

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 422 of 1992

With

CRIMINAL REVISION APPLICATION No. 152 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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PARMAR MAHENDRAKUMAR P. - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :

Ms C.M. SHAH, FOR MR VIJAY H PATEL for Appellant(s) : 1,
MR PD BHATE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/04/2008

ORAL JUDGMENT

Both the above proceedings have been filed by
one Mahendrakumar Pitamberbhai Parmar, original
accused in Special (Atrocity) Case No.17/90.

2. Criminal Appeal No.422 of 1992 has been filed challenging the judgment and order dated 20th April 1992, passed by the learned Special Additional Sessions Judge, Mehsana in Special Atrocity Case No.17/90 convicting the appellant for offence under section 332 of the Indian Penal Code and sentencing him for simple imprisonment for one year and fine of Rs.500/-. Criminal Revision Application No.152 of 1992 has been filed by the same person challenging the order of acquittal passed by the learned Judge against Shri Khengarsinh Virsinh Dabhi in Special Atrocity Case No.16/90. As per charge Ex.5, it was alleged against the appellant that on 15th August 1990, at about 9.30 in the morning, when complainant Khengarsinh was discharging his duties as Chief Officer of Visnagar Municipality in the compound of Water Works of the Municipality, the accused with an intention to interfere in discharge of the official duties of the complainant, entered his office, tore down the complaint register, smashed the glass covering the table, broke a chair, abused the complainant, tore his clothes and gave him kick and fist blows. He was, therefore, charged for offence punishable under section 332, 504, 506(2) and 427 of the Indian Penal Code. As already noted, he was convicted only for the offence punishable under section 332 of the IPC.

3. Complainant, Khendgarsinh Virsinh Dabhi, PW-1, was examined at Ex.10. He stated in his deposition that he is the Chief Officer of the Nagarpalika

since 6 years. On 15.8.1990 at about 9.30 in the morning, the incident took place when he was in his office along with Ochhavlal Uttamlal Kansara doing his work. Other employees were also sitting on the Bench just outside the office. At 9.30 in the morning, accused, who is a member of the Municipality came along with Chairman Shivjibhai and Babubhai Vasanvala. They complained about the lights not working in the area where Mahendrabhai resides. The witness had thereupon gave instructions to carry out the repair urgently. The accused got excited and stated that the witness is interested only in making money and not solving the problems of the people. He lifted the glass from the table and threw it at the complainant. The complainant dodged the blow and glass broke. Accused, thereafter, threw a chair at him breaking one of the legs of the chair. The accused tore the clothes and threatened the complainant. The complainant was using a stick due to the injuries in an accident which was snatched and he was made to fall down.

In the cross-examination, he stated that no flag hosting ceremony took place in the Nagarpalika.

4. PW-3, Ochhavlal Kansara was examined at Ex.18. He also claimed to be present when the incident took place on 15th August 1990. He stated that the accused along with Shivabhai and Babubhai Vasanvala came to lodge a complaint regarding street lights. Since accused Mahendra had dissatisfaction about the

previous complaint, he got angry and told the Chief Officer that he is interested only in making money. He had torn the register, had thrown the glass from the table at the complainant. He had also thrown a chair at the complainant and threatened him that his other leg also would be broken. He had caught hold of the complainant and tried to beat him up. The witness and others had saved him from being beaten up.

In the cross-examination, he stated that flag hosting ceremony had taken place at his office. However, the Chief Officer was not present at that time. He denied the suggestion that he was supporting the complainant because the complainant was his boss.

5. Bhikhabhai Punjabhai, PW-4, was examined at Ex.19. He was employed as driver of the Nagarpalika at the relevant time. He stated that he was sitting on the Bench outside the building. When the complainant and Ochhhavhlal were working in the office inside, at that time accused along with Shivabhai and Babubhai arrived and there was heated exchange of words. From outside, he could see that the Chief Officer had fallen down on the ground. He had gone there and helped him back on the chair. He had, thereafter, taken the Chief Officer for lodging complaint.

6. PW-2, Dr.Mayurbhai Natvarlal Shah was examined

at Ex.16. He had treated the complainant at about 11.15 in the morning of 15th August 1990. The patient had complained of having received fist blows. He had noticed bruise on the right cheek. There was a complaint of pain on the chest and swelling on the left hand side of the stomach near kidney.

