

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 745 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

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| Approved for Reporting | Yes | No |
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STATE OF GUJARAT
Versus
DINU PARBAT KARAMTA & ORS.

Appearance:

MR J K SHAH APP for the Appellant(s) No. 1

MR HRIDAY BUCH(2372) for the Opponent(s)/Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 20/11/2025**ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 11/10/2002 passed by the learned Special Judge, Junagadh in Atrocity Sessions Case No. 30 of 2000 for the offences punishable under Sections 307, 504 and 34 of Indian Penal Code and under Sections 3(1)(x) of the Atrocities Act and under Section 135 of the Bombay Police Act, the appellant – State has preferred the present appeal under Section

378 of the Code of Criminal Procedure, 1973 (“the Code” for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1. The prosecution case in brief is that the complainant of this case belongs to Scheduled Caste community and the accused are of other community. The incident in question took place on 4-9-1999 at 6 PM in the field of the complainant situated at village Lambora. The prosecution case is that the accused of this case came with their cattle and allowed them to graze in the field of the complainant, where there were standing crops. That as the complainant asked them to drive away the cattle from his field, the accused attacked him with weapons like iron pipe, axe and Dhariya and caused fracture on the skull, legs and hands and thereby committed the offence under Sections 307, 504 and 34 of Indian Penal Code. The accused also uttered foul abuses relating to the caste of the complainant and thereby insulted him in the name of his caste. The accused have thus, committed the offences under Section 3(1)(x) and 3(2) (v) of the Atrocities Act.

2.2. On these facts, the complaint was filed with Mangrol Police Station. The Police after investigation charge-sheeted the accused for the aforesaid offences. After investigation, chargesheet was filed before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section 307 IPC and Atrocity Act, the case was committed to the Special Court and it was registered as Atrocity Sessions Case No. 30 of 2000 for trial. On conclusion of evidence on the part of the prosecution, the Special Court put various incriminating circumstances appearing in the evidence to the respondent-accused so as to obtain explanation/answer as provided under Section 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 a false case has been filed against him. After examining the evidence, witness testimonies and submissions from both sides, the learned Court below recorded the finding in favour of the respondent-accused acquitting him of the charges levelled against them.

3. We have heard learned APP for the appellant – State and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

4. Mr. J K Shah, learned APP appearing for the appellant – State submits that the impugned order of acquittal is required to be interfered with as the evidence produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that the injuries caused to the injured by the accused were on the head, hands and on leg and thus the said injuries can be said to be serious in nature and if the complainant who received the said injuries is not given the treatment in time, then it would have caused his death. Thus, it is alleged that the accused persons inflicted these injuries upon the complainant with the intention of causing his death, using the weapons in their possession, fully aware that such acts were imminently likely to result in his death. It is therefore submitted that that all the accused persons, acting in concert, attempted to cause the death of the complainant and also abused and insulted him and thereby committed offences punishable under Sections 307, 504, and 34 of the Indian Penal Code.

4.1 It is further submitted that the complainant, who sustained injuries, has been examined as Prosecution Witness No. 40, and his complaint is

on record at Exhibit 41. The complainant has provided strong and reliable evidence linking the accused with the injuries sustained by him. The weapons recovered from the possession of the accused have also been duly identified, and the complainant has stated that these very weapons were used to cause his injuries. The testimony of the complainant is corroborated by the medical evidence of Dr. Yogitaben Ravibhai Dholiya (Exh.13), Dr. Girishkumar Kundariya (Exh.16), Dr. Gulabbhai J. Ganki (Exh.33), and Dr. Roshanbhai Devshibhai Variya. Dr. Yogitaben Dholiya, in her deposition at Exhibit 13 who has stated that when the injured was brought to the Mangrol Primary Health Centre for treatment, the medical history provided indicated that the injuries had been caused in an assault. Similarly, Dr. Girishkumar Kundariya (Exh.16) has also deposed to the same effect. However, the learned Special Court has recorded acquittal and committed serious error.

4.2 Learned APP has further submitted that insofar the offence under the Atrocities Act are concerned, the prosecution has also proved the said offence by leading substantial evidence and it has come on record to show that the complainant belongs to schedule caste and the accused had insulted the complainant in public domain and thus the said offence also proved. However, the learned Special Court has not considered the said evidence and therefore it is submitted to quash the finding of the Special Court in this regard and to convict the accused for the said offence.

