

**(2010) 05 GUJ CK 0002**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 544 of 1993**

State of Gujarat

APPELLANT

Vs

Mafabhai Shankerbhai Raval and Another

RESPONDENT

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**Date of Decision :** 03-05-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 378  
Penal Code, 1860 (IPC) — Section 114, 323, 504  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 3(1), 3(10)

**Citation :** (2010) 05 GUJ CK 0002

**Hon'ble Judges :** S.R. Brahmbhatt, J

**Bench :** Single Bench

**Advocate :** M.G. Nanavaty, app, for the Appellant; Y.M. Thakore, for  
Respondents 1 - 2, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties.

2. The appellant - State of Gujarat u/s 378 of the Code of Criminal Procedure has approached this Court challenging the order of acquittal dated 22.10.1992 passed by learned Special Judge and Sessions Judge, Palanpur in Special Case No. 22 of 1991 acquitting the accused respondents of the offence punishable u/s 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocity Act" for short) and u/s 323, 504 read with Section 114 of the Indian Penal Code.

3. The prosecution witness No. 1 - original complainant, who happens to be the member of Scheduled Caste had to lodge complaint on 22.1.1991 with the PSO, Chhapi against respondents original accused Nos. 1 and 2 alleging that A1 had encroached upon the panchayat land situated near to his house and thereon A2 had thithering his buffalo. On accosting them as to why they are doing this, both of them got infuriated and A1 slapped him and also gave him fist blow on chest

and A2, hurled abuses. Hence, the complainant started shouting his brother Poonambhai and his wife came and rescued him and thus by assaulting him in this fashion, they have committed an offence punishable u/s 323, 504 read with Section 114 of the Indian Penal Code and u/s 3(1)(10) of the Atrocity Act. The learned Special Judge and Sessions Judge on 28.8.1992 framed charge to this effect and after recording plea of not guilty on the same day, commenced the trial. The Court after recording evidence and appreciating the same came to the conclusion that the prosecution could not prove its case beyond reasonable doubt so as to bring home guilt on the part of the accused and acquitted the accused from the charges leveled against them vide order dated 22.10.1992, which is impugned in the present Appeal u/s 378 of the Code of Criminal Procedure.

4. Learned APP could not point out as to why and on what count, it can be said that the trial Court has erred in recording evidence nor has it been established in this appeal that sustaining of the order of acquittal would in any way result into miscarriage of justice.

5. Shri Thakore, learned advocate appearing for the respondents after referring to the testimony of the complainant PW-1, that of Bhikhiben PW-2 - wife of complainant, PW-3 Poonambhaibrother of the complainant, DineshwaribenPW-4 - police witness, Ishwarlal Valamiya-PW-5-Police witness and Pareshbhai Patel-PW-6-Medical Officer and submitted that collective reading of all these witnesses testimonies would go to show that learned trial Judge was absolutely correct and proper in recording his findings that the prosecution has failed to prove its case beyond doubt. He submitted that the Court has recorded that there was indeed an animosity between the parties on panchayat land and in absence of any independent witness and in absence of no direct other eye-witness's evidence, the recording of acquittal may not be disturbed by this Court u/s 378 of the Code of Criminal Procedure. He further submitted that in fact the framing of charge itself is not proper as the reading of complaint would show that no charge under the Atrocity Act were capable of being made out. He submitted that in view of that the order of acquittal may not be disturbed u/s 378 of the Code of Criminal Procedure.

6. This Court has heard learned advocates for the parties at length and perused the records and proceedings. The following indisputable aspect emerging from the proceedings deserve to be noticed before adverting to the rival submissions of the counsel for the parties:

1. The incident is said to have occurred on 22.1.2991 at 10-30 in the morning.
2. The incident is said to have occurred on account of encroachment of the land of Panchayat by A1 and A2 thithering his buffalo thereon.
3. The complainant has in his complaint and testimony clearly stated that his house is not exact adjacent to the land in question and there is to be altercation on earlier occasion in respect of the said land.

4. It has also come on record that earlier dispute in respect of land in question and thithering of buffalo have resulted into compromise on account of intervention of other party, which would go to show that there used to be animosity between the parties on this count.

5. The land in question admittedly did not belong to the complainant.

6. The complainant has also admitted in his testimony that there is some distance between the land and his house.

7. Except the complainant, no one other has witnesses the complainant being beaten or abused by the accused.

8. The complainant has chosen not to describe verbatim abuse nor did the complainant disclose insult and biting of complainant on account of he being member of Scheduled Caste.

9. The medical certificate and opinion of the doctor assume greater importance so far as Section 323 is concerned. The doctor did not opined and certificate did not indicative of no external injury on the person of the complainant.

7. In view of aforesaid indisputable aspect in the matter, which would go to show that the trial Court was justified in recording its findings that the prosecution did not establish its case beyond reasonable doubt. This Court u/s 378 of the Code of Criminal Procedure would not interfere in the order of acquittal. It is also required to be noted at this stage that contradictions in the testimony of the witnesses as recorded by the trial Court, cannot be brushed aside u/s 378 of the Code of Criminal Procedure so as to disturb the order of acquittal. The collective facts and circumstances in this case would go to show that the order of acquittal has not been resulted into miscarriage of justice in any manner and the same is required to be sustained. The prosecution has failed in establishing any of the ingredients required to be established for a bringing home guilt on the part of the accused.

8. In the result, the appeal fails and is rejected accordingly. Bailable warrant stands cancelled. Registry is directed to send back the records and proceedings to the trial Court.