

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1673 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.G.URAIZEE**

=====

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 ?	

=====

STATE OF GUJARAT

Versus

BARAIYA MEGHJIBHAI MAHASHANKAR & 3 other(s)

=====

Appearance:

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

MR TULSI SAVANI, ADVOCATE for the Opponent(s)/Respondents

=====

CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE**Date : 03/05/2017****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 01.03.2008 passed by learned Special Judge, Fast

Track Court No.5, Bhavnagar at Mahuva in Special (Atrocity) Case No.5 of 2005, whereby the respondents came to be acquitted for the offences punishable under Sections 323 and 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 'Atrocity Act' for short).

2. The brief facts of the prosecution case is that the complainant Anjuben W/o Govindbhai Rathod, lodged complaint before Alang Police Station being II-CR-NO-110/04, against accused persons for the offences punishable Under Section 323, 114 of Indian Penal Code & Section 3 (1) (x) of the Atrocity Act. It is the case of the prosecution complainant Anjuben W/o Govindbhai Rathod that she is residing at: Navi Devli, Taluka Talaja with her family. She had two sons and one daughter. The further case of the prosecution is that on 19/12/2004, after completing the housework, she went to Piprala village with her husband for hearing "Ramparayani Saptah Chaltis" where there was separate arrangement for men and women. At about 12:00 hours in the afternoon, when the complainant was taking food with other women, at that time, Bholabhai, Bhurabhai and Meghjibhai came there and Bholabhai and Meghjibhai told her that "tu Dheddi Ahi Shu Kam Jamva Bethi, Ahithi Bahar Nikal". After saying these words, they pushed the complainant and therefore, she had fallen down. Thereafter, when she went to meet her husband and informed him about the said incident, at that time Meghjibhai, Master Jivrambhai and his wife came there and told "Tu Ahithi Jati Rahe" and wife of Jivrambhai told her "Amaru Badhu Bhelvi Maryu". Therefore, the complainant lodged her complaint before Alang Police Station for the offences punishable under sections 323 read with section 114 of the Indian Penal Code and under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 which came to be registered as C.R.No.II 110 of 2004.

3. On the basis of the said complaint, investigation was initiated and after thorough investigation charge sheet was filed before the Learned jurisdictional Judicial Magistrate First Class. As the offences committed by the accused person were exclusively triable by the Court of sessions as per the provisions of 209 of Criminal Procedure Code, the Learned Judicial Magistrate First Class was pleased to commit the case to the court of sessions and the case was transferred and placed for trial before the Learned Special Judge, Fast Track Court No.5, Bhavnagar at Mahuva, which has been numbered as special (Atro) case No.5 of 2005. Thereafter, charge was framed against them for the offence punishable Under Section 323, 114 of Indian Penal Code & 3 (1) (x) of Atrocity Act. The accused persons pleaded not guilty to the charges and claimed to be tried. The prosecution therefore laid evidence. The Prosecution has examined 7 oral witnesses as well as produced 7 documentary evidence on the record of the case. At the conclusion of the trial, learned Special Judge, Fast Track Court No.5, Bhavnagar at Mahuva, was pleased to acquit all the accused persons.

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

5. I have heard Mr K.P. Raval, learned A.P.P for the State, and Mr. Tulsi Savani, learned advocate for the respondents-original accused.

6. Mr Raval, learned APP submits that the evidence of the complainant – Anjuben Govindbhai, PW No.6 is supported by the testimony of her husband – Govindbhai Rathod, PW No.2. it is his

submission that though 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 the caste of the complainant. He, therefore, urges that the appeal may be allowed and the respondent may be punished appropriately.

7. Mr. Savani, learned advocate for the respondent has 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.

8. It emerges from the ocular and documentary evidence available on the record that the incident is alleged to have happened on 19.12.2004 whereas PW No.6-Anjuben – original complainant has taken treatment in the afternoon of 20.12.2014. The evidence of Dr Dhiraj Mayaram Agrawat, PW No.1 reveals that the injuries suffered by the complainant were 2-3 hours old. Thus, it is very clear from the medical evidence that the prosecution has failed to prove that PW No.6 – Anjuben Govindbhai had suffered injuries as alleged by her in the incident which happened on 19.12.2004.

9. Though available, independent witnesses are not examined as the incident had taken place in a pandal where many people from various communities had gathered to hear the religious discourse. PW

No.3 and PW No.4 who are sons of the complainant have not supported the prosecution case. The only independent witness Ramjibhai Tapabhai, PW No.5 has also not supported the prosecution case.

10. It emerges from the evidence of P.W.No.6 – original complainant that she received Rs.25,000/- from the Government as compensation for having filed the complaint under the Atrocity Act. The testimony of PW No.2 – Govindbhai Rathod, husband of the complainant reveals that in the past he had filed many complaints under the Atrocity Act against various persons and received compensation in all the cases. It is thus clear that the complainant is in the habit of filing false complaints under the Atrocity Act.

11 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.”

12. The learned Special Judge has having analysed the evidence available on record in detail and by assigning cogent reasons acquitted the respondents under sections 323 and 114 of the I.P Code and Section 3(1) (x) of the Atrocities Act. 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.

13. For the foregoing reasons, the Appeal fails and is hereby dismissed. The judgment and order of acquittal dated 01.03.2008 passed by learned Special Judge, Fast Track Court No.5, Bhavnagar at Mahua in Special (Atrocity) Case No.5 of 2005 is hereby confirmed. R&P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

mohd