4.3 Learned APP has further referred to the evidence of the other material witnesses and submitted that from the evidence of the said witnesses, the involvement of the accused in commission of the crime is proved and therefore, this Court may interfere with the said finding and record the conviction. He would therefore submit to allow this appeal.

5. On the other hand, learned Advocate Mr.Buch appearing for the respondents – accused has submitted that prosecution has failed to prove the charges levelled against the respondents – accused as the evidence of the complainant is doubtful and no plausible reasons are shown by the prosecution as to why their evidence ought to have been believed since they are the interested witnesses and thus their evidence are not reliable and believable. He has further submitted that there are omissions and contradictions in the evidence of the prosecution witnesses and the same cannot be ignored.

5.1 It is submitted that merely because to convict the accused, the entire evidence though does not surface the involvement of the accused; cannot be said to have been believed and the learned Special Court has rightly appreciated the evidence of the prosecution witnesses and thereby come to the conclusion while acquitting the respondents – accused. He has further submitted that insofar as the offence under the Atrocities Act is concerned, no such witness has been examined by the prosecution to believe that the accused insulted the complainant by uttering such words in public domain and the investigation of the offence in question is not conducted by the officer of the rank of the Dy. SP as the offence is relatable to the Atrocities Act and therefore the entire investigation vitiates. He would therefore submit to dismiss the present appeal while confirming the judgment and order of acquittal passed by the learned Special Court.

6. Heard the learned APP for the appellant – State and learned Advocate appearing for the respondents – accused and perused the deposition of witnesses, as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

7. At the outset, evidence of PW 12 – Bhikha Alabhai, complainant examined at Exh.40 is required to be seen. The said witness has deposed in his testimony about the occurrence of the incident. He has deposed in his testimony that incident in question was taken place due to grazing of the animals by the accused side. This Witness has deposed in his testimony that accused had kept his animals in his field and when the witnesses reached there, they started giving foul abuses and on being asked to stop them and to remove their animal from the field, accused – Batuk gave axe blow on his head while accused – Dinu Parbat gave Dhariya blow on the left hand elbow whereas accused – Rame gave pipe blow on his leg. This Witness has further deposed that they have also slapped the complainant and thereafter his right leg was broken and he became unconscious. This Witness has further identified the weapons with which the injuries were caused. This Witness has been cross-examined by the other side however nothing showing the involvement of the accused in commission of the crime of meted out the harassment at the hands of the accused has come on record from the evidence of this witness. However, during the cross-examination, certain omission and contradictions in relation to the place of incident, assailants, and with regard to consciousness of the complainant as well as the presence of the family members of the complainant in consonance with the other evidence surfaced such as Medical Officer and therefore the evidence of the complainant comes under the shadow of doubt.

8. PW No.13 – Prabhaben Dhirubhai, sister of the complainant has been examined at Exh.42 and has deposed in her testimony that on the day of the incident, she and her family members were at home, and at around 5:30 p.m., when they were returning to Lambora, her nephew Mithun came and informed her that his father had been assaulted by Dinu Parbat, Batuk Parbat, and Ramesh Rama. Thereupon, she along with her

family members went near the village crematorium, where they found her brother lying in a severely injured and bleeding condition. She further stated that she had seen the accused persons leaving the spot carrying weapons such as an axe, an iron pipe, and a dhariya (sharp-edged weapon). According to the witness, these weapons correspond to muddamal (seized weapon) items Nos. 3, 4, and 5. This Witness has been cross-examined by the prosecution where she has denied the suggestion that her nephew Mithun had told her that, while he was on his way to Virpur he was calling his father and his father lying injured in bleeding condition near the crematorium at Charithan. She has also conceded that Mithun did not disclose the names of the assailants. Likewise, she has denied the suggestion that she did not see the accused persons carrying an axe, pipe, or dhariya when she reached the place of occurrence. She has further denied that she did not disclose any such facts before the police.

9. Prosecution Witness No.43, Shri Dhirubhai Hajabhai has been examined at Exh.43. In his deposition, he has stated that on the day of the incident, Mithun came and informed him that his father had been assaulted by Dinu Parbat, Batuk Parbat, and others of Virpur and therefore, he proceeded to the place of occurrence and, upon reaching, found Bhikhabhai lying in a bleeding condition. When he returned to the place of occurrence, his wife Prabha, his brother-in-law-Gordhanbhai and in-laws Karmanben had come. This Witness has stated that Bhikhabhai had told him that injuries were caused by Dinu Parbat, Batuk Parbat and witness has been unable to identify the weapons when he was asked about the same.

