

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 23 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.G.URAIZEE**

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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 or any order made thereunder ?	

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STATE OF GUJARAT

Versus

SARDARSINH VECHATSINH MAKWANA & 1 other(s)

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Appearance:

PUBLIC PROSECUTOR for the Appellant(s) No. 1

MR JV JAPPEE, ADVOCATE for the Opponent(s)/Respondent(s) No. 1

RULE SERVED for the Opponent(s)/Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE A.G. URAIZEE**Date : 16/11/2016****ORAL JUDGMENT**

The present appeal, under section 378 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), is directed against the judgment and order of acquittal dated 06.10.2007 passed by the learned Special

Judge, Himatnagar in Atrocity Case No.18 of 2006 whereby the learned Special Judge acquitted the original accused-respondents herein of the charges for the offence punishable under Sections 323, 324, 506(2) and 114 of the Indian Penal Code read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 135 of the Bombay Police Act.

3. The brief facts of the prosecution case are that the Complainant – Ramabhai Dhulabhai Chamar has registered a complaint against the accused persons at Himatnagar Town Police Station for the offences punishable under Sections 323, 324, 506(2) and 114 of the Indian Penal Code read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 135 of the Bombay Police Act inter alia stating that he was having one farm in village Sundargadh, which was known as Tevavala where he was cultivating the crop of soy. On 30.12.2005 at about 11.00 hours the complainant went to his farm for bringing grass for the cattle and while he was cutting the grass, at that time, accused Sardarsinh Vechatsinh Makwana, who is owner of agricultural land situated adjacent to the land of the complainant came there and started giving filthy abuses and questioned him as to why the complainant was cutting the grass. The complainant replied him that he was cutting the grass on his own land and asked as to why he was using abusive language to which accused got excited and stated that “Sala, Dhedha, Shedo tara bapno nathi” and by saying so, he inflicted a pipe blow on the face of the complainant due to which the complainant started bleeding from his nose. At that time, brother of accused – Himatsinh Vechatsinh Makwana came there carrying weapon like dhariya and inflicted a dharia blow on the complainant. Accused no.1 also gave pipe blow on the left hand of the

complainant while accused no.2 inflicted dharia blows on the stomach of the complainant. On hearing the shouts of the complainant, Narsinhbhai, son of the complainant, came there and rescued the complainant from the hands of the accused persons. The accused persons went away by giving threats to the life of the complainant if he ever cuts grass from the field borders. Accordingly, the aforesaid complaint was lodged against the present respondent-accused and the same is registered as CR No.I 435 of 2005 with Himatnagar Town Police Station.

4. After completion of the investigation, the charge-sheet was filed before the learned Judicial Magistrate First Class, Himatnagar. As the offences alleged are exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Himatnagar committed to the Court of Sessions under Section 209 of the Code and the same was registered as Atrocity Case No.18 of 2006. Since the opponent-accused did not plead guilty and claimed to be tried, they were tried for the alleged offences.

5. At the time of trial, in order to bring home the charges leveled against the original accused, the prosecution examined the following witnesses and also produced the following documentary evidences.

P.W. No.	Name of the Witness	Exhibit
1	Ramabhai Dhulabhai Chamar, Complainant	21
2	Narsinhbhai Ramabhai Chamar	22
3	Dr Vipulkumar Sanatkumar Jani, Medical	23

	Officer	
4	Kinwarsinh Rajusinh Jhala	28
5	Kanaksinh Amarsinh Parmar	30
6	Natwarbhai Jodhabhai, PSO	33
7	Chhaganbhai Jivabhai Bharwad	36
8	H.R. Chaudhari Dy.Suptd. Of Police	41

The prosecution has led the following documentary evidence in support of its case:

Sr.No.	Documentary evidence	Exhibit Nos.
1	Medical Certificate	27
2	Panchnama of seizure of the weapon	29
3	Panchnama of scene of offence	31
4	Original Complaint	37
5	Office Copy of treatment	38
6	Yadi for obtaining the Caste Certificate	39
7	Caste Certificate of the complainant	40
8	Notification	42

6. At the end of the trial and after recording the statement of the accused under Section 313 of Cr.P.C. and hearing the arguments on behalf of the prosecution and the defence, the learned Special and Sessions Judge, Sabarkantha at Himatnagar acquitted the accused of the charges leveled against them.

7. Being aggrieved by and dissatisfied with the aforesaid judgment and order, the appellant-State has preferred the present Criminal Appeal.

