IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 979 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

==========

Approved for Reporting	Yes	No

==========

STATE OF GUJARAT
Versus
LAXMANJI SADAJI THAKOR & ANR.

==========

Appearance:
MS ASMITA PATEL, ADDL. PUBLIC PROSECUTOR for the Appellant
MR RH THAKKER(5825) for the Opponent(s)/Respondent(s) No. 1
MR VR HALANI(6169) for the Opponent(s)/Respondent(s) No. 1
RULE SERVED for the Opponent(s)/Respondent(s) No. 2

==========

CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 05/07/2025

ORAL JUDGMENT

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 8.10.2009 passed by the learned Presiding Officer and Addl. Sessions Judge, 2nd Fast Track Court, Deesa camp at Deodar in Special Case No.70 of 2008, whereby the respondent accused came to be acquitted for the offences under sections 323, 504, 506(2) of Indian Penal Code and under section 3(1)(x) of the Atrocities Act, the appellant – State has preferred present appeal under section 378 of the Code of

Criminal Procedure, 1973 ("the Code" for short).

2. The prosecution case in nutshell is that on 4.9.2007, the accused drove tractor to the area dominating by the people of SC/ST community and spoke filthy language to the complainant on his caste and also passed threat of dire consequences. The accused also beaten the complainant and thereby, committed aforestated offence.

3. In pursuance of the complainant lodged by the complainant with the concerned Police Station for the aforesaid offences, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of offence, discovery and recovery of weapons and obtained FSL report etc. for the purpose of proving the offence. After having found sufficient material against the respondent accused, charge-sheet came to be filed in the Court of learned JMFC. As said Court lacks jurisdiction to try the offence, it committed the case to the Sessions Court, Ahmedabad City as provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, Palanpur, learned Sessions Judge framed charge at Exh.5 against the respondent accused for the aforesaid offences. The respondent accused pleaded not guilty and claimed to be tried.

5. In order to bring home charge, the prosecution has examined 6 witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in para 5 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondent accused so as to obtain explanation/answer as provided u/s 313 of the Code. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him.

7. We have heard learned APP for the appellant – State, learned advocate Ms. Vaibhavi Raval for learned advocate for the respondent accused and minutely examined oral and documentary evidence adduced before the learned Trial Court.

8. In background of above, if we re-examine the evidence recorded during the trial, the prosecution examined complainant PW 1 Mr. Ratilal Nanji at Exh.10. In his deposition, he has categorically stated that he has not been beaten by the accused nor the accused has used filthy language to lower down his caste and therefore, he was declared turned hostile as he did not support the case of the prosecution. However, he supports the case to the effect that he has been derogated on the caste by speaking specific words. He has been thoroughly cross-examined. What could be noticed from his deposition that apart from he and his wife, he did not claim that any third party was present on the spot and in presence of third party, derogatory words are spoken to lower down his caste.

9. Witness Jivabhai Nanji - the real brother of the complainant, has been examined as PW2. He has categorically

deposed that the accused was speaking filthy language and was also speaking particular words to him to derogate him on his caste. In chief examination, he also deposed that the accused has passed threat and also spoken derogatory words along with passing the threat. In cross examination, he admitted that at the time of incident, he was at his home. He also admitted that when he reached to the spot of the incident, there was a mob of about 25-50 people and he could not say that which were the persons on the spot who were speaking filthy language. He has also admitted that he has not mentioned specific words used by the accused derogating him and his brother on the caste in his police statement. Evaluating the evidence of the witnesses, what could be noticed that he was not the person on the spot. He was not present on the spot when the incident took place and secondly, when he reached to the spot of an incident, there was a mob of about 25-50 people gathered around and he has improvised his version from the police statement. The words which he spoke in his deposition has not stated in the police statement.

10. Another witness PW 3 Alabhai Dalit was examined by the prosecution at Exh.14. He also declared turn hostile. According to his chief examination, upon various shouts and callings, he went to the spot of the incident. He has deposited that at that time, the accused and his brother were fighting with each other and each of them are speaking filthy language to each other. He separated both of them and at that time, the accused was leaving the place by passing threat. He was turned hostile as far as the act of atrocity is concerned, but thereafter in cross examination done by the accused, he said that in his police

statement, he has mentioned that the accused was speaking filth to the complainant and also the accused was derogating the complainant for his caste. In cross examation, he has admitted that when he reached to the place of the incident, 25 to 50 people were already gathered there and some third parties who are not belonging to the SC/ST community were also present there. He has also admitted that when he reached at the spot, the incident has already over.

