

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1483 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
Versus
RAVAL SURYAKANT KESHVALAL

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Appearance :

MR MR MENGDEY APP for Appellant

None for Respondent

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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 J.R.VORA)

[1] The above referred appeal is preferred by the State of Gujarat under the provision of Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the learned Sessions Judge, Special Court, Patan on 04.03.2006 in Special Atrocity Case No.29 of 2004 whereby the present respondent being accused of the said Special Atrocity Case came to be acquitted by the trial Court for the offences punishable under Sections 354, 323, 504 and 506(2) of the Indian Penal Code as well as for the offence punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The State has also requested to grant leave to appeal to the appellant - State against the judgment and order of acquittal.

[2] According to the prosecution case, the incident occurred on 18.09.2002 at about 9.00 p.m. and the complaint has been offered by the complainant - Pujiben Khetabhai Vankar, aged about 48 years before Police Inspector, at Sami Police Station on 19.09.2002. It is the prosecution case that complainant - Pujiben Khetabhai Vankar was Surpanch at the relevant juncture of Village : Kanij. On the day of the incident i.e. on 18.09.2002 at about 7.00 p.m., she had been to Village : Khijadiyari to see her daughter and after taking dinner, she was coming back to Village : Kanij and

reached at Kanij, at that time it was darkness. After getting down from the private vehicle at Village : Kanij, she went below the road to answer nature's call and, thereafter, she came on road and at that juncture, she noticed that one motorcycle came and halted beside her. She also noticed that motorcycle was driven by the accused. After halting the motorcycle near the complainant, the accused threatened her that complainant had been Surpanch and, therefore, she had become vain, but he (accused) was capable to murder her and to send her to Jail. Complainant requested the accused, who was serving as Talati of the Village, that why accused was threatening her. On accosting by the complainant, the accused - Talati was excited and started abusing the complainant and started beating her with kick and fist. The accused insulted her by caste saying that accused wanted to indecently behave with her. The complainant was caught by the accused and was thrown on the ground and her blouse was torn by the accused. The complainant, therefore, raised shouts for help and on hearing the shouts, witnesses Thakore Bharmalbhai Lavjibhai, Suthar Rameshbhai Amthabhai and Thakore Keshaji Parmaji came running down there and rescued the complaint from the hands of the accused. The witnesses persuaded the accused and, therefore, accused went away and threatened that on that day, on account of these three witnesses she was rescued, but next time she would be done to death. According to the prosecution case, the motive of the assault was that accused had embezzled the amount from Gram Panchayat

allotted to Javahar Scheme and the complainant being Surpanch had preferred complaints against the accused - Talati, Taluka Development Officer, Sami and District Development Officer.

[3] The crime came to be registered against the accused being C.R.No.121/2002 at Sami Police Station for the abovesaid offences and the charge-sheet came to be filed in the Court of learned Judicial Magistrate, First Class, at Sami and was committed to the Special Court.

[4] Vide Ex.10, charge came to be framed against the accused on 03.05.2005 by the learned trial Judge and accused pleaded not guilty. Therefore, the prosecution examined the following witnesses.

P.W.1	Pujiben Khetabhai Vankar, Complainant	Ex.22
P.W.2	Bharmalji Lavjiji Thakore, Eye Witness	Ex.23
P.W.3	Keshaji Parmaji Thakore, Eye Witness	Ex.24
P.W.4	Dr.Dasharathbharti Pashabharti Swami, Medical Officer, Community Health Centre, Harij.	Ex.26
P.W.5	Velabhai Pujabhai Nadoda - Patel, Panch of panchnamas at Ex.29 and 30.	Ex.28
P.W.6	Kantibhai Bhagabhai Makvana, P.S.O. of Sami Police Station, who registered the complaint of the complainant.	Ex.31
P.W.7	Rameshbhai Kantilal Patel, Investigating Officer (P.S.I., Sami Police Station)	Ex.34
P.W.8	Girdharlal Chhogmal Joshi, Investigating Officer (P.S.I., Sami Police Station)	Ex.35
P.W.9	Amaratbhai Halabhai Rabari, Investigating Officer (P.S.I., Sami Police Station)	Ex.37

P.W.1	Pujiben Khetabhai Vankar, Complainant	Ex.22
P.W.10	Narendrakumar Naginbhai Chaudhari, Investigating Officer (Deputy Superintendent of Police , Radhanpur)	Ex.39

[5] The prosecution also produced on record the following documentary evidence.

1.	Certificate of the medical treatment of the complainant.	Ex.27
2.	Panchnama of scene of offence.	Ex.29
3.	Recovery panchnama of the blouse worn by the complainant.	Ex.30
4.	Complaint offered by Vankar Pujiben Khetabhai.	Ex.32
5.	Depute order	Ex.33
6.	Certified copy of the Caste Certificate	Ex.38

[6] Thereafter, the prosecution declared the evidence to be over and hence, the learned trial Judge recorded the statement of the accused under Section 313 of the Code of Criminal Procedure wherein the case of the accused was of total denial. Thereafter, learned trial Judge heard the prosecution and defence at length and came to the above conclusion to acquit the accused and hence, this present appeal by the State.

[7] We have summoned Record & Proceedings from the trial Court and we have heard learned APP Mr.M.R. Mengdey for the appellant - State in respect of this appeal at length.

