

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1554 of 2009****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

MANILAL GABABHAI BARIYA @ AMBALAL PUNABHAI BARIYA & 3
other(s)

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Appearance:

PUBLIC PROSECUTOR for the Appellant(s) No. 1

MR K.P. RAVAL, APP for the Appellant(s) No. 1

None for the Opponent(s)/Respondents

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CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE**Date : 24/03/2017****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 04.06.2009 passed by learned Special Judge, Narmada at Rajpipla in Special Atrocity Case No.1 of 2009, whereby the respondents herein came to be acquitted for the offences punishable under Sections 323, 324, 504 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' and Section 135 of the Bombay Police Act.

2. The prosecution story as unfolded during the trial is that on the day of incident i.e. on 27.10.2008, the respondents accused came and started abusing the complainant and then started giving kick and fist blows to him. Since the complainant asked for pardon, the respondents-accused got excited and then the respondent-accused viz., Manilal Gababhai Bariya took out knife from his pocket and gave blow of it on the right shoulder of the complainant and caused injuries. On raising screams, surrounding persons assembled there and hence, the respondents-accused fled away from the place of offence. Thereafter, the complainant was taken to hospital for treatment. The complainant also narrated motive behind the incident in the complaint to the effect that as the complainant won the election of Sarpanch against the accused, the respondents-accused keeping grudge in mind assaulted him and thereby the respondents-accused have committed alleged offences. Accordingly, offence being C.R.No.I-55/2008 came to be registered with Tilakwada Police Station for the offences under Sections 324, 323, 504 and 114 of the Indian Penal Code, under Section 135 of the Bombay Police Act and under Section 3(1)(x) of the Atrocity Act on 28.10.2008.

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, Rajpipla for the offences under Sections 324, 323, 504 and 114 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. 3335/2008.

4. Since the offence alleged against the respondents-accused was exclusively triable by the Court of Special Judge, the learned Judicial Magistrate, First Class, Rajpipla committed the case to the Court of Special Judge under Section 209 of the Cr.P.C. registered as Special Atrocity Case No. 1/2009. On committal, the case was transferred and placed for trial before the learned Special Judge, Narmada at Rajpipla, who had initially framed charge against the respondents-accused for the alleged offences vide Exh.7. 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 to bring home the charge leveled against the accused persons, the prosecution has examined as many as 13 witnesses and relied upon their oral testimony, the details of which have been given in the impugned Judgment and Order i.e. Prosecution Witness No.1 viz., Gopalbhai Desai (Complainant) at Exh.12, Prosecution Witness No.2 viz., Dr. Ratankumar Jivandas Ranjan at Exh.16,

Prosecution Witness No.3 viz., Surechbhai Babubhai (Panch Witness) at Exh.19, Prosecution Witness NO. 4 viz., Chandreshbhai Babhubhai Bariya (Panch witness) at Exh. 21, Prosecution Witness No.5 viz., Mukeshbhai Gopalbhai at Exh.22, Prosecution Witness No.6 viz., Nagjibhai Desaibhai Vasava at Exh. 23, Prosecution Witness No.7 viz., Abdulbhai Jayiytkhan at Exh.24. Prosecution Witness No.8 viz., Shabbir Husen Dayama at Exh.25, Prosecution Witness No.9 viz., Maganbhai Shankarbhai Bariya at Exh.26, Prosecution Witness No.10 viz., Babubhai Govindbhai Bariya at Exh.27, Prosecution Witness No.11 viz., Kanubhai Mansukhbhai Bariya at Exh.28, Prosecution Witness No.12 viz., Ambaben Desaibhai at Exh.29 and Prosecution Witness No.13 viz., Nareshbhai Ambalal Muniya (Investigating Officer) at Exh.30.

6. The prosecution has also produced 06 documents and relied upon the contents of the same, details of which have been given in the impugned Judgment and Order i.e. complaint at Exh.13, caste certificate of the complainant at Exh.14, panchnama of scene of offence at Exh.15, medical certificate of the complainant at Exh.17 medical case papers of the complainant at Exh.18 and body position panchnama of the accused at Exh.20.

7. 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.

8. The appellant-State being aggrieved against the acquittal

order preferred this appeal.

9. I have heard Mr K.P. Raval, learned A.P.P for the State. Though served, none appears for the respondents-accused.

10. 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 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.

11. Original Complainant – Gopalbhai Desaibhai Vasava, who was examined as PW No.1 at Exhibit 12 stated in his evidence that on the day of the incident he was sitting at Bhathuji Maharaj Mandir at about 7 PM along with Maganbhai Shankarbhai and at that time Manilal Gababhai Bariya, Bhogilal Maganbhai Bariya, Ramanbhai Maganbhai Bariya and Kanchanbhai Shankarbhai Bariya – accused persons came there and asked him as to why he supported Chhabubhai in the Sarpanch election and by saying so he was beaten indiscriminately and Manilal Gababhai Bariya removed knife from his pocket and gave knife blow below the right shoulder. However, in the history given before the police, the complainant has stated that accused – Ramanlal Maganlal gave lathi blow to him.

12. Dr Ratankumar Jivandas Ranjan, PW No.2 in his deposition at Exhibit 16 has stated that during the examination of the complainant, he

found CLW injury of 2x0.5 inch size below the right shoulder which could have been caused by a hard and blunt substance. However, the original complainant in his deposition at Exhibit 12 stated that he was given knife blow by Manilal Gababhai Bariya below his right shoulder. Thus, the evidence of the complainant is not trustworthy and unbelievable.

13. Though the prosecution has examined as many as 13 witnesses, none of them have supported the case of the complainant and their evidence is not sufficient to support the case of the prosecution.

14. So far as the offence punishable under section 323 of IPC is concerned, the deposition of the complainant is that he received injuries by means of knife while in the history given before the police he attributed the injury because of lathi blow given by Ramanlal Maganlal. Further, the evidence of the complainant is not in consonance with the medical evidence of PW No.2.

15. 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."

16. Therefore, I am of the view that the learned trial judge has not committed any illegality in acquitting the respondents under sections 323, 324, 504, 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.

17. For the foregoing reasons, the Appeal fails and is hereby dismissed. The judgment and order of acquittal dated 04.06.2009 passed by learned Special Judge, Narmada at Rajpipla in Special Atrocity Case No.1 of 2009 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

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