

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1722 of 2010****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

DHARMESHKUMAR KANTIBHAI KOLI PATEL & 1 other(s)

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Appearance:

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

MR NK MAJMUDAR WITH MR SJ NAIK, ADVOCATE for the
Opponent(s)/Respondents

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CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE**Date : 13/04/2017****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 08.06.2010 passed by learned Special Judge, Fast Track Court, Bharuch, Camp at Ankleshwar in Special Atrocity Case No.53 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 and Section 135 of the Bombay Police Act.

2. The prosecution story as unfolded during the trial is that the complainant – Pramodbhai Gordhanbhai Solanki was going to his aunt's home on 27th March 2009 at about 8 PM. When the complainant reached Reliance Tower in village Nava Borbhata, at that time, the respondents-accused and one Chintan Patel, juvenile accused have started insulting the complainant by saying that as to why while the complainant and the respondents-accused were working together in a private company in GIDC, Ankleshwar the complainant was harassing them and they have also abused him by naming his caste. It is further stated that by saying so, the juvenile accused – Chintan Patel removed knife from his pocket and inflicted knife blow on the right hand and they have also given the fist blows and knife blows and they had given him filthy abuses relating to the caste of the complainant with a clear intention to insult the complainant in public. Thus, all the accused persons in abetment of each other have committed offence 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 and section 135 of the Bombay Police Act.

3. On the basis of the aforeaid complaint, the investigation was initiated and after investigation the charge sheet was filed against the

respondents-accused viz. Dharmeshkumar Kantibhai Patel and Ankitkumar Jagdishbhai Patel before the learned Judicial Magistrate First Class, Ankleshwar, which is registered as Criminal Case No.2028 of 2009 on 4.5.2009. As accused – Chintankumar Chandubhai Koli Patel and accused – Bhaveshkumar Kantilal Patel are minors, a separate charge sheet was filed against before concerned Juvenile Court. 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 Atrocity Sessions Case No.53 of 2009 before the learned Special Judge, Fast Track Court, Bharuch Camp at Ankleshwar.

4 The learned Special Judge, Fast Track Court, Bharuch Camp at Ankleshwar framed the charge vide Exhibit 5 against the accused persons for the offences punishable under sections 323, 324, 504, read with 114 of the Indian Penal Code and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and 135 of the Bombay Police Act 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	Maheshbhai Ganpatbhai Patel	09
2	Dilipbhai Shankarbhai Solanki	11
3	Pramodbhai Gordhanbhai Solanki,	14

	Complainant	
4	Kanubhai Parsottambhai Solanki	18
5	Gangaben Gordhanbhai	19
6	Gordhanbhai Somabhai Solanki	20
7	Dr Umashankar Bhagwansinhg	21
8	Maheshbai Nanjibhai	23
9	Sanjaybhai Manharbhai Vasava	25
10	Mangabhai Dahyabhai	26
11	Saagarbhai Kalidas	28
12	Vipulbhai Sudhirbhai Vasava	29
13	Bhimjibhai Shankarbhai Ninama	30

5. The prosecution has produced following documentary evidence in this sessions case :

Sr.No.	Description	Exhibit
1	Panchnama of physical condition of the accused	10
2	Panchnama of seizure of bloodstained shirt of the complainant Pramodbhai Solanki	12
3	Complaint	15
4	Caste Certificate of the complainant	16
6	Medical Certificate issued by Medical Officer, CPC Municipal Dispensary as regards injuries suffered by the complainant	22
7	Xerox copy of station diary of Anklesh Police Station	2
8	Note addressed by PSO, Ankleshwar to Medical Officer, Ankleshwar	20
9	Xerox copy of station diary of Anklesh Police Station	24
10	Panchnama of scene of offence	27
11	Order of appointing Shri B.S.Ninama, Dy.SP as Investigating Officer of the atrocities offence passed by teh Superintendent of Police, Bharuch	31
12	Notification issued by District Magistrate, Bharuch	32

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 dated 08.06.2010 by giving them the benefit of doubt.

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

7. I have heard Mr KP Raval, learned A.P.P for the State and Mr. S.J. Naik, learned advocate for Mr N.K. Majmudar, learned advocate for the respondents.

8. Mr K.P. Raval, learned APP submits that though the complainant does not remember the names of the respondents, he has identified them in the court. It is his further submission the learned trial judge has committed error in acquitting the respondents. He, therefore, urges that the appeal may be allowed and the respondents may be convicted.

9 Mr Naik, learned advocate with Mr N.K. Majmudar, learned advocate has supported the impugned judgment and order of acquittal. He further submits that there is no iota of evidence to connect the respondents with the commission of crime and therefore, he submits that the appeal may be dismissed.

10 It appears from the evidence of original Complainant – Pramodbhai Solanki, who was examined as PW No.3 at Exhibit 15 that though he identifies the respondents in the court, he does not attribute

any specific role to them. It does not emerge from his evidence as to who assaulted the complainant with belt. He also admits that none of the respondents spoke any words about his caste. The other material witnesses examined by the prosecution also did not help the case of the prosecution inasmuch as they also did not say that the incident had happened in their presence and any of the respondents herein had spoken offending words about the caste of the complainant.

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 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.”

12. 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, 5 r/w 114 of the I.P Code and Section 3(1) (x) of the Atrocities Act and Section 135 of the Bombay Police 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.

13. For the foregoing reasons, the Appeal fails and is hereby dismissed. The judgment and order of acquittal dated 08.06.2010 passed by learned Special Judge, Fast Track Court, Bharuch, Camp at Ankleshwar in Special Atrocity Case No.53 of 2009 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

(A.G.URAIZEE, J.)

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