IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1248 of 2013

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STATE OF GUJARAT
Versus
RAIJIBHAI FULABHAI SODHA

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Appearance:
PUBLIC PROSECUTOR for the Appellant(s) No. 1
NON BAILABLE WARRANT NOT RECEIVED BACK for the Opponent(s)/Respondent(s) No. 1
RULE SERVED for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY**
and
HONOURABLE MR.JUSTICE D. M. VYAS

Date : 28/07/2025

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY)

As per the judgment dated 11.07.2025, the appeal preferred by the Sstate was allowed and the sole accused was found guilty and was convicted for the said offences. As the accused was absent on that day, this Court has issued non-bailable warrant against him to secure his presence for the purpose of questioning him on the quantum of sentence. The following order was passed on that day:

"As the accused is not available before the Court, to question him on the quantum of sentence, issue Non-bailable warrant against the accused to secure his presence for the purpose of questioning him on the quantum of sentence and to impose sentence against him, returnable on 28th July

2025."

Today when the matter is taken up, to our utter surprise, learned APP Ms. Krina Calla submits on instructions that in fact the accused died long back on 21.09.2016 itself and she has also produced a copy of death certificate to that effect along with report of the Police Inspector, Mahemdabad Police Station. She submits that the factum of his death is not informed earlier to the office of PP or atleast to her when the matter was heard by this Court and for want of information from the police regarding his death, that she could not bring it to the notice of the Court. We very seriously deprecate the said negligence on the part of the concerned police in not informing the factum of death of the accused to the office of the PP of the High Court and also to present APP even when the matter is taken up for final hearing.

Therefore, both the concerned police and office of PP made the Court hear the matter in a case where accused passed away long back. When he died on 21.09.2016 itself in an appeal preferred in the year 2013, since he is the sole accused in the case, the appeal stood abated against him at the time of death itself. But for a period of 9 years, both the police and the office of PP did not bring the said factum of death of the accused to the notice of Court. It is the negligence of the police which made the Court to pass a judgment in a case where accused passed away. It is a fit case where appropriate action is to be taken against the concerned police for their negligence in discharging their duties in not informing the office of PP and also to the Court regarding the factum of death of the sole accused in the

case to enable the Court to pass appropriate order of abatement of the appeal against the accused. Therefore, both the learned PP and APP are hereby directed to take the act of negligence on the part of the concerned Police to the notice of Superintendent of Police, Kheda District to take appropriate action against the concerned police officials who are very negligent in discharging their duties in not bringing to the notice of office of PP and also to the notice of the Court regarding the death of the Accused. The office of PP shall take steps to see that such incidents do not recur in future causing much inconvenience to the Court and wasting the time of the Court and in making the Court to pass judgment in a case where the appeal stood abated. The office of PP also equally got responsibilities to verify in such old appeals regarding the availability or not of the accused before commencing argument in final hearing matter of such cases. It shows that there is lack of proper co-ordination between police and the office of the PP.

Therefore, no sentence could be passed in the present matter as the accused passed away on 21.09.2016, as the appeal against him stands abated as per law.

Now, the question that arises for consideration is what would be the effect of the judgment dated 11.07.2025 that was passed after final hearing of the appeal. The legal position in this regard is not *res integra* and the Hon'ble Apex Court had an occasion to deal with the similar situation. The Supreme Court in the case of ***S vs. Sunilkumar and Another (2016) 16 Supreme Court 687*** held "when the factum of death of the accused was not brought to the notice of the Court when the appeal was

heard and decided convicting the accused, the said judgment will have no effect and it has to be recalled recording the fact that the accused had expired before the appeal was heard out and the appeal had became abated."

Therefore, in view of the dictum laid down by the Apex Court in the above reported judgment, the judgment dated 11.07.2025 allowing the appeal of the State and convicting the accused will have no effect and the said judgment is hereby recalled and the appeal is disposed of as abated.

(CHEEKATI MANAVENDRANATH ROY, J)

(D. M. VYAS, J)

Anuj