

(2025) 12 GUJ CK 1775
In the Gujarat High Court
Case No : R/Criminal Appeal No. 2145 Of 2010

State Of Gujarat	Vs	APPELLANT
Sitaben W/O Prahladbhai Chauhan & Ors		RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 209, 313, 378, 378(1)(3)
Indian Penal Code, 1860 — Section 114, 294(B), 324
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(i)(x)

Citation : (2025) 12 GUJ CK 1775

Hon'ble Judges : Sanjeev J.Thaker, J

Bench : Single Bench

Advocate : Yuvraj Brahmbhatt

Final Decision : Dismissed

Judgement

Sanjeev J.Thaker, J

1.1 This appeal has been filed by the appellant – State under Section 378(1)(3) of the Criminal procedure Code, 1973 (Code), assailing the judgment and order dated 31.03.2016, passed by the Special Judge, City Sessions Court, Ahmedabad, in Atrocity Criminal Case No.09 of 2009, acquitting the respondents - original accused for the offence punishable under Sections 324, 294(b) and 114 of the Indian Penal Code, 1860 ('IPC', for short) and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Atrocity Act', for short).

1.2 On 12.12.2024 the Coordinate Bench of this Court had issued notice to original complainant i.e. Respondent No.3 which as per record is served. Respondent Nos.1 and 2 are also served. However, none appeared for any of the respondents.

2.1 Brief facts of the prosecution case are that on 03.02.2007, the complainant

Hirabhai Mohanbhai Solanki had filed the complaint before the Naranpura Police Station, Ahmedabad, which is registered being I-C.R.No.77 of 2007 stating therein that, after completing his work at Torrent Power, AEC, Shahpur, he returned to his house at around 3:30 p.m. At around 3:45, his cousin sister Ramiben, left for labour work at nearby house which is situated opposite to the house of the complainant, for lifting the bricks. After some time, he heard noise of quarrel between Sitaben Prahladbhai Chauhan (original accused No.1), resident of House No.9/84, Chandrabhaga Society, and his cousin, who was hurling filthy language to cousin of the complainant. The original accused No.1 also slapped the cousin of the complainant Ramiben. At that time, husband of Sitaben viz. Prahladbhai Chauhan (original accused No.2) came there and uttered some filthy language relating to caste of Ramiben. The original accused no.2 Prahladbhai took wooden sheet being used for lifting the bricks from the hand of Ramiben and gave blows on right side of forehead of Ramiben which caused her to fall on the ground and she became unconscious. Thereafter, people gathered there and seeing the people, both the accused ran away from the place of incident. The injured Ramiben was taken to Kumud Hospital, Vijaynagar for treatment by Muljibhai, cousin brother of the complainant. The complaint was filed by the complainant stating that accused no.1 used derogatory words relating to caste of the injured Ramiben, slapped her and accused no.2 gave blow of wooden sheet and thereby caused injury to Ramiben. The incident of quarrel occurred because while lifting the bricks by Ramiben, her hand touched son of Prahladbhai (original accused No.2).

2.2 On the basis of the said complaint, investigation was carried out, statements of witnesses were recorded under Section 161 of the Cr.P.C. Caste Certificate of the complainant was collected and the charge-sheet was filed on 14.03.2007 for offences punishable under Sections 324, 294(b) and 114 of the 'IPC' and under Section 3(i) (x) of the 'the Atrocity Act'.

2.3 Since the case was exclusively triable by the Court of Sessions, as per Section 209 of the Cr.P.C., the case was committed to the Court of Sessions. Thereafter, charge was framed against the accused persons. The accused pleaded not guilty to the charge and claimed to be tried, trial commenced.

2.4 To prove its case, the prosecution examined following witnesses and and produced documentary evidence to corroborate the oral testimonies.

ORAL EVIDENCE :

Sr No.

Exh.

Prosecution Witness Number

Name

1

9

1

Ashwinbhai Shivabhai Prajapati

2

17

2

Hirabhai Mohanbhai Solanki

3

21

3

Rajubhai Manabhai Solanki

4

23

4

Ramiben Tokarbhai Vanker

5

26

5

Geetaben Sanjaybhai Chauhan

6

27

6

Bhupendra Dayashanker Shukla

7

29

7

Revaben Hirabhai Solanki

8

31

8

Mahendrasinh Kanuji Padiyar

9

32

9

Nanuji Dhulaji Parmar

10

34

10

Lavjibhai Kanabhai

DOCUMENTARY EVIDENCE :

Sr No.

