

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 402 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

KOLI PATEL HASUBHAI POPATBHAI &amp; 2 other(s)

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Appearance:

MS. MONALI BHATT ADDL. PUBLIC PROSECUTOR for the Appellant(s) No.

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(MR SUNIL C PATEL)(651) for the Opponent(s)/Respondent(s) No. 1,2,3

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**CORAM: HONOURABLE MR. JUSTICE A.G.URAIZEE****Date : 20/02/2017****ORAL JUDGMENT**

Heard Ms. Monali Bhatt, learned APP for the appellant -State. Mr. Sunil C. Patel, learned advocate for the respondents is absent when the appeal is called out.

2. The brief facts of the case are as under:

It is the case of prosecution that on 21.7.2005 at about 15:30 hours, the complainant Raibhanbhai Sodabhai Padhare had lodged a complaint before Panshila Police station stating that the complainant along with his family is doing labour work and on 19.7.2005 at about 8:00 hours at night, the complainant along with on Sagar Gagjibhai Padhar, had gone to pan galla of Madhubhai Ajabhai. It is further stated that the complainant had gone to the shop to take pan and the accused Laghrabhai Kamabhai got excited and gave blow of Kodali to the complainant on left hand, below the elbow and accused Hasubhai and Dayarambhai have given kick and fist blows and and also gave filthy abuses and thereby committed the offences punishable under sections 323, 504, 506(2) read with section 114 of IPC as well as section 135 of Bombay Police Act and section 3(1)(10) of Prevention of Atrocity (Scheduled caste and Scheduled tribe Act, before Panshila Police station vide CR. NO. II 38/2005. The police recorded the witnesses and filed charge sheet before trial, court . The learned Judge by his judgment and order dated 29.11.2006 acquitted the respondents. Hence this appeal.

3. Ms. Bhatt, learned Addl. Public Prosecutor

submits that the complainant and material witnesses have supported the prosecution case in material particulars but it is her further submission that the medical evidence supports the prosecution case and therefore, the learned trial judge has committed an error in acquitting the respondents on the basis of the minor and inconsequential contradictions. She, therefore, urges that the appeal may be allowed and the respondents may be convicted.

4. I have gone through the documentary as well as the, oral evidence adduced by the prosecution. Upon re-appreciation of the evidence of the prosecution, I am not inclined to accept the submissions made by Ms. Bhatt learned APP for the appellant State.

9. 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."*

5. The learned trial judge has considered the oral and documentary evidence led by the prosecution in detail and has recorded the finding that the complaint was lodged about 43 hours after the incident and the complaint appears to be counter blast to the complaint lodged by the respondents against the complainant and other 70 persons.

6. It appears from the evidence on record, that the complainant has not properly explained the delay of 43 hours. It emerges from the record that the complaint against the respondents was lodged after consultation with the community elders after 43 hours of the incident. It is worthwhile to note that the FIR being CR No. 52/2005 was lodged against the the complainant and other persons with Panshila police station by the respondents. This complaint is first in point of time. Therefore, the possibility of the complaint against the respondents is a counterblast to the complaint lodged against them cannot be ruled out.

7. It is settled proposition of law that when the trial court has adopted plausible reasonable view in favour of the accused persons. It cannot be substituted by the another plausible view. As noted in the foregoing there is no explanation for the lodgement of the complaint late by 43 hours and it appears that the complaint was a lodged after consultation with community elders. The possibility of exaggeration cannot be ruled out and therefore, the judgment and order of acquittal recorded by the learned Special Judge does not warrant interference.

8. For the foregoing reasons the appeal

stands dismissed.

MARY VADAKKAN

**(A.G.URAIZEE, J)**