

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1413 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER Sd/-**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
PATHUBHAI SHAILARBHAI MOBH & ORS.

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Appearance:
YUVRAJ BRAHMBHATT, APP for the Appellant(s) No. 1
MR MURALI N DEVNANI(1863) for the Opponent(s)/Respondent(s) No.
1,2,3,4
RULE SERVED for the Opponent(s)/Respondent(s) No. 5

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 05/12/2025****ORAL JUDGMENT**

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal, dated 16.6.2012, passed by the learned 2nd Additional Sessions Judge, Rajula, in Special Case No.9 of 2011, for the offences punishable under Sections 323, 504, 506(2), 114 of the Indian Penal Code and under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant – State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, “**the Code**”).

2. The prosecution case as unfolded during the trial before the lower Court is that the accused persons came in front of the house of the complainant on 28.4.2009 at about 20.30 hours and asked the witness-Mukeshbhai to tie the dog with chain, to which he denied and therefore the accused no.1 slapped Mukesh and upon the intervention of the complainant, accused persons abused them and insulted them regarding their caste in public place and thereby humiliated them and gave threats of killing; that the accused persons had abused the complainant by insulting his caste in public place and thereby humiliated him and also administered threat of killing the complainant. Therefore, the complaint was lodged.

3. After investigation, sufficient *prima facie* evidence was found against the accused person/s and therefore charge-sheet was filed in the competent criminal Court. Since the offence alleged against the accused person/s was exclusively triable by the Special Court, the learned Magistrate committed the case to the concerned Special Court where it came to be registered as Special Case No.9 of 2011. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution has examined the witnesses and also produced various documentary evidence before the trial Court, which are described in the impugned judgment.

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which they were charged, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. Learned APP for the appellant – State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by the learned trial Court and has submitted that the learned trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. In the aforesaid background, considering the oral as well as documentary evidence on record, independently and dispassionately and considering the impugned judgment and order of the Trial Court, the following aspects weighted with the Court.

(i) In the charge framed vide Exhibit-2, it has been stated that the incident had happened on 28.04.2009, whereas P.W.-1-Bhagubhai Alabhai Rathod, who is a complainant, who has been examined vide Exhibit-12, he has stated that the incident happened before 16 months. The said deposition has been taken on 20.07.2010. Therefore, according to the complainant, the incident was happened in March 2009. Therefore, there were contradictions in the date and time of the alleged incident. It has further been stated that the incident has happened at 20:30 hours, whereas the complainant in his deposition has stated that the incident has happened at 08.00 p.m. on 28.04.2009.

(ii) The testimony of P.W.2 -Mukeshbhai Jivrajbhai, Vide Exhibit 17 is taken into consideration. If the examination-in-chief of the said witness is taken into consideration, he states that the incident had happened before 15 to 16 months from 25.01.2011 but does not give any details of the date of incident. If the evidence of P.W.-3-Laxmiben Alabhai Rathod, whose deposition is taken on 08.03.2011 at Exhibit-28 is taken into consideration, it has been stated that the incident happened before 6 months. Therefore, there are lot of contradictions regarding the date of incident. Further, the date and timing mentioned in the charge and the deposition of P.W.1-complainant also differs.

(iii) If the deposition of P.W.-5-Alabhai Meghabhai, who has been examined vide Exhibit 36, is taken into consideration he states that the incident had happened before 3 years, i.e. somewhere on 30.11.2008, whereas, as per the charge, the incident has happened on 28.04.2009. Therefore, the prosecution has failed to prove the case against accused No.1, under Section 323 of the IPC, there is no charge against accused Nos.2 to 4 under Section 323 of the IPC.

(iv) There are contradictions in the deposition of P.W.1 at Exhibit 12 with respect to the assault, he has stated, that in his cross-examination at paragraph no.5, that Mukeshbhai was not assaulted. From his deposition it has not been proved by the prosecution as to which part of the body injury is caused. The prosecution has also not proved the fact that accused no.1 had assaulted Mukeshbhai Jivrajbhai. If the prosecution witness Mukeshbhai Jivrajbhai's deposition at Exhibit-17 is taken into consideration, he has stated that Uthabhai had hit him on his face, but if the complaint at Exhibit 13 is taken into consideration, the said fact has not been transpired that Uthabhai had assaulted Mukeshbhai on his face.