11. Witness PW 4 Dariyaben - wife of the complainant has been examined by the prosecution at Exh.15, in which she deposed that when the incident of altercation took place between her husband and accused and they were speaking filthy language to each other, she rushed to call her brother-in-law and other persons, and when she reached to the spot of the incident, she has seen that her husband was beaten by the accused and she was also beaten by giving kick and fist blows and the accused was passing threat for dire consequences. In her chief examination, this witness did not speak anything about act of offence under the Atrocity Act, but once she turned hostile in a cross-examination done by the learned APP, she stated that in her police statement, she has mentioned that the accused was speaking filthy language and was also derogating the complainant on the caste. In cross examination, she has admitted that at the time of incident, she, her husband and accused only three persons were present on the spot and apart from that, no other person were present. Thereafter the prosection has led the evidence of PSO and investigating officer.

12. What could be noticed on perusal of the evidence that the

victim of the alleged incident did not speak about kick and fist blows and injuries received thereof. Admittedly, the complainant has not taken any treatment from the medical officer. The prosecution has not investigated in this aspect. No evidence is produced on record, which shows that the complainant who has received injury as per the prosecution case has led any shot of evidence, which indicates that the complainant has received injury. As stated hereinabove, the complainant himself admitted that no such incident has happened, whereby the accused has given kick and fist blows to him. In aforesaid circumstances, possibility of hurt administered to the complainant defined under section 3(1)(x) of the Atrocity Act is ruled out. Admittedly, at the time of incident, the complainant, his wife and accused only three persons were present. A specific word, according to the complainant was spoken to dogogate him on his caste. However, the wife of the complainant, who is also present on the spot of the incident, turned hostile on this aspect, and she did not support the case of the prosecution to the effect that the accused has spoken a particular derogatory word to lower down the caste of the complainant. There is no cavil that the complainant belongs to the SC/ST community. There is a charge of office under section 3(1)(x) of the Atrocity Act, which reads as under:-

> *Section 3(1)(x) in The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989*
>
> *(x)corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;"*

13. Explaining the provision of section 3(1)(x) of the Atrocity

Act, in case of **Georige Pentaiah v/s. State of Andra Pradesh [2008 (12) SCC 531], the** Hon'ble Apex Court held and observed that complainant ought to alleged that accused are not member of SC /ST caste and he was intentionally insulted or intimidated by the accused with intent to humiliate in place within public view. In the present case, admittedly, there is no public view. Apart from the complainant, his wife and the accused, no third persons were present on the spot. Therefore, even if, it is believed that certain words are spoke to derogate or hamber the complainant on his caste, the prosecution failed to prove that it was intentional and spoken with an intention to hamper the complainant. In view of this, according to this Court, the offence of Atrocities Act is not made out.

14. So far as offences punishable under the IPC are concerned, there cannot be an intentional insult with an intent to provoke breach of peace. These essential ingredients are totally lacking on reading the FIR as well as all the evidence on record. At no point of time, it comes on record that because of intentional insult by the accused, the complainant was provoked to break public peace or to commit any other offence. In the present case, first of all, the complainant himself admitted that he has not been beaten or has received any type of injury and secondly, the entire evidence discussed herein above failed to bring the case within four corners of "with an intent to cause alarm to the complainant". In view of above, according to this Court, the learned trial Court has not committed any error in acquitting the accused.

15. What could be noticeable that the learned trial Court in the

impugned judgment has thoroughly evaluated the evidence of the prosecution and ascribed reasons that how the prosecution case fell short of achieving standard of "beyond reasonable doubt". The findings of the learned trial Court also indicate about existence of sheer contradiction and improvisation in the deposition of star witnesses and became root cause to stultify prosecution case. In view of above, this Court finds no sufficient material to interfere with the impugned judgment and order of recording acquittal.

16. To be noted that since the trial court's judgment acquitted the accused, reinforce the presumption of innocence, the appellant State needs to present a much stronger case to overturn the original verdict and secure a conviction.

17. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP for the applicant has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

18. 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."*

19. 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 learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned 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.

20. 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, no case is made out to interfere with the impugned judgment and order of acquittal.

21. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed. Bail bond stands cancelled.

(J. C. DOSHI,J)

SHEKHAR P. BARVE