

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1258 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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STATE OF GUJARAT - Appellant(s)**Versus****MOMIN AMIRALI MOHMEDBHAI & 2 - Opponent(s)**

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Appearance :

MS HANSA PUNANI APP for Appellant(s) : 1,
MR SIDDHARTH H DAVE for Opponent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA**and****HONOURABLE MR.JUSTICE M.R. SHAH**

Date : 30/06/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Heard Ms.Hansa Punani, learned Additional Public Prosecutor appearing on behalf of the State and Mr.Siddharth H.Dave, learned advocate appearing on behalf of the respondents – accused.
2. Leave to appeal is granted. Appeal is admitted.
3. With the consent of the learned advocates appearing on behalf of the respective parties and as the record and proceedings is available with us, the appeal is taken up for final hearing today.
4. The learned advocate appearing on behalf of the respective parties have made submissions on merits.
5. The above referred Criminal Appeal is preferred under sec.378 of the Code of Criminal Procedure by the State of Gujarat – appellant herein, against the judgement and order of acquittal delivered by the learned Sessions Judge, Special Court, Patan in Special [Atrocity] Case No.426 of 2002 dtd.14/2/2006, whereby the respondents

herein being accused came to be acquitted by the trial court for the offences punishable under sec.3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and for the charges levelled against them under sections 323, 504, 506(2) and 114 of Indian Penal Code and under sec.135 of the Bombay Police Act.

6. Ms.Hansa Punani, learned Additional Public Prosecutor appearing on behalf of the State and Mr.Siddharth Dave, learned advocate appearing on behalf of the respondents – original accused are heard extensively at this stage. We have gone through the record and proceedings of the trial court thoroughly.

7. As per the prosecution case, the alleged incident happened on 7/4/2002 at about 17.30 hours in the evening. As per the prosecution case in the complaint, which was given by the original complainant – Jadiben wife of Revabhai Amthabhai Chauhan on 7/4/2002, there was election of Sarpanch and she also contested the post of Sarpanch and at that time in the afternoon, the accused Julfikar Alimohammed Momin came there with

10 persons for bogus voting and at that time her agent Amratbhai Amthabhai stopped them and because of that, taking grudge, when the complainant and the witness Amratbhai were proceeding towards residence at 5.30 p.m., at that time accused persons came there with weapons and used filthy languages and pushed the complainant and abused against their caste and therefore, it was alleged that they have committed the offences punishable under sec.3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and for the charges levelled against them under sections 323, 504, 506(2) and 114 of Indian Penal Code and under sec.135 of the Bombay Police Act. It is to be noted that the said complaint came to be registered on 9/4/2002. The investigation was carried out by the investigation officer who investigated the case, recorded statements of the witnesses, prepared Panchnama of the place of offence, Panchnama of recovery of weapons etc. and thereafter chargesheet came to be filed against the accused for the aforesaid offences and the case was numbered as Criminal Case No.909 of 2002. That thereafter, as the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate (First

Class) committed the case to the learned Sessions Court, Patan under sec. 202 of the Code of Criminal Procedure, which was numbered as Special [Atrocity] Case no.426 of 2002. Supplementary chargesheet came to be filed against the original accused No.1. Charge came to be framed against all the accused persons for the aforesaid offences and all the accused pleaded not guilty and therefore, they came to be tried.

8. To prove the case, the prosecution examined nine witnesses. The prosecution examined Jadiben Devabhai - injured original complainant at Ex.29, Amratbhai Amthabhai PW-4 at Ex.30, Dahyabhai Savabhai PW-5 at Ex.31, Kanubhai Hemabhai Chauhan PW-4 at Ex.40. The prosecution also further examined Panch Witnesses namely Prahladbhai Sedhabhai at Ex.22 and Somabhai Mohanbhai Prajapati at Ex.27 to prove the panchnama. The prosecution also examined P.S.O. Tulsibhai Mithabhai Solanki at Ex.41, Amratlal Ishvarlal Joshi - P.S.I., Patan Taluka Police Station PW-8 at Ex.44, Mr.Mulubha Vaghubha Zala, Deputy Superintendent of Police, Siddhpur PW-9 at Ex.48. To prove the case, the prosecution produced on record documentary evidences, such as, Panchnama of palce of offence, Panchnma of

