

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1323 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Approved for Reporting	Yes	No
		√

STATE OF GUJARAT

Versus

THAKOR TALAJI KUNWARJI (EXPIRED & ABATED) & ORS.

Appearance:

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

MR JIGAR G GADHAVI(5613) for the Opponent(s)/Respondent(s) No. 2,3,4

RULE SERVED for the Opponent(s)/Respondent(s) No. 5

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Date : 25/02/2026

JUDGMENT

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 22.05.2012, passed by the learned Special Judge (Atrocity), Mahesana, in Special Atrocity Case No. 28/2011, for the offences punishable under Sections 323, 504, 506(2) and 114 of the Indian Penal Code, as well as under Section 3(1)10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Section 135 of the Bombay Police 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 27.09.2010 at about 7:00 AM, the children of Accused Nos. 2 and 3 were sitting in an open plot opposite the house of the complainant, Senma Babubhai Shankarbhai, resident of Nandali. The complainant objected to the same. Upon learning this, Accused Nos. 2 and 3 came to the spot and started abusing the complainant. Thereafter, Accused Nos. 1 and 4 joined them, armed with a stick, and allegedly abused the complainant using caste-related derogatory words in public. The accused also allegedly threatened the complainant not to disclose the incident. It is alleged that the accused thereby committed offences punishable under Sections 323, 504, 506(2), and 114 of the IPC, Section 3(1)(10) of the SC/ST (Prevention of Atrocities) Act, and Section 135 of the Bombay Police Act. 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.28/2011. 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 11 witnesses and also produced 16 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 weighed with the Court:

8.1 The prosecution has relied on the complaint produced Exhibit. 18 dated 28.09.2010. According to the case of the prosecution, i.e., on 27.09.2010, the complainant found that the son of accused no. 2 and 3 were sitting in the courtyard, i.e., in front of his house, to ease themselves, and when the complainant told them not to sit their for such purpose, the accused started hurling obscene abuses to him and thereby committed an offence punishable under Sections 503 and 104 of the IPC, and they threatened that if the complainant comes forward to file the complaint they will kill him, and had assaulted with a stick like weapon causing injury and abused the complainant of his caste.

8.2 The prosecution has examined vide Exhibit. 9, Rajput Ashwinbhai Mohansinh as PW-1, who is the panch witness of the body and recovery of weapons of offence, which is produced vide Exhibit. 10. The said witness has turned hostile and not supported the case of the prosecution. The prosecution has also examined as PW-2, the other witness of panchnama produced vide Exhibit. 10. He has also not supported the case of the prosecution and has turned hostile, the said witness is examined vide Exhibit. 13. Both panch witnesses have denied that any panchnama regarding the physical condition of the accused or the seizure of the

stick like weapons was prepared by the police in their presence. Thus, from the testimony of these two witnesses, it is not proved that the weapons were seized from the custody of the accused. the panchnama of scene of offence is produced vide Exhibit. 15.

8.3 At Exhibit 14, Prosecution Witness No. 3, Kanuji Takhaji Thakor, has been examined on oath. This panch witness is a witness to the panchnama of the place of offence. In his deposition, he has stated that the police obtained his signature on already prepared panchnama. Therefore, he has been declared hostile. Hence, the contents and authenticity of the panchnama of the place of offence are not proved.

8.4 The prosecution has examined vide Exhibit. 16 as PW-4 viz Thakor Kaluji Babaji. He has supported the scene of offence. The complainant has been examined as PW-5 vide Exhibit. 17, and the complaint of the complainant is produced vide Exhibit. 19. He filed the complaint one day after the incident. On evaluating the testimony of the complainant, it appears that he graduated in B.A. and is a literate person. In his cross-examination, it has come on record that he had previously filed several complaints under the Atrocities Act, and in all those cases, the accused were acquitted. Further,

the complainant has stated that at the time of the incident about eight to ten people had gathered at the spot and all of them were abusing him. However, he did not disclose their names on the grounds that the number of persons was large. This circumstance indicates that the complainant has chosen to proceed only against the present accused. If, as stated, all the persons present were abusing him, the complainant ought to have clearly and specifically stated that it was only the present accused who uttered caste-related insulting words.

