

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 597 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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THE STATE OF GUJARAT**Versus****MURLIDHAR ROCHIRAM MULCHANDANI & ORS.**

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Appearance:**MS REETA CHANDARANA, APP for the Appellant(s) No. 1****MR SUNIL S JOSHI, ADVOCATE for the Opponent(s)/Respondents**

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CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE**Date : 09/03/2017****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 19.06.2007 passed by learned Special Judge, Panchmahal at Godhra in Sessions Case No.597 of 2008, whereby the respondents came to be acquitted for the offences punishable under Sections 504, 506(2) and 114 of the Indian Penal Code and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The prosecution story in nutshell is that the complainant – Makwana Sonalben Uttamkumar is a Scheduled Caste candidate in Godhra Ward No.3 and people from Sindhi community had beaten her at Ankur School and therefore, on 26.10.2005 the complainant lodged a complaint against the accused persons at Godhra Town Police Station. It is further the case of the prosecution that on 26.12.2005 at about 0.30 hours in the night at Vagdivas, the respondents – accused persons went to the house of the complainant and abused the complainant by calling her as 'Bhildi' and threatened her to withdraw the complaint filed by her against the accused persons at Godhra Police Station on 26.10.2005 or else she would be done to death. The respondents – accused persons also stated that the complainant and her mohalla also would be set at fire. At that time, the husband of the complainant had tried to intervene and pacify the accused persons. However, respondent – accused no.1 had told him that the Government and Police Department belongs to them and he can do whatever he can. Thereafter, they left the place after threatening the complainant to withdraw her complaint or else face dire consequences. Therefore, the complainant went to Godhra Town Police Station and lodged the complaint against the accused persons for the offences punishable under sections 504, 506(2) and 114 of the Indian Penal Code and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. On the basis of the aforeaid complaint, the investigation was initiated and after investigation as there was sufficient evidence against the respondent-accused persons, charge sheet was filed against the respondents before the learned Judicial Magistrate First Class, Godhra. As the offences alleged against the accused persons are exclusively triable by the Court of Sessions, as per the provisions of section 209 of the Criminal Procedure Code, the learned Magistrate was pleased to commit the case to the Court of Sessions and the case was registered as Special Case No.25 of 2006 before the learned Special Judge, Panchmahal, Godhra.

4 The learned Special Judge, Panchmahal at Godhra framed the charge against the accused persons for the offences punishable under sections 504, 506(2) and 114 of the Indian Penal Code and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 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 following witnesses came to be examined :

Oral Evidence

Sr.No.	Name of the Prosecution Witness	Exhibit
1	Mangabhai Vadilal, PW No.1	8
2	Daljitsinh Balwantsinh Multani, PW No.2	9
3	Complainant - Sonalben Uttamkumar Makwana, PW No.3	12
4	Chamanbhai Khatabhai Pargi, PW No.4	15

5. The prosecution has produced following documentary evidence

in this sessions case :

Sr.No.	Exhibit	Description
1	Exh.10	Pnachnama of scene of offence
2	Exh.13	Complaint
3	Exh.14	Caste Certificate

At the conclusion of the trial, the learned Special Judge, Panchmahal, Godhra was pleased to acquit all the accused persons vide his impugned judgement and order dated 19th June 2007.

6. The appellant-State being aggrieved against the acquittal order dated 19th June 2007, preferred this appeal.

7. I have heard learned A.P.P for the State, and Mr. Sunil Joshi, learned advocate for the respondents.

8. 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 her caste. He, therefore, urges that the appeal may be allowed and the respondent may be punished appropriately.

9. Mr. Joshi, learned advocate for the respondent is supported the impugned judgment and order of acquittal. It is his further submission that in view of the limited scope of the acquittal appeal, all plausible view taken by the trial Court cannot be substituted and interfered with by the appellant by another view. He, therefore urges that the appeal may be dismissed.

10. The respondents were put to trial for the offences punishable under sections 504 and 506 (2) and 114 of the I.P. Code and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By impugned judgment and order the respondent came to be acquitted for all the offences. The State is aggrieved by the acquittal of the respondents.

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 four witnesses in support of its case out of which PW No.1 – Mangabhai, who is the brother of husband of the complainant, has not supported the case of the complainant. As per the prosecution case though the incident had taken place in public place, except P.W.1 and original complainant no one was examined by the prosecution. To put it in other words, the incident was not witnessed by any person, though, it had taken in public place, and therefore, it cannot be said that the P.W.3 was humiliated within public view as contemplated under Section 3(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. So far as the offence punishable under sections 504 and 506(2) of the I.P Code is concerned the prosecution case was not supported by any independent witness. I am, therefore, of the opinion that the learned trial judge has

rightly acquitted the respondent for the offence punishable under section 504 and 506(2) read with section 114 of the I.P Code.

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. The learned Special Judge has acquitted the respondents under sections 504, 506(2) and 114 of the I.P Code and Section 3(1) (x) of the Atrocities Act by assigning cogent reasons. 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 19th June 2007 passed by learned Special Judge, Panchmahal, Godhra in Sessions Case No.25 of 2006 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

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