

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 947 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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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

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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

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STATE OF GUJARAT

Versus

KOLI ODHAV LALJI  
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Appearance:

Mr.L.R.Pujari, APP, for appellant

MR AKSHAY H MEHTA for Respondent

No. 1, 2, 3, 4, 5, 6, 7, 8, 9  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/10/97

#### ORAL JUDGEMENT

By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has challenged judgment and order dated April 30, 1985, rendered by the learned Judicial Magistrate (First Class), Lakhatar, in Criminal Case No.64 of 1983, whereby the learned Judicial Magistrate acquitted the respondents-accused from the charges framed against them for the offences punishable under Sections 147, 148, 149, 323, 324, 326 of the Indian Penal Code.

As per the prosecution case, on August 4,1982, at about 7 p.m. on the highway, near village Olak, when the procession was taken out on the occasion of Baldev festival, stones were pelted at the said procession, due to which, the complainant and other witnesses sustained injuries. It is the prosecution case that, thereafter, the respondents, armed with deadly weapons, attacked the complainant's side, and caused injuries to the witnesses. The injured witnesses were taken to the hospital for treatment where they were admitted as indoor patients. A

complaint came to be lodged in the Lakhatar Police Station against the respondents-accused. Mr.Parmar, Police Sub-Inspector of Lakhatar Police Station, carried out investigation and filed chargesheet, for the offences punishable under Sections 147, 148, 149,323, 324, 326 of the Indian Penal Code, against the respondents, in the court of the learned Judicial Magistrate (First Class), Lakhatar, which was registered as Criminal Case No.64 of 1983.

The learned Judicial Magistrate framed necessary charge (Exh.11) against the respondents. The charge was read over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution, in support of its case, examined the injured witnesses as well as the medical officers who had treated the injured witnesses. After recording of evidence of prosecution witnesses was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the respondents denied the case of the prosecution.

On appreciation of the evidence led by the prosecution, the learned Judicial Magistrate acquitted the respondents by the impugned judgment, giving rise to the present appeal.

Mr. L.R.Pujari, learned Additional Public Prosecutor, has taken me through the oral as well as documentary evidence produced on the record of the case. The learned APP submitted that the learned Judicial Magistrate has erred in not relying upon the oral testimony of the injured witnesses. It is submitted that the evidence of witnesses was corroborated by the medical officers who had treated them. The learned APP has argued that the respondents had formed an unlawful assembly and were armed with deadly weapons and, with deliberate attempt to cause injuries on the witnesses, had assaulted them.

In my view, there is no substance in any of the contentions urged by the learned Additional Public Prosecutor. From the evidence produced on the record, it appears that the incident in question had started due to pelting of stones by some miscreants. Respondent No.1 had himself sustained injuries and was admitted in Shri Mahatma Gandhi Smarak Hospital, Surendrangar. The injury certificate (Exh.66) shows that respondent No.1 was admitted in the said hospital on August 4, 1982 and was discharged on August 16, 1982. Similarly, injury

certificate (Exh.67) shows that respondent No.2, Nanjibhai Laljibhai, had also sustained injuries during the course of the incident and was admitted in the said hospital on August 4, 1982 and discharged on August 13, 1982. Injury certificate (Exh.73) shows that respondent No.4, Naran Lakhubhai, had also sustained injuries in the said incident and was admitted in the said hospital on August 4, 1982 and discharged on August 11, 1982. Respondent No.5, Arjanbhai Lakhabhai, was also admitted in the said hospital as per the injury certificate Exh.68, and had remained as indoor patient in the said hospital for ten days. Respondent No.6, Samjuben, had also sustained injuries and had remained as indoor patient from August 4, 1982 to August 13, 1982 as per the certificate Exh.76. Similarly, injury certificate (Exh.71) shows that respondent No.8, Shiva Laghra, had remained in the said hospital for two days due to the injuries sustained by him in the incident. The entire evidence on record establishes that, due to pelting of stones at the procession, there was a free fight between the complainant's side and the respondents and, in that free fight, the injuries caused to the eye-witnesses were possible by pelting of stones. There is no cogent and reliable evidence on the record to suggest that the said injuries were caused by the respondents. In my opinion, the prosecution has tried to conceal the real genesis of the case. The investigation carried out by Police Sub-Inspector, Mr. Parmar, in high-handedness, also casts serious doubts in the mind of this Court about the genuineness of the prosecution story. There are many contradictions, omissions and improvements in the evidence of the prosecution witnesses which creates serious doubt about the occurrence of the incident as narrated by the prosecution. Where genesis of the prosecution case is doubtful, benefit of doubt must go in favour of the respondents. The learned Judicial Magistrate has, in his judgment, given cogent and convincing reasons in acquitting the respondents.

This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Judicial Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judicial Magistrate

for acquitting the respondents. Suffice it to say that the learned Judicial Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judicial Magistrate in order to convince me to take the view contrary to the one already taken by the learned Judicial Magistrate. Therefore, the acquittal appeal deserves to be rejected.

For the foregoing reasons, the appeal fails and is hereby dismissed. Muddamal articles be destroyed in terms of the directions contained in the impugned judgment and order of the learned Judicial Magistrate.

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(swamy)