

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 71 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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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

BHEMABHAI JETHABHAI THAKOR - Opponent(s)

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Appearance :

MS HANSA PUNANI, APP for Appellant(s) : 1,

NOTICE SERVED for Opponent(s) : 1,

MR UM SHASTRI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 31/07/2012

ORAL JUDGMENT

1. The present Appeal, under Section 378 of the Code of Criminal Procedure, is filed by the appellant – State of Gujarat against the Judgment and order dated

17.11.1997 passed by learned Special Judge (Atrocity), Banaskantha at Palanpur, in Special Case No. 217 of 1993, whereby the learned Judge has acquitted the respondent – original accused from the charges alleged against him. Against the said Judgment and order of acquittal, the appellant – State has filed present Appeal.

2. The brief facts of the prosecution case are that on 3.4.1991 at 10.00 a.m. when the complainant was standing on the Galla of Ismail Langha Ghanchi at the Bus Stand at Rathanpur for purchasing Bidi, at about 1.30 hours, Koli Bhema Neta of village Purana came there speaking filthy abuses and inflicted the blow of sword on the right hand arm and on the chest of the complainant. Therefore, the complainant lodged Police complaint before the Rathanpur Police station against the respondent – accused for the offence punishable under Sections 324, 504 of I.P. Code, under Section 135 of the Bombay Police Act and under Section 3(1)(10) of the Atrocity Act. The said complaint was registered vide CR No. I – 50 of 1991.
3. Necessary investigation was carried out, statements of the witnesses were recorded. Thereafter, after completion of investigation, the charge-sheet was filed against the respondent – accused in the Court of learned Magistrate. As the case was triable by the Court of learned Special Judge, the learned Magistrate committed the case to the Court of learned Special Judge. Thereafter, the charge was framed against the respondent – accused. The respondent – accused pleaded

not guilty to the charge and claimed to be tried.

4. To prove the case against the accused, the prosecution has examined the witnesses and relied upon the documents. At the end of trial, after recording the statement of the respondent – accused, under Section 313 Cr. P.C., and after hearing the arguments on behalf of the prosecution and the defence, the learned Special Judge (Atrocity) & Additional Sessions Judge, vide the impugned Judgment and order, has acquitted the respondent – accused from the charges levelled against them.
5. Being aggrieved by and dissatisfied with the aforesaid Judgment and order of acquittal, the appellant – State of Gujarat has preferred this Appeal.
6. Heard learned A.P.P. Ms. Hansa Punani, appearing on behalf of the appellant – State of Gujarat. Though served, the respondent did not remain present or no body has appeared on his behalf. Board shows that Learned Advocate Mr. Shastri is appearing on behalf of the respondent, but, at the time of hearing, he was not present. I have also gone through the Judgment and order passed by the trial Court and also considered the documents produced on the record of the case.
7. Learned APP, appearing on behalf of the appellant, has contended that the Judgment and order passed by the learned Judge is without appreciating the facts and evidence on the record. She has contended that looking

to the complaint and the deposition of the witnesses and the medical certificate, it clearly appears that the respondent - accused had assaulted on the complainant and caused injury to him and also insulted the complainant about his caste and gave filthy abuses. She has, therefore, contended that looking to the over all evidence, prima-facie, the prosecution has established its case beyond reasonable doubt and the learned Judge has wrongly acquitted the accused from the charges levelled against him. She, therefore, contended that the Judgment and order of the trial Court is bad in law and perverse and, therefore, the same requires to be quashed and set aside.

8. Other side is served, but, nobody has appeared on his behalf. I have also gone through the Judgment of the trial Court and other evidence.
9. From the observation of the trial Court it is established that Dr. Rajendrakumar Surajmal Gupta (Exh.9) has categorically deposed that the injury received by the complainant is not possible by sword. The eye witnesses and other witnesses have also not supported the case of the prosecution and even the identity of the accused is not proved. The learned Judge has categorically observed that the witnesses, who can be said to be independent witnesses, have not supported the case of the prosecution. In my opinion, the learned Judge has not committed any error in not believing the case of the prosecution and, therefore, the Judgment of the trial Court is proper and no interference is called for.

10.It is settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

11.In view of above, the Appeal is dismissed. The Judgment and order dated 17.11.1997 passed by the learned Special Judge (Atrocity) & Additional Sessions Judge, Banaskantha at Palanpur, in Special Case No. 217 of 1993, is hereby confirmed. Bail Bonds, if any, shall stand cancelled. Record & Proceeding to be sent back to the trial Court immediately.

(Z.K.SAIYED, J.)

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