8.5 The cousin brother of the complainant, who was present at the time of the alleged incident, has been examined as Exhibit. 21, Amratbhai Veerabhai as PW-6. Vide Exhibit 21, the prosecution has examined PW 6, Amratbhai Virabhai Senma. He deposed that at the time of the incident about twenty-five to thirty people had gathered at the place of occurrence. However, none of those people have been examined as independent witnesses by the prosecution. Therefore, it would not be safe to place complete reliance solely upon the testimony of the said witness.

8.6 The other cousin of the complainant, who states to have been present at the time of the incident, has been examined vide Exhibit. 23, Kantilal as PW-7. At Exhibit 23,

Prosecution Witness No. 7, Kantibhai Bhikhbhai Senma, has been examined on oath. This witness is an interested witness, being the brother of the complainant, and therefore is likely to depose in support of the complainant. He also stated that at the time of the incident about ten to fifteen people had gathered. However, no independent witness has been examined by the prosecution. All the witnesses examined are family members of the complainant. In such circumstances, the evidence requires scrutiny.

8.7 The uncle of the complainant has been examined as PW-8, Haribhai vide Exhibit. 24. He is uncle of complainant and interested witness. He deposed that two ladies came when the said incident occurred, but he has not given this fact in his police statement.

8.8 The prosecution has examined Ranjitsinh PW-9 vide Exh-25, who was the Police Inspector at Kheralu Police Station, had taken the complaint. Bhikaji Chawda has been examined as PW-10 vide Exhibit. 27, who is the PSO at Kheralu Police Station, and the further investigation was taken by the DYSP. The station diary has been produced vide Exhibit. 28, and the facts message that investigation has to be done by the DYSP has been produced vide Exhibit. 29.

8.9 The prosecution has examined the DYSP, Vishnagar, Khimjibhai Saluji as PW-11 vide Exhibit. 30. From the side of the prosecution, at Exhibit 30, Prosecution Witness No. 11, Khimjibhai Sulji Baranda, has been examined on oath. This witness is the Investigating Officer. On evaluation of his testimony, it appears that during investigation he found that near the place of incident there are houses of Panchal brothers, a Rabari family, and also houses of the Chaudhary community. However, he has not recorded the statement of any independent witness from the locality. He has recorded statements only of the family members of the complainant, who are all interested witnesses.

8.10 The entire case of the prosecution has been taken into consideration. The panch witness Exhibit. 9 has neither supported the case of the prosecution, nor supported the recovery panchnama. The other panch witness, Govindbhai Chaudhary, who has been examined vide Exhibit. 13, has also not supported the case of the prosecution, and has only signed the panchnama as prepared by the police. The other panch witness of the place of offence has been produced vide Exhibit. 14, has also not supported the case of the prosecution.

8.11 The complainant, who has been examined vide Exhibit. 17, has also admitted that he had contested the election of

Sarpanch at Nandali village and had lost the said election, and has also admitted that before filing the present complaint he has also filed an atrocity case no. 72/2008 against accused no. 4, Thakor Laljibhai, and in the said case, the accused no. 4 was acquitted of the offence. It has also come on record that his wife had also filed a case against Lalaji Mangaji, i.e., accused no. 4, being atrocity case no. 40/2011. It has also come on record that his brother had filed atrocity case against Muslim brothers and also against Mahendrasingh and Praveensinh Chandansinh. The incident took place on 27.09.2010 at about 7:00 a.m. The complaint, however, was registered on 30.09.2010 at 16:05 hours. No satisfactory explanation has been given for this delay in lodging the complaint. The prosecution has only relied on the evidence of the relatives of the complainant. The prosecution has failed to prove the case against the accused by not examining any independent witnesses.

8.12 If the entire evidence is taken into consideration, the prosecution has failed to prove its case against the accused. The prosecution has not been able to give any justification, as to why the said complaint was filed after one day, knowing well that the complainant had also earlier filed the atrocities complaint, and therefore was in knowledge of filing the said complaint in time. The complainant in the complaint states that at the time of the alleged offence, 8-10

people had gathered and all were abusing, but their names have not been stated in the said complaint.

8.13 If the entire evidence of all the witnesses are taken into consideration, there are drawn a lot of contradictions and discrepancies in their oral evidence.

9. 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.

9.1 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.

9.2 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, 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 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. The Hon'ble Apex Court, in a recent decision, in the case of ***Constable 907 Surendra Singh and Another V/s State of Uttarakhand reported in (2025) 5 SCC 433***, has held in paragraph 24 as under:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

17. 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.

18. 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.

19. 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.

ADITYA SINGH

(SANJEEV J.THAKER,J)