7. The police had drawn panchnama of the scene of the incident and also collected the clothes worn by the complainant. Panchnamas were produced at Ex.12 and 13.

8. It is primarily on the above evidence the prosecution sought to establish the charge.

9. It may be noted that the present accused had also lodged a criminal case against the present complainant which was registered as Special Atrocity Case No.16/90 in which the learned Judge was pleased to acquit the accused therein.

10. From the evidence on record, it can be seen that the presence of the accused at the place of the incident is virtually undisputed. Several witnesses have given clear statement in this regard. In fact, the cross-examination carried out by the defence also does not suggest that the presence of the accused at the relevant time was ever in doubt. The main thrust of the defence version appears to be that the incident is a got up one and no injuries were caused by the accused nor any damage to the property done.

11. However, there is no case of previous enmity between the complainant and the accused. The complainant has clearly stated that on 15th August 1990 at about 9.30 in the morning, when he was working in the office, accused along with two other councillors came to his office and not satisfied by the response to the complaints made, threw a glass from the table on the Chief Officer, thereafter even a chair was thrown and lastly his clothes were torn and he was thrown on the ground. The version of the complainant, PW-1, is amply corroborated by the eye-witness account of PW-3-Ochhavlal Kansara and PW-4-Bhikhabhai Punjabhai. Both the persons were present when the incident took place. In fact, PW-3 was working inside the office building at the relevant time. Bhikhabhai was sitting on the bench outside the building.

12. Additionally, panchnama Ex.12 also corroborates the eye-witness accounts and broken glass pieces and broken chair were found in the Municipal Office. The torn clothes of the complainant were also seized and panchnana thereof was produced before the Court at Ex.13. It is true that the eye-witnesses, Ochhavlal Kansara, PW-3, and Bhikhabhai Punjabhai, PW-4 were both lower in rank to the complainant Chief Officer. However, it cannot be forgotten that the accused himself was a Corporator in the Municipality. Under the circumstances, the testimony of these witnesses cannot be easily

discarded. It is true that there are minor contradictions in the different versions given by different witnesses. However, none of these contradictions go to the root of the matter so as to discard the entire prosecution version.

13. It thus remains established on record that the accused had barged into the office of the complainant where the complainant as Chief Officer of the Municipality was working. Not satisfied with the response to the complaints lodged, he threw a glass from the table at the Chief Officer and thereafter threw a chair, luckily the Chief Officer was not hurt. The accused, however, caught hold of him with his shirt and tore his shirt and in the process, the complainant also fell down causing minor injuries.

14. Conviction of the appellant for offence under section 332 of the IPC is therefore justified. However, the sentence of one year seems to be harsh. The same, in the facts of the case is reduced to six months of simple imprisonment.

15. At this stage we cannot lose sight of the fact that the incident took place way back in the year 1990. 18 long years passed since then. The appellant is not having any criminal antecedents nor any complaint of having misused the liberty though he was on bail throughout trial as well as pending appeal has been made. Under the circumstances, the

appellant deserves to be granted the benefit of probation. He shall, therefore, not have to serve out the sentence.

16. In Criminal Revision Application, on 19th September 1994, the learned single Judge of this Court noted that in view of the fact that against the judgment, the State appeal being Criminal Appeal No.422 of 1992 is admitted, no order in the revision application filed by the complainant. Learned advocate Ms.Chetna M.Shah for the appellant, however, pointed out that Criminal Appeal No.422/92 was filed by the accused and not by the State. She further pointed out that the State appeal against acquittal being Criminal Appeal No.576 of 1992 was dismissed by this Court on 8th April 1994. This being so, Criminal Revision Application does not survive and the same needs to be disposed of accordingly.

16. In the result, the appeal is disposed of in following terms:

- (i) conviction of the appellant is upheld. His sentence is, however, reduced to six months simple imprisonment.
- (ii) The appellant is given the benefit of probation and shall not have to serve out the sentence if he executes a bond of good behaviour before the Trial Court for a period of one year. Such bond may be executed latest by 30th June 2008. In case of breach of bond, he shall have to serve

out the sentence.

(iii) Criminal Revision application is disposed
of.

(Akil Kureshi, J.)

(vjn)