[8] We have gone through the Record & Proceedings carefully and we have scanned and re-appreciated the evidence, even at this juncture. We have scrutinized the reasons assigned by the learned trial Judge for acquittal. We have also considered the reasonable probabilities arising out of circumstances which we have evaluated in this case. We have considered the contentions raised on behalf of the appellant - State against the judgment and order of acquittal.

[9] On going through the record, it appears that though the complainant examined at Ex.22, eye witness Bharmalji Lavji Thakore examined at Ex.23 and eye witness Keshaji Parmaji Thakore examined at Ex.24 attempts to support the prosecution case. Medical Officer Dr.Dasharathbhari Pashabharti Swami examined at Ex.26, who also deposed that on 20.09.2002, he had examined the complainant at Community Health Centre, who had come with police yadi and accordingly, the complainant had tenderness over the left side face and there were no external mark of injury. Remaining witnesses are panch witnesses and police witnesses. Witness Velabhai Pujabhai Nadoda examined at Ex.28 as the panch of panchnama at Ex.29 of the scene of offence and panchnama at Ex.30 by which torn blouse of the complainant on presenting the complainant was seized by the police. Both the panchnamas are proved. Remaining Police witnesses are; Kantibhai Bhagabhai Makvana at Ex.31 who recorded the complaint and

entrusted the investigation to the concerned Investigating Officer P.W. Rameshbhai Kantilal Patel examined at Ex.34, P.W. - Girdharlal Chhogmal Joshi examined at Ex.35, P.W.9 - Amaratbhai Halabhai Rabari examined at Ex.37 and P.W.10 - Narendrakumar Naginbhai Chaudhari, examined at Ex.39, are the Investigating Officers who have in stages investigated the offence.

[10] On re-appreciating and going through the reasons assigned by the learned trial Judge for acquittal, it is noticed that there is an enmity between the complainant - Surpanch and accused - Talati about the Panchayat work. The complaint was filed on the next day which was got typed by complainant in the Court premises and her husband P.W. - Keshaji Parmaji Thakore had been to Police Station with her to offer the complaint. P.W. - Bharmalji Lavjiji Thakore could not identify the accused in the Court and he stated that his eye sight was very weak. Therefore, he could not identify the accused. P.W. - Keshaji Parmaji Thakore, husband of the complainant deposed that on hearing shouts, he reached at the scene of offence and noticed that accused and the complainant were standing and accused was giving abuses to the complainant, at that time, complainant was requesting the Talati. Now re-appreciating the evidence, it clearly comes out from the evidence that all the witnesses have deposed in contradiction to each other which goes to the root of the case. The complaint has been filed late on the next day and that too after due consideration.

Bharmalji Lavjiji Thakore, the witness stated that his eye sight was very weak and in all probability he must not have seen the incident as he was not able to identify the accused in the Court. While P.W. - Keshaji Parmaji Thakore, husband of the complainant deposed that complainant and Talati, both were standing together and accused was giving abuses to the complainant and complainant was requesting the accused. In his deposition, he stated that the complainant had conveyed him that Talati had attempted indecent assault upon her. While Medical Officer Dr.Dasharathbharti Pashabharti Swami categorically stated that she had only complained of pain on her left side of the face. But none of any of the witness stated that the complainant was beaten on left side of the face. There was no other visible mark and injury on the body of the complainant. It has been proved that the say of the complainant is not corroborated by the medical evidence and contradicted by the evidence of other two witnesses. It has been admitted by the complainant that between the complainant and accused being Surpanch and Talati, the dispute was going on about the withdrawing of the money of the Panchayat which was in the Bank and, therefore, there was established enmity. The independent witness Parmabhai Khemabhai was residing near the scene of offence, has not been examined by the prosecution and, therefore, it could safely be said that the prosecution has failed to prove the case against the accused beyond reasonable doubt. We have gone through the reasons assigned by the trial Court for acquittal and we

find that the learned trial Judge acquitted the accused because on account of contradiction and in absence of medical evidence and on account of enmity. None of the witnesses inspired any confidence. We, therefore, are of the humble view that the conclusions arrived at by the trial Judge, are not so perverse as to warrant any interference in this appeal against the acquittal. Though the trial Court also discussed the breach of Rule-7 framed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as according to the trial Court the crime was, initially, not investigated by the officer of the rank of the Deputy Superintendent of Police and trial was vitiated. We do not dwell upon this issue as even otherwise on facts, the prosecution has failed to establish its case and benefit of doubt, must go to the accused and it must result in acquittal.

[11] In view of the unsatisfactory evidence led by the prosecution, we are of the considered opinion that no illegality is committed by the learned Sessions Judge in acquitting the accused of the offences with which he was 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.

[12] 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 VS. 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.

[13] In the case of **Ram Kumar Vs. State of Haryana**, reported in **AIR 1995 SC 280**, the 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.”

[14] 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 Vs. Bijendra Narain Chaudhari, AIR 1967 SC 1124** and **State of Karnata Vs. Hema Reddy and Another, AIR 1981 SC 1417**.

[15] 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 APP 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.

[16] 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, leave to appeal deserves to be refused by dismissing the appeal in limine.

[17] For the reasons stated hereinabove, leave to appeal is refused. The appeal is dismissed at the threshold.

[[J. R. VORA,J.]

[M. R. SHAH,J.]

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