional Sessions Court, Limkheda, where it was registered as Sessions Case No.53 of 2023. The learned Sessions Court, after hearing the learned advocates for the parties on the point of charge, framed the charge against the accused at Exhibit 6 for the offences and the accused were pleaded not guilty and claimed to be tried, and their pleas were recorded at Exhibit 7.

3.4 In support of its case, the prosecution examined witnesses and produced documentary evidence, and the evidence was closed by a pursis at Exhibit 57. The further statements of the accused under Section 313 of the Cr.P.C. were recorded, wherein they denied the incriminating circumstances appearing against

them and claimed that they were innocent and had been falsely implicated. Upon conclusion of the trial and after hearing the learned Additional Public Prosecutor and the learned advocate for the accused, the learned Sessions Court, by the impugned judgment and order, acquitted the accused from the offences punishable under Sections 302, 201, 34, 120(B) of the I.P.C..

3.5 Being aggrieved, the appellant has preferred the present appeal.

4. Submissions made on behalf of the appellant are as under:

4.1 It is submitted that the impugned judgment and order of acquittal passed by the learned Sessions Court is erroneous, contrary to the evidence on record and against the settled principles of criminal jurisprudence. It is submitted that the offence was committed in the secrecy of the night, and direct eye-witness evidence is rarely available in such cases. The case rests on circumstantial evidence, and the learned Sessions Court ought to have appreciated whether the prosecution had completed the chain of circumstances, instead of insisting upon primary or ocular evidence.

4.2 It is submitted that the learned Sessions Court rightly concluded on Issue No.1 that the death of the deceased was homicidal and not accidental. However, while dealing with the remaining aspects of the evidence, the learned Sessions Court erroneously disbelieved the prosecution case on the basis of a solitary admission elicited in the cross-examination of the Medical Officer, namely Dr. Manishkumar Tulsibhai Kharadi (PW-10, Exh.40), that such an injury could possibly result from

an accidental fall on a hard surface. It is submitted that the said witness had categorically deposed in his examination-in-chief that the death was caused by excessive haemorrhage due to head injury and not by any other injury. A positive and categorical expert opinion could not have been discarded on the strength of a hypothetical suggestion given in the cross-examination, particularly when the defence put only a few questions to the witness, which did not dilute his opinion. The defence also failed to establish any other circumstance supporting the theory of accidental fall.

4.3 It is further submitted that the case of the prosecution does not rest on the theory of "last seen together" alone, but the entire chain of circumstances stands established. PW-2 Sureshbhai Ramanbhai Baria (Exh.12), son of the deceased, had seen the deceased in the company of the respondent-accused, and shortly thereafter the shout of the deceased was heard from the direction of the canal. The learned Sessions Court has, however, placed undue emphasis on minor contradictions in the depositions of PW-1 Mukeshbhai Ramanbhai Baria (Exh.10), PW-2 Sureshbhai Ramanbhai Baria (Exh.12), PW-3 Mangaliben Ramanbhai Baria (Exh.14), PW-5 Ashwinbhai Ramanbhai Baria (Exh.17) and PW-6 Meenaben Sureshbhai Baria (Exh.18). Merely because these witnesses are family members of the deceased, their testimony could not have been discarded in its entirety, and the approach of the learned Sessions Court is contrary to settled principles of law.

4.4 It is submitted that the initial information of accidental death and the subsequent registration of the complaint for the

offence of murder stands fully explained by the facts and the evidence of the witnesses, since the offence was not detected at the first instance and the complaint was lodged only after the post-mortem opinion. As regards motive, it is submitted that the same pertained to a dispute over agricultural land, and the learned Sessions Court erred in holding that the absence of motive was fatal to the prosecution. In any event, absence of a conclusively proved motive is not fatal where the other circumstances form a complete chain.

4.5 In conclusion, it is submitted that the learned Sessions Court has applied an erroneous standard of proof, and when the prosecution has established the complete chain of circumstances pointing solely towards the guilt of the respondent-accused, the impugned judgment and order of acquittal is perverse, unsustainable and deserves to be quashed and set aside, and the respondent-accused deserve to be convicted for the offences with which they were charged. Therefore, it is submitted to allow the present appeal.

5. We have heard learned APP for the State, at the stage of admission, and carefully perused the oral as well as documentary evidences adduced before the learned Sessions Court.