(v) The prosecution has not been able to prove through any medical evidence that P.W.-2- Mukeshbhai Jivrajbhai got injury because of the assault by the accused. If the deposition of P.W.-3-Laxmiben Alabhai Rathod, who has been examined Vide Exhibit 28, is taken into consideration, in her deposition, it has been stated that Bhagubhai had assaulted Mukeshbhai on his face. Therefore, the prosecution has not been able to prove as to who had assaulted Mukeshbhai.

(vi) If the complaint at Exhibit-13 is taken into consideration, it

has not been stated as to which of the accused had abused and what was the abuse given by the said accused, and which of the accused gave which abuse. If the deposition of P.W.-2-Mukeshbhai Jivrajbhai, who has been examined at Exhibit-17, is taken into consideration, it transpires that after 2 or 3 minutes of the incident, the complainant had arrived and therefore, it has not been proved that the complainant was present when the said incident happened.

(vii) Moreover, from the deposition of the complainant Bhagubhai Alabhai Rathod, vide Exhibit-12, the prosecution has not proved that the accused had threatened Mukeshbhai Jivrajbhai and even in the complaint at Exhibit-13, the said fact of the accused about the threats given to Mukeshbhai Jivrajbhai has not been proved by the prosecution. Even the prosecution witness-Laxmiben Alabhai Rathod's evidence vide Exhibit 28, does not prove the fact that there was any threat of life given by the accused to Mukeshbhai.

(viii) There are lot of contradictions in the complaint at Exhibit 13 and the testimony of the witnesses. P.W.7-Bhav nabhen Bhagubhai, who has been examined by the prosecution at Exhibit-41 has also not supported the case of the prosecution.

(ix) With respect to the abuse of the caste, there are also contradictions in the deposition of the complainant vide Exhibit-12 and the complaint made by the complainant at Exhibit 13. With respect to the abuse of the caste, there are contradictions in the deposition of the complainant vide Exhibit 12, the testimony of Mukeshbhai Jivrajbhai vide exhibit-17 and the testimony of Laxmiben Alabhai Rathore at Exhibit-28. With regard to the allegations of abuse and threat, there are lot of contradictions in the deposition of witnesses. The prosecution has also not examined any other independent witnesses to prove its case.

(x) Therefore, the prosecution has not proved the case against the accused for the offence punishable under Section 322, 504 and 506 of the Indian Penal Code, 1860 and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Moreover, as per the observations made by the Hon'ble Apex Court in the case of **Sajan Sakhariya Vs. State of Kerala and others reported in AIR 2024 SC 4557**, every insult or intimidation would not amount to an offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, unless such insult or intimidation is started at a victim because he is a member of a particular Scheduled Castes or Scheduled Tribes. Therefore, from the allegations made in the complaint, the

prosecution has not proved that the accused is guilty of offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(xi) The trial Court while considering the evidences in detail has observed that the prosecution has failed to prove the case against the accused beyond reasonable doubt. While discussing the evidence in detail, the trial court has found that the only allegation against the accused is of speaking indecent words against the caste of the complainant. However from a perusal of records, it appears that the said utterance does not constitute an offence under the provisions of the Atrocity Act. The trial Court has gone into the evidence in detail and has come to the conclusion that the accused are not guilty of the alleged offence.

9. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

10. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused

with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

11. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of **State of Karnataka Vs. Hemareddy**, reported in **AIR 1981 SC 1417** wherein it is held as under:

“... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

12. Thus, in case the appellate court agrees with the reasons

and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

13. In the case of ***Ram Kumar v. State of Haryana***, reported in ***AIR 1995 SC 280***, Supreme Court has held as under:

“The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.”

14. As observed by the Hon'ble Supreme Court in the case of ***Rajesh Singh & Others vs. State of Uttar Pradesh*** reported in ***(2011) 11 SCC 444*** and in the case of ***Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh*** reported in ***(2011) 6 SCC 394***, while dealing with the judgment of acquittal, unless reasoning by the trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

15. In the case of ***Chandrappa v. State of Karnataka***, reported in ***(2007) 4 SCC 415***, the Hon'ble Apex Court has observed as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
- (2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such*

power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the

basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

16. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

17. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondents - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

18. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove its case and the same deserves to be dismissed and is ***dismissed***, accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.

URIL RANA

Sd/-
(SANJEEV J.THAKER,J)