

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1041 of 2006****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

LALITBHAI HARMANBHAI PATEL & 4 other(s)

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Appearance:

MS RITA CHANDARANA, APP for the Appellant(s) No. 1

MR ASHISH H SHAH, ADVOCATE for the Opponent(s)/Respondent 2

ABATED Opponent(s)/Respondent No.1

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

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CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE**Date : 10/11/2016****ORAL JUDGMENT**

1. The State is in appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code" for

short) to question the legality and validity of the judgment and order of acquittal dated 21.05.2005 passed by learned Additional Sessions Judge, Fast Track Court No.13, Vadodara in Atrocity Case No.15 of 2003, whereby the respondents herein came to be acquitted for the offences punishable under Sections 323, 504, 506(2) read with section 114 of the Indian Penal Code and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocity Act' for short) and Section 135 of the Bombay Police Act.

2 The prosecution story as unfolded during the trial is that the complainant – Naginbhai Gordhanbhai has given the complaint to the effect that he has been residing at Village Muval, Indira Avas, Taluka Savli, Dist, Vadodara and doing labour work. He has stated in his complaint that on 22.03.2002 when he was coming back from labour work at about 7.00 in the evening, he had approximately 1kg of tuwer picked up from the field of one Daskaka and at that time, few people of his village that is Lalitbhai Harmanbhai Patel, and Bhupendrabhai Harmanbhai Patel (Accused No.1 and 2 herein) intercepted him and said that why did he commit theft from their field and by saying so, said accused No.1 and 2 abused the complainant and brought him in the village where Yagneshbhai Arvindbhai Patel gave him the blow of a stick on his left leg and in the head and Jayantibhai Motibhai Patel started beating him. The complainant started shouting for help and listening to the voice of the complainant his uncle Ramanbhai Ambalal, his mother Shantaben and his Aunty Premilaben intervened to save him from incessant beating from the said persons who have been arraigned as the accused persons in his complaint.

3 The said complainant has further stated in his complaint that one

Ravjibhai was also forcefully brought on the scooter by Harnish Chandubhai Patel and the Aunt of the complainant Premilaben was also beaten by the said accused persons and they used filthy language to degrade the caste of the complainant and also threatened the complainant of dire consequences.

4 The said complaint was registered by P.S.O. Savli following the personal appearance of the complainant on 22/03/2002. The P.S.O sent the complainant to Hospital for medical treatment and the complaint was reduced into writing on which he took the thumb impression of the complainant. Thereafter, the said complaint was forwarded to Shri J.H.Parmar for further investigation. Shri.J.H. Parmar the then P.S.I of Savli, Police Station on receipt of the investigation proceeded to the place of crime, carried out the panchnama on 26/03/2002. Thereafter, the said investigation was carried out by then Dy. S.P. Shri. Gadhvi whereby the Dy.S.P. took the statements of the mother, father of the complainant and other eye witnesses who supported the version of the complainant. Two days after assuming the investigation, the said Dy.S.P. was promoted as Dy. Police Commissioner, Ahmedabad and he handed over the investigation to Shri Vasava, who, on receipt of the investigation on 02/04/2002 arrested Harnishbhai Chandubhai Patel, carried out the physical body Panchnama and collected muddamal sticks alleged to have been used in the commission of the crime, collected necessary documentary evidence of the caste of the complainant and after having satisfied that the case against the accused was made out, filed the charge sheet.

5 The accused persons were produced before the learned J.M.F.C, Savli and since the allegations levelled against the accused persons are

triable by the Court of Sessions, the learned J.M.F.C, Savli vide his order dated 24/02/2003 committed the case to the District and Sessions Court, Vadodara and from the said court, the case has been transferred to the court of learned Additional Sessions Judge, Fast Track Court No.13 for regular trial.

6 The learned Additional Sessions Judge, Fast Track Court No.13, Vadodara framed the charge vide Exhibit 6 against the accused persons for the offences punishable under sections 323, 504, 506(2) read with 114 of the Indian Penal Code and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 135 of the Bombay Police Act and the same was read over and explained to the respondents-accused. They pleaded not guilty and claimed to be tried. In order to bring home the prosecution case, the prosecution has examined 18 prosecution witnesses and produced 10 documentary evidences. At the conclusion of the trial, the learned trial judge after hearing the learned advocates for the parties and after analysing the oral as well as documentary evidence was pleased to acquit all the accused persons vide his impugned judgement and order dated 21.05.2005 by giving them the benefit of doubt.

7. The appellant-State being aggrieved against the acquittal order preferred this appeal.

8. I have heard Ms Reeta Chandarana, learned A.P.P for the State and Mr Ashish H Shah, learned advocate for respondent No.3. None appears for Respondent No.2 though served.

9. The learned APP submits that the material witnesses including

the complainant have fully supported the prosecution case. Still, however, the learned trial Judge has acquitted the respondent on the basis of minor contradictions. It is her further submission that the respondents had committed serious offence by abusing the original complainant and by speaking derogatory words about his caste. She, therefore, urges that the appeal may be allowed and the respondents may be punished appropriately.

10. On the other hand, Mr Ashish Shah, learned advocate has supported the judgement and order passed by the trial court and prayed for dismissal of the appeal preferred by the State.

11 Original Complainant – Naginbhai, who was examined as PW No.1 at Exhibit 18 has not supported his version during his deposition and therefore, he was declared as hostile witness. Further, Shantaben Gordhanbhai Nayaka, PW No.8 in her deposition at exhibit 32 also not supported the prosecution case. Moreover, there are inconsistencies and material contradictions in the depositions of other prosecution witnesses as regards the accused persons who had assaulted the prosecution witnesses.

12. 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."

13. Therefore, I am of the view that the learned trial judge has not committed any illegality in acquitting the respondents under sections 323, 504, 506(2) r/w 114 of the I.P Code and Section 3(1) (x) of the Atrocity 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.

14. For the foregoing reasons, the Appeal fails and is hereby dismissed. The judgment and order of acquittal dated 21.05.2005

passed by learned Additional Sessions Judge, Fast Track Court No.13, Vadodara in Atrocity Case No.15 of 2003 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

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