Exh.

Particulars

1

10

Panchnama of scene of offence

2

18

Original complaint given by Hirabhai

3

19

Caste certificate of complainant

4

22

Panchnama of body position of accused

5

24

Caste Certificate of Witness Ramiben

6

28

Certificate of doctor for treatment given to Ramiben

7

32

Report under Section 57

Further statement of the respondents accused were recorded under Section 313 of the Cr.P.C by the trial Court wherein also the accused denied their involvement in the offence.

2.5 On conclusion of the trial, the learned trial Judge acquitted the accused persons. Being aggrieved by the same, the State has preferred the present appeal.

3. Heard, learned Additional Public Prosecutor Mr.Yuvraj Brahmbhatt for the appellant – State.

4.1 Learned APP for the appellant - State has mainly contended that order of acquittal is contrary to law and evidence on record and that the trial Court ought to have seen that the prosecution has proved its case beyond reasonable doubt by producing cogent and reliable evidence. It has been argued by learned APP that prosecution had examined ten witnesses and also produced seven documentary evidence in support of the case of the prosecution. However, the trial Court has not properly appreciated oral as well as documentary evidence, available on record, in its true spirit and proper perspective.

4.2 It is further contended that trial Court has erred in holding that the prosecution has failed to prove that on 03.02.2007 at about 15:45 hrs or thereabout, Prosecution Witness No.4 viz.Ramiben was doing masonry labour work, lifting the bricks from the road opposite to the house of Mohanbhai Kasturbhai Chauhan. During that time, Ramiben had a plank which touched Sitaben (accused No.1) on her forehead and she got angry upon Ramiben and used filthy language and slapped Ramiben. Accused No.2 Prahladbhai, who happens to be husband of Accused No.1, had come there and he also used unparliamentary language and snatched away plank and hit it on the right side of forehead of Ramiben.

4.3 Learned APP has further submitted that trial Court has failed to appreciate that prosecution has proved its case beyond reasonable doubt. The trial Court has also erred in not taking into consideration evidence of Prosecution Witness No.2, who was examined at Exh.17 namely Hirabhai Mohanbhai Solanki, an independent witness, who has fully supported the case of the prosecution as narrated by him in FIR at Exh.18.

4.4 Learned APP has also argued that the trial Court has not properly appreciated the evidence of the complainant and disbelieved his evidence while coming into conclusion that prosecution has failed to prove beyond reasonable doubt that the accused persons have committed offences charges against them.

4.5 Learned APP has also submitted that injured witness, Prosecution Witness No.4 Ramiben Tokarbhai Vankar, who has been examined at Exh.23, had fully supported the case of the prosecution as narrated in the complaint and the trial Court has also failed to appreciate the evidence of Prosecution Witness No.6 Dr.Bhupendra D. Shukla, who was examined at Exh.27 who has produced medicate certificate of injured witness Ramiben at Exh.28 wherein he has specifically stated that such injuries are possible by giving blows.

4.6 It has been further submitted by learned APP that, trial Court has failed to properly appreciate the evidence of Prosecution Witness No.1 Ashvinbhai Shivabhai Prajapati, who was examined at Exh.9, Prosecution Witness No.3 Rajubhai Manabhai Solanki, who was examined at Exh.21, injured Prosecution Witness No.4 Ramiben Tokarbhai Vankar who has been examined at Exh.23, Prosecution Witness No.5 Geetaben Sanjaybhai Chauhan who has been examined at Exh.26, Prosecution Witness No.7 Revaben Hirabhai Solanki, who has been examined at Exh.29, Prosecution Witness No.9 Nanuji Dhulaji Parmar examined at Exh.32 and Prosecution Witness No.10 Lavjibhai Kanabhai who was examined at Exh.34 and, therefore, reasons assigned by learned trial Court while appreciating the evidence as well as acquitting the accused persons are improper, perverse and bad in law and, therefore, it has been argued that the order of acquittal be quashed and set aside.

5. None appeared for the respondent accused.

6.1 Before advertng to the facts of the case, it would be worthwhile to refer to the scope of interference in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice 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 reaffirmed and strengthened by the trial Court.

6.2 Further, 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrive at would not be arrived at by any reasonable person, and therefore, the decision is to be characterized as perverse.

