

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1954 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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THE STATE OF GUJARAT

Versus

NATUBHA ABHESANG RAYJADA & 1 other(s)

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Appearance:

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

MR J.M. BUDHBHATTI, ADVOCATE for the Opponent(s)/Respondents

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CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE**Date : 24/11/2016****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 17.02.2006 passed by learned Additional Sessions

Judge and Special Judge, Jam Khambhaliya, in Special Case No.46 of 2004, whereby the respondents herein came to be acquitted for the offences punishable under Sections 504 and 506(2) 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' and Section 135 of the Bombay Police Act.

2. The prosecution story as unfolded during the trial is that on 25.09.2004, while the complainant's wife, Hemaben and witnesses Jethai and Mukeshbhai were travelling in the bullock cart the respondents accused came there and started issuing threats of killing the wife of the complainant. That again on the next day, i.e. on 26.09.2004 while the complainant was going in the bullock cart at about 7 PM accused nos.1 and 2 intercepted the bullock cart and gave abuses to the complainant and humiliated him by uttering his caste in public. The respondents accused have also tried to assault the complainant with iron pipe. Accordingly, offence being C.R.No.II-29/2004 came to be registered with Salaya Police Station for the aforesaid offences under Sections 504 and 506(2) of the Indian Penal Code, under Section 135 of the Bombay Police Act and under Section 3(1)(x) of the Atrocity Act.

3. On the basis of complaint, the investigation was embarked upon. The Investigating Officer visited the scene of offence, drew panchnama of scene offence in the presence of panchas, recorded the statements of various witnesses, arrested the respondents-accused and obtained caste certificate of the complainant. On conclusion of the investigation, on the basis of the material collected against the respondents-accused, charge sheet came to be filed before the Court of Learned Judicial

Magistrate, First Class, Khambhaliya for the offences under Sections 504 and 506(2) of the Indian Penal Code, under Section 135 of the Bombay Police Act and under Section 3(1)(x) of the Atrocity Act, which came to be registered as Criminal Case No. 1267/2004.

4. Since the offence alleged against the respondents-accused was exclusively triable by the Court of Sessions Judge, the learned Judicial Magistrate, First Class, Khambhaliya committed the case to the Court of Special Judge under Section 209 of the Criminal Procedure Code. On committal, the case was registered as Special Case No.46 of 2004 and thereafter it was transferred and placed for trial before the learned Additional Sessions Judge and Special Judge, Jam Khambhaliya, who had initially framed charge against the respondents-accused for the alleged offences vide Exh.5. The charges were read over to them. The statements of each accused came to be recorded, wherein they pleaded not guilty to the charge and claimed to be tried.

5. In order bring home the charge leveled against the accused persons, the prosecution has examined as many as 9 witnesses and relied upon their oral testimony. The prosecution has also produced 25 documents and relied upon the contents of the same.

6. 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 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 Rita Chandarana, learned A.P.P for the State and Mr J.M. Budhbhatti, learned advocate for the respondents-accused.

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. Shri J.M. Budhbhatti, learned advocate for the respondents has supported the impugned judgment. He also submits that since the impugned judgement and order of acquittal does not suffer from any illegality or perversity, in view of the settled proposition of law, even if two views are possible, the view taken by the trial court cannot be substituted in appeal. He further submitted that the learned trial judge has rightly recorded a finding that the prosecution has failed to prove the case against the respondents beyond reasonable doubt. According to his submission, the scope of acquittal appeal is very limited and if plausible view is adopted by the trial court for acquitting the accused person, it cannot be substituted by any other plausible in acquittal appeal. He, therefore, urges that the appeal lacks merits and the same may be dismissed.

11. To bring home the guilt the offence punishable under section

3(1)(X) of the Atrocity Act, the prosecution has to prove that the offence was committed by the accused persons within public view. The prosecution has examined in all nine witnesses including the original complainant in support of its case. From the entire evidence led by the prosecution it cannot be said that the complainant was humiliated within public view as contemplated under Section 3(1)(x) of the Atrocities Act. The prosecution, in my view, therefore, has failed to prove the offence against the respondent for offence punishable under Section 3(x) of the Atrocity Act. I am, therefore, of the opinion that the learned trial judge has rightly acquitted the respondents.

12. Further, from the deposition of police witness, viz. Shri Babaji Valji Pandor, PW No.9 at Exhibit 28 it becomes clear that though he was a Police Sub Inspector, he has carried out the major part of investigation viz. he recorded the statements of the witnesses and prepared the panchnama of scene of offence. Thereafter, at the fag end of investigation, the same was taken over by Shri Chudasama, Deputy Superintendent of Police. Thus, the investigation carried out by Shri Pandor is contrary to the mandatory provisions of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, a subordinate legislation under an Act of Parliament, namely, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities){PoA}, Act,1989, specifies that an offence committed under the PoA Act, shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police(Dy.S.P.). Rule 7(2) of the aforesaid Rules stipulates that the Investigating Officer shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police

who in turn will immediately forward the report to the Director General of Police of the State Government.

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 504 and 506(2) 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 17.02.2006 passed by learned Additional Sessions Judge and Special Judge, Jam Khambhaliya, in Special Case No.46 of 2004 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

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