6. Since the learned Sessions Court has recorded a finding on Issue No.1 that the death of Ramanbhai Sonabhai Bariya was homicidal, this Court has, at the outset, re-appreciated the evidence of PW-9 Dr. Manishkumar Tulsiprasad Kharadi, Medical Officer, Singvad (Exh.40), who conducted the post-mortem examination on 16.12.2022. The post-mortem notes

were proved at Exh.42. The body was identified by the son of the deceased, Sureshbhai Ramanbhai Bariya.

6.1 The Medical Officer noted six ante-mortem injuries. Injury Nos.1 to 4 were lacerated wounds on the head, of which injury Nos.1 and 2 were interconnected, and injury Nos.5 and 6 were abrasions over the right shoulder and the nose. On dissection, a skull fracture 11 cm in length was found on the left side of the head, with clotted blood and a subarachnoid haemorrhage over both sides of the head. The remaining internal organs were normal.

6.2 After perusing the FSL reports (Exhs.43 and 44), the Medical Officer categorically opined that death was caused by excessive bleeding resulting from the head injuries, and not by any other injury. He further stated that the injuries were grievous in nature and sufficient in the ordinary course to cause death.

6.3 In cross-examination, the Medical Officer admitted that such injuries could possibly result if a person accidentally fell into a canal, or jumped into it with the intention of committing suicide, and struck a hard and blunt object. This Court is of the view that the said admission indicates only a possibility, which cannot displace the positive opinion of the expert founded on the nature, number and location of the injuries. The burden cast on the defence to show that the opinion is erroneous or contrary to medical jurisprudence, nor has it led any evidence to establish the plea of accidental fall or suicide, as the entire burden rests on the prosecution to prove its stance beyond doubt.

6.4 In view of the above, the finding of the learned Sessions Court on Issue No.1 that the death was unnatural and homicidal, amounting to culpable homicide, is just and proper, and this Court finds no reason to interfere with it.

6.5 The above findings are confined to the injuries and the cause of death. The question of the involvement of the respondent-accused, including the circumstance of "last seen together", is to be examined separately.

7. Having held that the death of the deceased was homicidal, the only question that survives is whether the prosecution has proved, by a complete and unbroken chain of circumstances, that it was the respondent-accused who caused the death. The case being admittedly one of circumstantial evidence, and the impugned judgment being one of acquittal, this Court is conscious of the limited scope of interference under Section 378 (New Section 419 of the BNSS) of the Code. Interference is warranted only if the view taken by the learned Sessions Court is perverse or wholly unreasonable; it is not warranted merely because another view is possible.

8. The evidence of PW-1 Mukeshbhai Ramanbhai Bariya (Exh.10) is the sole basis for the circumstance of "last seen together". He deposed that his father went towards the canal with Rameshbhai Kanubhai Bariya and Saburbhai Dalabhai Bariya, the latter carrying a stick, and that shortly afterwards he heard his father's shout. On rushing to the canal, he saw no

one, even with the aid of his mobile torch. He candidly admitted that he did not see anyone assault his father. No witness saw the deceased and the respondent-accused standing together near the canal, and nothing incriminating was recovered from the house of any respondent-accused.

8.1 Further, the learned Sessions Court as transpires, has rightly concluded that the case is devoid of direct evidence and that the circumstance of "last seen together" rests solely on the testimony of PW-1, the complainant. He claims to have seen the deceased proceeding towards the canal with Rameshbhai Kanubhai Bariya and Saburbhai Dalabhai Bariya, the latter holding a stick, and to have heard the shout of his father shortly thereafter. He further claims to have conveyed these facts to his mother, his brother and the other prosecution witnesses. The fact of the death of the deceased, who was found in the canal with head injuries, is not in dispute. The real question is who caused the injuries, and on that question no witness has come forward to state how, in what circumstances and by whom they were inflicted. It is significant that when the information of accidental death was lodged on 16.12.2022 by PW-2 Sureshbhai Ramanbhai Bariya (Exh.12), no mention was made of the deceased having been seen with the respondent-accused. The complaint implicating them was lodged only on 19.12.2022, four days after the incident and after the post-mortem opinion. It is only after lapse of time, the same fact appears to have been manipulated, concocted later on which do not find any legs to stand.

9. As regards the head injuries, this Court has already held that the death is homicidal on the strength of the Medical Officer's categorical opinion. At the same time, the nature of the death is distinct from the question of who caused it. The opinion of the Medical Officer is silent on the identity of the assailant. No weapon was recovered at the instance of any respondent-accused. The FSL report did not connect them with the crime. The stick allegedly carried by Saburbhai Dalabhai Bariya was never seized or linked to the injuries.