6.3 Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the court has

committed a manifest error of law and ignored the material evidence on record. That the duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to just decision on the basis of material placed on record to find out whether the accused is connected with the commission of the crime with which he is charged.

6.4 In the case of Babu v. State of Kerala, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C., it is held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (emphasis applied)

6.5 In Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752, the Apex Court has observed that:

"The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court".

6.6 The Apex Court, in case of Chandrappa v. State of Karnataka (2007) 4 SCC 415, reiterated the legal position as under: (SCC p. 432, para 42)

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2)The Code of Criminal Procedure, 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."

6.7 The Apex Court has held that the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

6.8 These decisions clearly express that while exercising appellate powers, even if two reasonable views/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.

7.1 In the aforesaid backdrop, considering the oral as well as the documentary evidence on record vis-a-vis impugned judgment and order of the trial Court, following aspects also weighed with by the Court:

i) from the perusal of deposition, more particularly, the cross-examination of complainant PW-2 Hirabhai Mohanbhai Solanki, Exh.17, the complainant, it has come on record that he had come late from service and was not present at the time of incident and, therefore, the trial Court has held that there are material contradiction in the deposition of the complainant as well as injured Prosecution Witness No.4 Ramiben Tokarbhai Vanker, Exh.23. Moreover, there were other two women viz. Kashiben and Shantaben who were present at the time of incident which took place on 03.02.2007, however, inspite of the fact that they were present there, they have not been examined by the prosecution.

ii) Moreover, it has also come on record that complainant Hirabhai had deposed that injured Ramiben, PW No.4, Exh.23, was kept as indoor patient for one day.

As against that Prosecution Witness No.4, Exh.23 injured Ramiben herself and Prosecution Witness No.6, Exh.27 Dr.Bhupendra Shukla have deposed that after 2-3 hours Ramiben was discharged from the hospital.

iii) Moreover, number of persons were present at the time of incident inspite of that, no independent witness has been examined by the prosecution.

iv) Since the PW No.6, Dr.Bhupendra Shukla, Exh.27 has not stated in his evidence that as the case was not medicolegal case, neither he has taken history, nor informed the police and, therefore, the evidence of this witness would not be helpful to the case of the prosecution. This witness has also deposed that, in his opinion, the injury sustained by Ramiben could be possible if the person falls down.

v) There are no independent witnesses and the witnesses who have been examined by the prosecution are related to the injured person Ramiben. Looking to the deposition of the Doctor and other witnesses, there are lots of contradictions and discrepancies in the evidence of the prosecution.

vi) The panchas have also not supported the case of the prosecution. The prosecution has failed to prove that the accused have insulted or humiliated injured Ramiben in public place though the witnesses examined by prosecution are members of the same community.

vii) Therefore, the prosecution has not proved the case against the accused for the offence punishable under Section 324, 294(b) and 114 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.

viii) 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.

7.2 After re-appreciating the evidence, the view taken by the trial Court was plausible view that has been taken based on the evidence on record. The prosecution has not proved their case and the guilt of the accused has not been proved by the prosecution beyond reasonable doubt.

7.3 Thus, on overall re-appreciation and revaluation of the oral as well as documentary evidence on record, as referred to herein above, it transpires that there are contradictions and omissions in the evidence of the prosecution witnesses. The learned trial Judge has observed that prosecution has failed to bring home the charges levelled against the accused inasmuch as the ingredients of the offence alleged are not fulfilled.

8. This Court has gone through in detail the impugned judgment and order and found that the learned trial Judge has meticulously considered the depositions of all the witnesses and came to the conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubt and in the considered opinion of this Court, the learned trial Judge has rightly come to such a conclusion, which does not call for any interference at the hands of this Court.

9. In view of the aforesaid discussion and observations, in the considered opinion of this Court, the prosecution has failed to bring home the charge against accused for want of sufficient material. The findings recorded by the learned trial Judge do not call for any interference. Resultantly, the appeal fails and is dismissed accordingly. Impugned judgment and order dated 31.03.2016 passed by the Special Judge, City Sessions Court, Ahmedabad in Atrocity Criminal Case No. 09 of 2009 , recording the acquittal of the respondents - accused is confirmed.

10. Bail bond, if any, shall stand cancelled. R&P, if received, be transmitted back forthwith to the trial Court concerned.