

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 938 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAKWANA SOMABHAI CHHAGANBHAI

Appearance:

1. Criminal Appeal No. 938 of 1986
MR HM PRACHHAK APP for Petitioner No. 1
MR JM BUDDHBHATTI for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 29/01/2004

#. The appellant-State of Gujarat challenged in this appeal the impugned judgment and order of acquittal dated 4.4.1986 passed by the learned Additional Sessions Judge, Mehsana in Sessions Case No.41 of 1985 whereby the learned Judge acquitted all the respondents-accused for the offences u/S.307 r/w. Sec.34, 307 r/w. Sec.114, 323, r/s.34, 323 r/w. Sec.114, 504 r/w. Sec.34 and 504 r/w. Sec.114 of the IPC.

#. As per the prosecution case, the incident in question took place on 24.6.1983 at village Mathasur of Kadi Taluka, District Mehsana. Complainant-Kalabhai PW-2 Ex.13 and all the three accused are residing nearby in the same street. On the day of incident, accused No.2-Makwana Kaniben, wife of Bhanubhai Chhaganbhai was giving filthy abuses. Thereupon, complainant told her not to give filthy abuses. Because of that, accused No.3-Makwana Mangalbhai Chhaganbhai got excited and came with stick from the house of the complainant and gave stick blow. Accused No.1, Makwana Somabhai Chhanabhai also came with sword and gave 4 to 5 blows with it to the complainant. Father of the complainant had also received one blow with sword. Complaint at Ex.24 was filed by PW-2 Kalabhai Pushabhai before the police. The police investigated the case and filed charge sheet under Section 326 before the court of Magistrate. Accordingly, case was initially tried before the court of Magistrate under Section 326 of the IPC. However, considering the evidence led before the learned Magistrate and in view of the complainant gave an application before the learned Magistrate that charge framed against the accused was not enough looking to the gravity of injury, the Magistrate was convinced that the offence committed by the accused falls within the ambit of Section 307 of the IPC and accordingly he committed the case to the court of Sessions.

#. Along with this case, a cross case being Sessions Case No.42 of 1985 was also tried before the learned Trial Judge wherein accused No.3-Makwana Mangalbhai Chhaganbhai received injuries and on his complaint offence under Section 323 of the IPC etc. were registered against the present complainant-Kalabhai Pushabhai, PW-2 (injured eye witness) and another injured eye witness PW-3 Ex.15 and evidence of other prosecution witnesses, including the evidence of I.O. Shri Popatlal Govindram PW.9 Ex.25 and the documentary evidence in form of Panchnama of scene of offence Ex.22, gave benefit of

doubt to the respondents-accused on the ground that the prosecution failed to explain the injuries received by the respondent-accused No.3-Makwana Mangalbai Chhaganbai during the incident and that they have tried to change the place of the scene of offence. It is clear from the cross-examination of I.O., Shri Popatlal Govindram, Jamadar Grade-III, Kadi Police Station that the injuries received by the respondent-accused No.3-Mangalbai filed cross complaint before the police against the present complainant-Kalabhai Pushabhai, Gotam Pusha and Chandu Bechar were identified as accused and charge sheet was also filed under Section 323, 504, 506(2) and 426 of the IPC. I.O., Shri Popatlal has admitted in his cross-examination that it was revealed in his investigation that accused No.1-Somabhai Chhaganbai has broken the name plate by giving stick blows and for that purpose Panchnama was drawn. He has also admitted that it was revealed during his investigation that before the incident Kalabhai Pusha, Gotam Pusha and Chandu Bechar tried to molest Sita and Urmila daughter and niece of Somabhai Chhaganbai respectively when they had gone to answer the call of nature and because of that the incident in question has taken place.

#. In view of the above discussion, when the prosecution failed to prove that the injuries received by the accused No.3-Mangalbai during the incident and that they have tried to change the scene of offence and that the incident in question took place because an attempt made by the complaint and his associates to molest Sita and Urmila, then there is no question of interference with the order of acquittal passed by the learned Judge while acquitting the respondents-accused, the learned Judge gave cogent reasons.

In view of the above discussion, this appeal fails and is hereby dismissed. Bail bonds of the respondents-accused stand cancelled.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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