10. It further transpires that the prosecution also failed to establish the motive. The allegation that the respondent-accused wished to grab the land of the three issueless uncles is not supported by any evidence of a dispute, civil litigation or even a quarrel between the parties over such land. In fact, PW-1 denied that there was any such dispute between his father and Fulsinghbhai. Admittedly, the parties were not on speaking terms on account of an altogether different matter, namely the sale of a damaged car. While absence of motive is not fatal where the chain of circumstances is complete, in a case based wholly on circumstantial evidence, the failure to prove a motive which the prosecution itself has alleged weighs against it.

11. The submission of the learned APP that the learned Sessions Court discarded the evidence of the family members of the deceased solely on account of their relationship cannot be accepted. The learned Sessions Court has expressly held that the evidence of related witnesses is not to be rejected for that reason alone, but must be scrutinized closely. On such scrutiny, the

contradictions noted above are not minor; they relate to the very genesis of the prosecution case. The circumstances relied on are not conclusive, and there is no evidence placing the respondent-accused at the scene of the offence at the relevant time. Nor does the evidence indicate that their mobile locations coincided with those of the deceased at the relevant time.

12. Thus, the whole case of the prosecution rests on the circumstantial evidence; however the prosecution has failed to place on record any such circumstances to link the chain so as to surface the implication of the accused in commission of the crime in question. It is pertinent to note that even as per the case of the prosecution, in absence of any motive, that itself is sufficient to dislodge the case of prosecution if other proven circumstances could form a chain so complete as to indicate that in all human probability it is accused and no one else who committed crime yet, in a case based on circumstantial evidence, motive plays an important part.

13. Now, reverting back to the facts of the present case, nothing sort of any such material seems to be placed on record to indicate as to motive behind the commission of the offence in question and therefore, admittedly the whole case rests on the circumstantial evidence and considering the way in which the entire incident have been described, followed by the investigation carried out by the IO and to convict the accused in absence of any direct evidence though dealing with the case based on circumstantial evidence, the important aspect which requires to be considered are such as (i) whether circumstances relied by

prosecution have been proved beyond reasonable doubt; (ii) whether those circumstances are of a definite tendency unerringly pointing towards guilt of accused; (iii) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from conclusion that within all human probability crime was committed by accused; (iv) whether they are consistent only with hypothesis of accused being guilty; and lastly (v) whether they exclude every possible hypothesis except one to be proved.

14. In a case of circumstantial evidence, the chain is required to be completed as mandated under the law so as to indicate the guilt of the accused while discarding any other theory of the crime. If one of the link goes missing and not proved, in view of the settled law on the point, the conviction is required to be interfered with. At this stage, with profit, we may refer to the decision in case of ***Laxman Prasad Alias Laxman (supra)*** where the Hon'ble Apex Court after referring to ***Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116]*** and ***Shailendra Rajdev Pasvan vs. State of Gujarat [(2020) 14 SCC 750]*** has quashed the conviction by making observations in paragraph 2 to 4 as under:

> *"2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and*

also goes to the extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.

3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:

(i) Sharad Birdhichand Sarda v. State of Maharashtra,
(ii) Shailendra Rajdev Pasvan v. State of Gujarat.

4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."

15. We would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. 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 judgment of acquittal. The Appellate Court should consider the presence of innocence of the accused and further that, the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there are reasons for interference, as the same has been laid down by the Hon'ble Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67***.

16. In a nutshell, even where two views are reasonably possible on the evidence, the view favorable to the accused must be adopted, and the presumption of innocence, strengthened by a judgment of acquittal, is not to be disturbed lightly. The view taken by the learned Sessions Court that the prosecution failed to prove beyond reasonable doubt that the respondent-accused caused the death is a plausible and reasonable one, and it is neither perverse nor contrary to the evidence. The chain of circumstances is incomplete, and the respondent-accused are entitled to the benefit of doubt.

17. In view of the foregoing, the present appeal *sans merit* and deserves to be dismissed and accordingly, it is ***dismissed***.

18. The impugned judgment and order dated 19.04.2025 passed by the learned 4th Additional Sessions Judge, Limkheda at Dahod in Sessions Case No.53 of 2023 stands confirmed.

19. Record and proceeding, if any, be remitted to the concerned Court.

sd/-

(ILESH J. VORA,J)

sd/-

(R. T. VACHHANI, J)

PARMAR KRISH/12

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PARMAR KRISH(HC02348), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 12/10/2026 16:40:46