

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 163 of 1989

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?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
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?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ADAM IBRAHIM

Appearance:

MR SR DIVETIA, ADDL. PUBLIC PROSECUTOR for Petitioner
MR BA VAISHNAV for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 31/08/98

ORAL JUDGEMENT

1. The State of Gujarat has filed this appeal under section 378 of the Code of Criminal Procedure against the judgement and order of acquittal recorded by the learned Chief Judicial Magistrate, Junagadh in Criminal Case No.2161/85 which was filed against the respondents for the offence punishable u/s 504, 324, 323, 114 IPC and u/s 135 of the Bombay Police Act.

2. According to the prosecution case, the incident in question took place on 19/3/85 at about 15.00 hrs. near Ajanta talkies, Junagadh. The respondents as a result of some altercation with the complainant and other witnesses had assaulted on the said witnesses and caused injuries by means of stick, knife and pipe.

3. After filing of the complaint, investigation was carried on by Junagadh city police station and after completion of investigation, chargesheet came to be filed against the respondents and one Usmanali Ghanchi, who died during the pendency of the criminal case. The chargesheet was registered as criminal case No. 2161/85 in the Court of the learned Chief Judicial Magistrate, Junagadh. The prosecution examined complainant and three other witnesses. The learned Magistrate, after hearing the learned advocates of both the parties, acquitted the respondents from the charges framed against them, which has been challenged by this appeal.

4. Heard learned APP - Mr. S.R.Divetia for the State and Mr.H.J.Nanavati for Mr.Vaishnav, learned counsel for the respondents. Learned APP has submitted that the learned Chief Judicial Magistrate has erred in not properly appreciating the evidence of injured eye witness and has erroneously acquitted the respondents.

5. Learned APP has taken me through the entire evidence produced at the trial. The learned Magistrate while acquitting the respondents has given cogent and convincing reasons. The learned Magistrate has come to the conclusion that there was contradiction in the evidence of the injured witnesses and the medical evidence did not tally with the injuries and weapons used in the incident. In my opinion, the reasoning of the learned Magistrate cannot be said to be perverse or illegal.

6. This is an acquittal appeal in which 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 set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Magistrate. As I am in general agreement with the view expressed by the learned Magistrate, I do not think it necessary either to reiterate the evidence of prosecution witnesses or to re-state reasons for acquittal given by the learned Magistrate and in my view, expression of general agreement with the view taken by the learned Magistrate

would be sufficient in facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the case of (i) Girija Nandini Devi and others vs. Bigendra Narain Chaudhari, AIR 1967 SC 1124 and (ii) State of Karanataka vs. Hema Reddy and another, AIR 1981 SC 1417.

7. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned 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 Magistrate and convince me to take a view contrary to the one already taken by the learned Magistrate. Therefore, acquittal appeal deserves to be rejected.

8. For the foregoing reasons, the appeal fails and is dismissed.

AUGUST 31, 1998 [M.H.KADRI, J.]

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