8. I have heard Mr K.P. Raval, learned Additional Public Prosecutor for the appellant-State and Mr J.V. Japee, learned advocate for the respondents.

9. The learned APP submits that the material witnesses including the complainant and Dr Vipulkumar Jani, PW No.6 have fully supported the prosecution case. Still, however, the learned trial Judge has acquitted the respondent on the basis of minor contradictions. It is his further submission that the respondents had committed serious offence by abusing the original complainant and by speaking derogatory words about his caste. He, therefore, urges that the appeal may be allowed and the respondents may be punished appropriately.

10. Per contra, Mr Janak V Japee, learned advocate for the respondents-accused has submitted that there are material contradictions in the evidence of the prosecution and therefore the learned trial judge has rightly acquitted the respondents-accused of the charges levelled against them. He submitted that there is an old animosity between the complainant and the accused persons and with a view to settle the scores, the complainant has filed a false complaint

implicating the present respondents-accused. He, therefore, submitted that the appeal may be dismissed by confirming the judgment and order passed by the learned trial judge.

11. The original Complainant – Ramabhai Dhulabhai Chamar, who was examined as PW No.1 at Exhibit 21 stated in his evidence that on the day of the incident he was present in his field and cutting the grass for his cattle and also leaves from the bamboo trees standing on the border of his field and at that time the accused persons came there and attacked him with sharp cutting weapons and pipes. However, the injuries noticed by the Medical Officer who examined the complainant does not support the case of the complainant. The Medical Officer has noticed the following injuries:

1. CLW over the nose of the size of 1x0.5 cm muscle deep
2. CLW on right lower eye of the size 1x0.5 cm muscle deep
3. Abrasion over lumbar region of the size of 1x2 cm

According to Dr Vipul Jani injury nos.1, 2 and 3 are simple in nature and they are possible a hard and blunt substance. He opined that unless there is any complication, the injuries are likely to be healed within a period of 10-12 days. In the cross-examination, this Doctor has clearly stated that these injuries are not likely to be caused by a sharp weapon like dhariya, but are possible by any hard and blunt substance. Thus, the evidence of the complainant is not trustworthy and unbelievable.

12 Further, there is a discrepancy as regards the place of the incident. As per the say of the complainant, the accused persons attacked him while he was cutting grass in his own field. However,

looking to the evidence of Narsinhbhai Ramabhai Chamar, son of the Complainant, PW No.2 stated in his deposition that the incident in question took place between the agricultural land and bamboo tree border while the complainant stated in his complaint that the incident had taken place in his field. The bamboo tree field is forming part of agricultural land of one Nanabhai Dhulabhai. As per panchnama of scene of offence also the incident has taken place over the land which is abutting the agricultural land of the accused no.1.

13 As per the evidence of PW No.2 - Narsinhbhai Ramabhai Chamar, son of the Complainant the agricultural land of the complainant is surrounded by agricultural fields of several landowners who were working in their respective fields and at the time of incident they all came to the place of offence. Despite the same, the prosecution has not examined any of those persons in support of its case. Therefore, looking to the overall facts and circumstances of the case, the case of the prosecution is highly improbable and unbelievable.

13. The scope of the acquittal appeal under Section 378(1)(3) of the Code is limited. The Supreme Court in the case of **Sadhu Saran Sing v/s. State of Uttar Pradesh, (2016) 4 SCC 357**, have explained this court of acquittal appeal in paragraph 20 as under :

“20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration for the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the

conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal in Sambasivan v. State of Kerala, (1998) 5 SCC 412 has held:

7. " The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal, are well settled. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal."

14. Therefore, I am of the view that the learned trial judge has not committed any illegality in acquitting the respondents under sections 323, 324, 506(2) r/w 114 of the I.P Code and Section 3(1) (x) of the Atrocities Act and Section 135 of the Bombay Police Act. The view adopted by the learned Special Judge in acquitting the respondents is a plausible view, which cannot be substituted by another view. I am in complete agreement with the reasons and the findings recorded by the trial court and in my opinion the impugned judgment and order of acquittal does not suffer from any illegality or perversity and does not warrant any interference in this appeal.

15. For the foregoing reasons, the Appeal fails and is hereby dismissed. The judgment and order of acquittal dated 06.10.2007 passed by learned Special Judge, Himatnagar in Atrocity Case No.18 of 2006 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

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