

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 888 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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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?

1 to 5 - No

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STATE OF GUJARAT

Versus

NATHUBHAI RAVJIBHAI PATEL

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Appearance:

PUBLIC PROSECUTOR for Petitioner

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision:30-04-1998

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

State has preferred this appeal against the order of acquittal recorded by the learned Addl. Sessions Judge, Valsad at Navsari in Sessions Case No.140 of 1995 on 9-7-1997. Respondents-original accused were tried for

the offences punishable under Sec.302 read with Secs.34, 307, 325, 504 and 506(2) of Indian Penal Code and Sec.135 of Bombay Police Act.

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#. It is the prosecution case that on 30-5-1995, when complainant and others were campaigning for the election in their locality, accused threatened and assaulted the campaigners. Accused Nathubhai Ravjibhai and Bhagubhai Ramabhai gave blow with wooden stick to Rasikbhai and left the scene of offence which resulted in serious injuries to Rasikbhai. While complainant and others were taking Rasikbhai to his house, accused came with a tempo driven by Kishorebhai Bhagabhai and dashed against them, as a result of which, Shankarbhai has come under the front wheel of said tempo and was seriously injured. Thereafter, the accused left in that tempo. Complainant and others took Rasikbhai and Shankarbhai to a hospital at Billimora. Rasikbhai succumbed to the injuries. A complaint was lodged to that effect. Police started the investigation. After completing the investigation, Police submitted the charge-sheet and charge was framed against the accused after having committed the accused to the Court of Sessions.

#. After hearing the learned advocates of respective parties, the learned Additional Sessions Judge has recorded the order of acquittal, against which, the State has preferred this appeal.

#. We have called for the original record and proceedings.

#. Learned Addl. Public Prosecutor on going through the record and proceedings of MACP No.151 of 1996 filed by the injured Shankarbhai Bhagabhai Patel for compensation arising out of the vehicular accident, which has taken place with the said tempo on the same date, i.e. 30-5-1995, has argued that learned Addl. Sessions Judge ought to have believed the oral evidence of injured eye witnesses namely, Shankarbhai and Sadhanaben. He has argued that the prosecution has proved its case beyond reasonable doubt and learned Addl. Sessions Judge ought to have convicted the accused.

#. We have gone through the judgment and record and proceedings of MACP No.151 of 1996. It is required to be noted that the injured eye witness Sadhanaben has not been treated or examined by any doctor and FIR does not disclose her presence. The second important eye witness-Shankarbhai Bhagabhai Patel is the witness of the

incident. It is required to be noted that his statement was recorded by the Executive Magistrate after a lapse of 1 1/2 months, i.e. the incident has taken place on 30-5-96 and statement of Shankarbhai was recorded for the first time by the Police on 17-7-1995. No satisfactory explanation has been put forward by the prosecution for late recording of statement. The version of Shankarbhai was that with an intention to kill him, Kishorebhai Bhagabhai had dashed his tempo against him, but before the Police and in the MACP case, he has given contradictory versions. So, there is a material contradiction on the point of oral evidence. Obviously, the benefit will go to the accused. It is the doctor's opinion that injury received by Rasikbhai was not possible with the muddamal articles 10 and 11.

#. This Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will

ordinarily suffice."

#. Looking to the above observations and the facts and circumstances of the case, the appeal stands rejected.

##. Record and proceedings of MACP No.151 of 1996 be sent back to Motor Accidents Claim Tribunal, Valsad at Navsari.

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