recovery of weapon. After the evidences were over, Further Statement of the accused came to be recorded under sec.313 of the Code of Criminal Procedure. The original complainant deposed in his deposition that the accused came in Jeep. However, the said fact is not mentioned by the complainant in the complaint. Considering the fact that the alleged incident happened on 7/4/2002 and the complaint came to be filed after a delay of two days on 9/4/2002, for which there is no explanation and considering the fact that there was a dispute with regard to bogus voting and the same is not proved and the injury also not proved by leading medical evidences, on appreciation of evidence, the learned trial court acquitted the accused by further considering the fact that before two days, the accused Julfikar Alimohammed Momin had filed complaint against the witnesses Amratbhai Amrabhai and Revabhai Amrabhai. Hence present appeal.

9. We have heard the Additional Public Prosecutor appearing on behalf of the State as well as Mr.Dave, learned advocate appearing on behalf of the respondents - original accused at length and also considered the record and proceedings as well as the impugned judgement

and order of acquittal, It is borne out from the record that there was enmity between the complainant, her witnesses and the accused. It has also come on record that prior to two days, a complaint was filed by the original accused Julfikar Alimohmed Momin against two witnesses namely Amratbhai Amrabhai and Revabhai Amrabhai. It was specific case on behalf of the complainant that the dispute arose because the accused persons came there on 7/4/2002 for bogus voting and at that time, witness Amratbhai Amrabhai stopped them. However, in the cross-examination, she has specifically admitted that no complaint with regard to bogus voting was filed with the election officer. It has also come on record that for the alleged incident happened on 7/4/2002, the complaint came to be filed after two days i.e. on 9/4/2002 and there is no explanation for such delay. Even the injury, if any, has not been proved by leading medical evidences. The prosecution has examined witnesses who all are the relatives of the complainant, no independent witnesses has been examined. Considering the above, when the learned trial court has acquitted the accused, it cannot be said that the trial court has committed any error and/or judgement

and order of acquittal is so perverse which requires interference of this Court in exercise of powers under sec.378 of the Code of Criminal Procedure.

10.If the aforesaid circumstances at this juncture are taken into consideration with the fact that there is an enmity between the complainant and the accused, the possible conclusion from the probabilities of the case would be that the prosecution has failed to establish the charges levelled against the respondents accused.

11.The learned trial court has properly appreciated the evidence and has reached to the possible conclusion from the evidence that in the above said circumstances and when there is no corroboration to the say of the witnesses, the respondents - accused were entitled to acquittal. This conclusion cannot be interfered with for the reasons stated above.

12.In view of the unsatisfactory evidence led by the prosecution, we are of the considered opinion that no illegality is committed by the learned trial judge in acquitting the accused of the offences with which they

were charged and we are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the learned trial Judge, as, in our view, no other conclusion is possible except the one reached by the learned trial Judge.

13.It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

14.In the case of RAM KUMAR V. STATE OF HARYANA, reported in AIR 1995 SC 280, Supreme Court has held as under:

"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

12. It may be noted that 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 trial Judge. As this Court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for

acquittal and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial Judge and this is so, in view of the decisions rendered by the Hon'ble Supreme Court in the case of GIRJA NANDINI DEVI AND OTHERS V. BIJENDRA NARAIN CHAUDHARI, AIR 1967 SC 1124 and STATE OF KARNATAKA V. HEMA REDDY AND ANOTHER, AIR 1981 SC 1417.

13. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned trial Judge for acquitting the accused. Suffice it to say that the learned trial Judge has given cogent and convincing reasons for acquitting the accused and the learned A.P.P. has failed to dislodge the reasons given by the learned trial Judge and convince this Court to take a view contrary to the one taken by the learned Judge.

14. Seen in the above context, we do not find any valid reason or justifiable ground to interfere with the

impugned judgment and order acquitting the accused of the offences with which they were charged. Hence, the appeal deserves dismissal and is accordingly dismissed.

[J.R. VORA, J.]

[M.R. SHAH, J.]

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