

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1076 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

SUBHASHBHAI @ GALIYO AMRATLAL PATEL & 2 other(s)

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Appearance:

MS REETA CHANDARANA, 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 : 20/01/2017****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 17.12.2007 passed by learned Additional Sessions

Judge & Presiding Officer, 2nd Fast Track Court, Anand in Special (SC/ST) Case No.18 of 2007, whereby the respondents came to be acquitted for the offences punishable under 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 Act').

2. The prosecution story as narrated by the complainant – Becharbhai Tulsidas Vankar, resident of village Metpur, Taluka Khambhat, District Anand is that he was being elected as member of Metpur Village Panchayat for the last four years and that he was appointed as Chairman of Legal Committee of village panchayat. According to the complainant, on 1.5.2006 a programme of Krishirath was arranged by the Government and the complainant remained in the said programme and after completion of the programme it was followed by lunch. However, in the mike it was announced that only those officers who came from outside can have lunch and thereby the complainant was prevented from having lunch. Thus, accused – respondents have abetted in the commission of offence and therefore he lodged a complaint with Khambhat City Police Station against the accused persons for the offences punishable under section 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 charge sheet was filed against the respondents before the learned Judicial Magistrate First Class, Khambhat. 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 (Atrocity) Case No.18 of 2007 before the learned Sessions Judge, Anand.

4 The learned trial judge framed the charge vide exhibit 3 against the accused persons for the offences punishable under section 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 prosecution has examined in all seven prosecution witnesses and produced five documentary evidence. At the conclusion of the trial, the learned trial judge was pleased to acquit all the accused persons vide his impugned judgement and order.

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

6. I have heard learned A.P.P for the State, and the respondents though served have not filed their appearance.

7. 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 saying to the original complainant that persons belonging to vankar community are not allowed to have dinner and thereby the complainant was insulted in public because of his caste. He, therefore, urges that the appeal may be allowed and the respondent may be punished appropriately.

8. 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.

9. 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 seven 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(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.

10 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 to 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.”

11. The learned Special Judge has acquitted the respondents under section 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.

12. For the foregoing reasons, the Appeal fails and is hereby dismissed. The judgment and order of acquittal dated 17th December

2007 passed by learned Additional Sessions Judge & Presiding Officer, 2nd Fast Track Court, Anand in Special (SC/ST) Case No.18 of 2007 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

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