

Reserved On : 28/04/2026
Pronounced On : 06/05/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1942 of 2010

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STATE OF GUJARAT

Versus

BABBHAI BHIKHUBHAI KHACHAR & ORS.

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Appearance:

MS SHRUTI PATHAK, APP for the Appellant(s) No. 1

MR DIPEN K DAVE(3296) for the Opponent(s)/Respondent(s) No. 1,2,3

MR LAXMANSINH M ZALA(5787) for the Opponent(s)/Respondent(s) No. 1,2,3

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 4

RULE SERVED for the Opponent(s)/Respondent(s) No. 2,3

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CORAM: HONOURABLE MR.JUSTICE SANJEEV J.THAKER

CAV JUDGMENT

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 29.07.2010, passed by the learned Special Judge, Fast Track Court No.2, in Special (Atrocity) Case No.60 of 2007 for the offences punishable under Sections 323, 504, 114 of the Indian Penal Code, and Sections 3(1)(10) of the Scheduled Castes and the 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 on 12.07.2007, the

complainant along with his nephew Daya Samant and Bhupat Meharbhai was present at their field. At that time, the respondents–accused, armed with sticks, came there and started abusing them and also threatened to kill them. When the complainant and others requested pardon, the respondents–accused became aggressive and began assaulting them with sticks, as a result of which they sustained injuries. Therefore, the complaint was filed against the respondent/s–accused.

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 for the offences as alleged. Since the offence alleged against the accused person/s was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court where it came to be registered as Special (Atrocity) Case No.60 of 2007. The charges were 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 11 witnesses and also produced 10 documentary evidence before the Trial Court, which are described in the impugned judgment as under:

Oral Evidence

No.	Witness Name	Exhibit No.
1	Witness Complainant Dhudabhai Devabhai	09
2	Witness Dayabhai Samantbhai Solanki	12
3	Witness Bhupatbhai Mehulbhai	13
4	Panch Witness Kalyanbhai Nagjibhai	14
5	Panch Witness Bhupatbhai Ebhalbhai Dhadhal	16
6	Panch Witness Sureshbhai Bavkubhai Khavad	18
7	Dr. Jitendrakumar Manilal Upadhyay	19
8	Witness Bachubhai Bhimabhai	26
9	Witness Ramuben Bachubhai Bhimabhai	27
10	A.S.I. Jashubha Umedsinh Jadeja	30
11	Witness Shri R. J. Pargi, Dy. S.P., Investigating Officer	32

Documentary Evidence

No.	Description of Document	Exhibit No.
1	Original Complaint (FIR)	10
2	Certificate regarding the Caste of the Complainant	11
3	Panchnama of the Local Site (Scene of Offense)	15
4	Panchnama regarding the arrest of the accused and seizure of the stick (Mudammal)	17
5	Medical Certificate regarding injuries of the victim Dhudabhai Devabhai	20
6	Police Note/Yadi for medical treatment	22
7	Case papers of Dhudabhai Devabhai	23
8	Case papers of Samantbhai Dayabhai	24
9	Medical Certificate regarding injuries of Dayabhai Samantbhai	25
10	True Xerox copy of Sayla Police Station Diary Entry No. 23/07	31

5. After hearing both the parties and after analyzing the evidence adduced by the prosecution, the learned trial Judge acquitted the accused of 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, submitted that the learned trial Court has failed to appreciate the evidence in its true sense and perspective; and that the trial Court has committed an 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 weighed with the Court :

8.1. The prosecution has mainly relied on the complaint which is filed vide Exhibit-10, and it is the case of the prosecution that on 12.07.2007, at around 09.00 p.m., when the complainant, along with his nephew Daya Samat and Bhupat Mehrambhai was guarding the field, the complainant was awake in his room in his filed, and his nephew Daya and grandson Bhupat were sleeping. Accused nos.1 and two

unknown persons came to the field and started abusing the complainant. It is the case of the prosecution that thereafter, the accused no.1 started abusing the complainant of his caste and accused no.1 had drunk alcohol and at that time accused no.1 who was holding a stick, started assaulting the complainant, and in the said assault, the complainant was injured on his right hand. Thereafter, the complainant woke his nephew Dayabhai, and accused no.1 had also assaulted the said Dayabhai on his left leg. As the complainant got frightened, he ran towards the field of Bahcu Khima, woke them up and informed them about the said incident, and thereafter, as the complainant, and his nephew, and grandson i.e. Daya and Bhupat, ran away and filed a complaint on the next date. The complainant has examined himself as P.W.1-Dhudabhai Devabhai vide Exhibit-9. In his cross-examination he has stated that it is true that he had no quarrel with the present accused. In his deposition, he has stated that after the assault, as he got frightened, he ran away to his house.

