

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 845 of 1988

with

CRIMINAL REVISION APPLICATION No 469 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?No

STATE OF GUJ

Versus

PATEL KHEDABHAI G

Appearance:

Shri A.G.Uraizee, Additional Public Prosecutor, for the Appellant - State, as instructed and assisted by learned Advocate Shri R.C.Jani, for the original complainant.

Shri R.C.Jani, Advocate, for the petitioner (in Revision).

Shri N.M.Amin, Advocate, for the respondents - accused.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/12/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Patan on 4th July 1988 in Criminal Case No.1268 of 1981 is under challenge both in Criminal Appeal No.845 of 1988 and also Criminal Revision Application No.469 of 1988. By the impugned judgment and order of acquittal, the learned trial Magistrate acquitted the respondents herein of the offences punishable under Sections 147, 148, 149, 325, 324 and 323 of the Indian Penal Code, 1860 (the IPC for brief). The appeal is by the State of Gujarat and the revisional application is by the original complainant. I have thought it fit to dispose of both these proceedings by this common judgment of mine.

2. The facts giving rise to this appeal move in a narrow compass. The incident giving rise to the criminal proceeding against the respondents herein is stated to have occurred on 15th May 1981 at about 8.00 p.m. in the evening. The place of the incident is stated to be one parcel of land bearing survey No.153 and block No.202 situated at village Ruvavi taluka Patan (the disputed land for convenience). It was the case of the prosecution that one Ishwarbhai Meramdas (the complainant for convenience) in the company of his father, two brothers and one son had gone to the disputed land in their bullock-cart for dumping fertilizers therein. In the midst of the process of emptying the bullock-cart and dumping fertilizers in the field, the respondents-accused appeared on the scene with a dharia and sticks in their hands. It is the case of the prosecution that respondent - accused No.1 was armed with a dharia and the other respondents - accused were armed with sticks. They assaulted the complainant and his father, brothers and son. They went to the Government Hospital at Patan and got their injuries examined and treated. Thereafter, the complainant went to the Police Station at Patan and gave his complaint of the incident. That set into motion the machinery of investigation. On completion of the investigation, a chargesheet came to be filed in the Court of the Judicial Magistrate (First Class) at Patan charging the respondents - accused with the offences punishable under Sections 147, 148, 149, 325, 324, 323 and 447 of the IPC. It came to be registered as Criminal Case No.1268 of 1981. The charge against the respondents - accused was framed on 18th September 1984. No respondent - accused pleaded guilty to the charge. Thereupon, they were tried. After recording the

prosecution evidence and after recording the further statement of each respondent - accused and after hearing arguments, by his judgment and order passed on 4th July 1985 in Criminal Case No.1268 of 1981, the learned Judicial Magistrate (First Class) at Patan acquitted the respondents - accused of the charge levelled against them. That aggrieved both the complainant and the prosecution. The complainant has thereupon invoked the revisional jurisdiction of this court by means of Criminal Revision Application No.469 of 1988 and the State Government has invoked the appellate jurisdiction of this court by means of Criminal Appeal No.845 of 1988 questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. Learned Additional Public Prosecutor Shri Uraizee for the appellant - State has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate was not justified in acquitting the respondents - accused of the charge levelled against them in view of the overwhelming evidence on record. It has been urged by learned Additional Public Prosecutor Shri Uraizee for the appellant - State that the learned trial Magistrate ought to have come to the conclusion that the prosecution could bring guilt home to the respondents - accused beyond any reasonable doubt. As against this, learned Advocate Shri Amin for the respondents has urged that the learned trial Magistrate has carefully examined and appreciated the evidence on record and has come to the conclusion that the charge against the respondents - accused could not be proved beyond any reasonable doubt. Learned Advocate Shri Amin for the respondents has urged that the view taken by the learned trial Magistrate is a possible view and it calls for no interference by this court in this appeal in accordance with well-settled principles of law governing appeals against acquittal.

4. The learned trial Magistrate has observed that, though the complainant and the witnesses have stated that the respondents - accused caused bleeding injuries to some of them, no bloodstains were found at the scene of offence as transpiring from the panchnama drawn with respect thereto. Besides, the learned trial Magistrate has also found from the panchnama of the scene of offence that no footprints regarding scuffle were found in the disputed land. It cannot be gainsaid that, when a scuffle takes place in the field, several footprints of persons would be found therein. The learned trial Magistrate has also noted the fact that the complainant

and his companions were also armed with weapons like a dantani and a hoe and they did not use them in private defence against the attack made by the respondents accused. In that view of the matter, the learned trial Magistrate has come to the conclusion that it would be difficult to believe the version given by the complainant and his witnesses at trial.

5. It may be noted at this stage that the learned trial Magistrate has also found on the basis of the material on record that respondent - accused No.1 was claiming tenancy rights with respect to the disputed land. The complainant in his oral testimony has admitted that he was convicted in a criminal case by this court in appeal some time in 1977. The judgment of this court in Criminal Appeal No.858 of 1973 decided on 2nd July 1975 is at Exh.125/1 on the record of the case. It transpires therefrom that respondent - accused No.1 had appeared as a witness therein. The complainant has also admitted in his evidence that he had filed one criminal case against certain persons including respondent - accused No.1 for the offences punishable under Sections 447, 427, 504, 506 Part.II and 114 of the IPC in the Court of the Judicial Magistrate (First Class) at Patan. It came to be registered as Criminal Case No.2448 of 1986. It ended in acquittal of all the accused therein including respondent - accused No.1 in this case. The complainant has also admitted in his oral testimony that there were several Chapter Cases instituted against each other by both the sides. In that view of the matter, the complainant and respondent - accused No.1 could be said to have been on hostile and inimical terms. On the basis of this material on record, the learned trial Magistrate has not ruled out the possibility of a false complaint against the respondents - accused on account of enmity and hostility between the complainant and respondent - accused No.1. In this context, the infirmities found in the prosecution case would certainly assume importance.

6. The view taken by the learned trial Magistrate appears to be a possible view. In that view of the matter, according to the well-settled principles of law governing acquittal appeals, the view taken by the learned trial Magistrate need not be interfered with. The impugned judgment and order of acquittal would therefore call for no interference by this court in the appeal at the instance of the State of Gujarat or in the revision at the instance of the original complainant.

7. In the result, both the appeal and the revisional application fail. The appeal is dismissed and the

revisional application is rejected.

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