

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 52 of 2007

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

VAGHARI SHANTIBHAI MANJIBHAI & 3 other(s)

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Appearance:

MS REETA CHANDARANA, APP for the Appellant(s) No. 1

MR VIJAY H NANGESH, ADVOCATE for the

Opponent(s)/Respondents

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CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 21/02/2017

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 10.11.2006 passed by learned Special Judge & Additional District and Sessions Judge, Gandhinagar in Special Sessions Case No.46 of 2006, whereby the respondents came to be acquitted for the offences punishable under Sections 324, 323, 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 section 135 of the Bombay Police Act.

2. The prosecution story in nutshell is that the complainant – Baldevbhai Govindbhai Parmar is engaged in construction labour work and on the date of incident i.e. on 26.09.2005 he was working at a construction site situated in Sector 23, Gandhinagar. At that time, he received a phone call from his daughter who informed him that the respondent - accused persons were quarrelling and abusing his wife at his residence and therefore he rushed to his home and found that the accused were using filthy language and were humiliating his wife and his brother by naming their caste. It is his further case that Respondent No.1-Shantibhai Manjibhai gave a iron pipe blow on the head of his brother and inflicted another blow on his right hand. The complainant was also beaten by wooden block used to wash cloths. As complainant's brother was severely injured, he was immediately shifted to civil hospital, Gandhinagar for treatment. Complainant was also given OPD treatment. Wife of the complainant was also beaten by son of accused Respondent No.3-Hamirbhai aged 25 years on her right hand elbow. Hence, all the accused persons in collusion with each other with a common intention committed the offence alleged. Therefore, complaint was lodged by the complainant before Gandhinagar, Sector-21 police station for the above mentioned offences, which was registered for the offences punishable under sections 324, 323, 504, 506(2) 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 and section 135 of the Bombay Police Act.

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, Gandhinagar for the aforesaid offences. 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 Sessions Case No.46 of 2006 before the learned Special Judge and Additional District and Sessions Judge, Gandhinagar.

4 The learned Special Judge framed the charge vide exhibit 3 against the accused persons for the offences punishable under sections 324, 323, 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 Section 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 prosecution has examined six prosecution witnesses and produced 12 documents.

5 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 10th November 2006.

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

7. I have heard learned A.P.P for the State, and Mr. Vijay H Nangesh, learned advocate for the respondents-original accused.

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

9. Mr. Vijay H Nangesh, 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.

10. The alleged incident had taken place on 26.09.2005 and 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 six witnesses in support of its case. However, none of the aforesaid prosecution witnesses have led the evidence to prove that the respondent-accused persons have humiliated the complainant or his family members by uttering the caste of the complainant 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.

11 So far as the offence punishable under sections 323, 324, 504 and 506(2) read with 114 of the I.P Code is concerned, Dr Vinodkumar Ambalala Patel, PW No.3, in his evidence at Exhibit 12 has stated that the injuries sustained by the prosecution side are simple injuries and are possible to have been caused by a hard and blunt substance. Further, the complainant has stated in his evidence at Exhibit 11 that the date of incident is 26.3.2005 while the injured witnesses were examined by the doctor on 26.9.2005. Moreover, the case of the prosecution was not supported by any independent eye witness. I am, therefore, of the opinion that the learned trial judge has rightly acquitted the respondent for the offence punishable under section 323, 324, 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 fo 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 324, 323, 504, 506(2) and 114 of the I.P Code and Section 3(1) (x) of the Atrocities Act and section 135 of the Bombay Police 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 10.11.2006 passed by learned Special Judge and Additional District and Sessions

Judge, Gandhinagar in Special Sessions Case No.46 of 2006 is hereby confirmed. R & P shall be transmitted to the trial court forthwith.

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(A.G.URAIZEE, J.)