8.2. The prosecution has thereafter examined the nephew of the complainant Dayabhai Solanki as P.W.2 vide Exhibit-12

who the complainant alleges was present at the time of the incident and that he was also injured by accused no.1. The complainant in his complaint has stated that the incident had taken place at around 09.30 p.m. In his deposition he stated that the said incident had taken place at around 11.00 p.m. The P.W.2 who is alleged to have been present at the time of the incident also states that the said incident took place at 09.30. The said witness states that he was also injured due to an assault with stick by accused no.1. The grandson of the complainant Bhupatbhai has been examined as P.W.3 vide Exhibit 13, at the time of deposition, he was 13 years old. He had stated that he and Dayabhai were sleeping at the time of the incident and he was not aware of what incident had taken place before he woke up. The fact to be considered is that the complainant, in the complaint vide exhibit 10 has stated that after he was assaulted, he ran towards the house of Bachu Khima, and Bachu Khima and his wife, Ramuben informed them to run away. The said fact has not been stated by complainant who has been examined as P.W.1 in his deposition vide Exhibit-9, Dayabhai Solanki who has been examined as P.W.2 vide Exhibit 12, Bhupatbhai Mehulbhai who has been examined as

P.W.3 vide Exhibit 13.

8.3. Moreover, the said Bachubhai Khimabhai and Ramuben Khimabhai whom the complainant in the complaint vide Exhibit 10 has stated that the complainant, his nephew Dayabhai, and his grandson Bhupat had ran towards their house at the time of the incident, have been examined as P.W.8, Bachubhai Khimabhai vide Exhibit-26 and P.W.9 Ramuben Khimabhai who has been examined vide Exhibit 27; however, they have not supported the case of the prosecution and have turned hostile.

8.4. The prosecution has produced the panchnama of scene of offence vide Exhibit 15, and the panch witness, Kalyanbhai Nagjibhai, has been examined vide Exhibit-14. In his cross-examination he has stated that his signature was taken after the panchnama was prepared, and he is not aware of as to for what purpose the said panchnama was prepared.

8.5. -The arrest panchnama is produced vide Exhibit 17, and the said panch witness, Bhupatbhai Dhandhal has been examined as P.W.5 vide Exhibit-16, and Sureshbhai Khavad

has been examined as P.W.6 vide Exhibit-18. Both have turned hostile and have not supported the case of the prosecution.

8.6. The prosecution has thereafter examined Dr.Jitendrakumar Upadhyay as P.W.7 vide Exhibit-19, who was a Medical Officer at C.H.C. Sayla and who had treated the complainant Dudhabhai and his nephew Dayabhai. The certificate with respect to the injury of the of the complainant is produced vide exhibit 20. The medical case papers of the treatment of Dayabhai have been produced vide Exhibit 23. The medical case papers of the Samantbhai Dayabhai have been produced vide Exhibit 24. The injury certificate of Dayabhai have been produced vide Exhibit 25. If the cross-examination of the said witness is taken into consideration, the said witness had stated that it was a simple injury and that the alleged injury had taken place on 12.07.2007 at night, and on the next day at 07.00 p.m., the complainant and Dayabhai had come for treatment. He has also stated that the injury would not be caused by one weapon and that the injury could occur if a person tries to climb from the upper portion of the house. Moreover, the

said doctor has also stated that no history was given by the complainant and Dayabhai to him. The prosecution has thereafter examined P.S.O. Jasubha Jadeja, who had taken the complaint vide Exhibit 10, the said witness has been examined vide Exhibit 30 and the Station Diary is produced vide Exhibit 31.

8.7. The prosecution has thereafter examined Dy.S.P. Ramjibhai Parghi as P.W.11 vide Exhibit 32. He has stated that no explanation was given. The Trial Court, while acquitting the accused, has taken into consideration that there is no evidence against accused nos.2 and 3, either in the complaint or in the deposition of the witnesses, neither the complainant nor the witnesses of the complainant have stated that accused nos.2 and 3 have either abused them on the basis of their caste or assaulted them. Moreover, the evidence of P.W.2-Dayabhai and P.W.3-Bhupatbhai also does not prove the case, against the accused, in view of the fact that, as per the evidence of Bhupatbhai, they were woken up by the complainant after he was assaulted, and that he is not aware of what transpired before the said incident.

8.8. Moreover, the prosecution has also not been able to show the nexus of the alleged offence, in view of the fact that the complainant has not stated that there was any enmity between the complainant and the accused no.1, so that the accused no.1 would have been instigated to commit the alleged offence. The fact also remains that if the evidence of the complainant who has been examined as P.W.1 vide Exhibit-9, has stated that he is not aware whether he was assaulted with a stick or a blunt weapon and that it was night time and dark. Though it has been stated that the complainant has states that there was a dispute with Rabari community, but there is no direct nexus of enmity between the complainant and the accused. The accused nos.2 and 3 have also not been identified by way of identification parade.

* Therefore, the prosecution has not proved the case against the accused for the offence as alleged. 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 an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

* 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. 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 any 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, this Court is 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 were 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 properly evaluated the facts and the evidence on record.

11. It is also a settled legal position that in an 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 respondent/s - 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)