10. Prosecution Witness No.18 – Karmanben Aalabhai mother of the complainant has been examined at Exh.52 and she has deposed in her testimony that on the day of incident her grandson Mithun who was died

as on today came and informed that his father was beaten up on the road. She therefore went to the place of incident and found her son Bhimo lying on the road with injuries on the leg, hand and head and at that time police came and took him to the Mangrol Dispensary. This Witness has been cross-examined by the other side and denied the suggestions that Mithun had not returned to home after the incident and accused did not beat.

11. Prosecution Witness No.16–Dharmendrasinh Vaghela, Police Witness has been examined at Exh.47 and said witness has deposed in his testimony that on the day of incident he was present at Mangrol Police Station and having come to know about the incident, he went to the place of incident. This Witness has deposed in his testimony that accused–Dinu Parbat came to the Police Station and informed that Bhikha Alla assaulted him and in the said incident Bhikha Alla received injuries and he was lying at the spot. This Witness has instructed the PSO to lodge the complainant. This Witness has deposed in his testimony about the method and manner in which the investigation is conducted.

12. From the evidence of the aforesaid witnesses, it appears that they have deposed as to the method and manner in which the incident took place.

13. Prosecution Witness No.17 – V S Parmar, Police Witness has been examined at Exh.51 and he has admitted in the cross-examination that since there are contradictions in the complaint with regard to incident in question, he was required to take further statement of the complainant and therefore he went to for that purpose. This Witness has been cross-examined by the other side where-from the contradictions and omissions in the complaint, further statement of the complaint has come on record.

14. All the Panch witnesses to the Panchnama drawn by the IO have turned hostile and has not supported the case of prosecution.

15. As per the evidence of PW No.1-Dr. Yogita Shah (Exh.13), the injury sustained on the complainant's head was of a serious nature, and if timely medical treatment had not been provided, such injury could have resulted in death. However, during cross-examination, the said medical witness altered her opinion and admitted that unless the wound is fully explored, no definite medical opinion can be expressed regarding the nature or seriousness of the injury. Furthermore, neither Dr. Kunadiya (Exh.16) nor Dr. Roshanbhai Hariya (Exh.34) has provided any medical opinion concerning the seriousness of the head injury sustained by the complainant. Therefore, the fractures on the complainant's hands and legs are injuries other than those inflicted on vital parts of the body. Hence, the medical evidence does not conclusively establish that the injuries on the complainant were inflicted on vital parts of the body, nor does it establish that the injuries were sufficient in the ordinary course of nature to cause death if immediate treatment had not been administered. No medical witness has given a clear opinion that the injuries were of such a nature as would ordinarily result in the death of any person. For proving an offence under Section 307 of the Indian Penal Code, the essential ingredients of Section 300 IPC must be satisfied, meaning thereby; the prosecution has to prove that the accused caused an injury on a vital part of the victim's body with the intention and knowledge that such injury was likely to cause death or could result in death. Such essential ingredients are not supported by the medical evidence in the case on hand.

16. It appears from the record that the evidence of the complainant and the other evidence produced by the prosecution appears to be

doubtful. It also appears that the complainant has not disclosed the true facts relating to the incident, the place of occurrence, and the nature of the injuries. Not only this, but when the statements of the witnesses are examined with the complainant's version, it appears that the remaining witnesses being the complainant's sister, brother-in-law, and maternal relative are the interested witnesses due to their close relationship with the complainant. Furthermore, if the complainant's statement regarding the place of the incident is examined, in the complaint lodged before the police he initially stated that at the time of the incident, the accused were grazing their buffaloes in the "Chariyan" adjoining Teja's field; the buffaloes had strayed into his field, and when he went to drive them out, the accused arrived there. When he reprimanded them, the accused abused him, took him into the Chariyan, and assaulted him there. However, in his deposition before the Court, the complainant stated that the accused had entered his field with their cattle, and when he told them to drive the cattle out, the accused jointly assaulted him in his own field, causing injuries on his head and limbs. Thereafter, the accused allegedly dragged him to their field and fractured his hands and legs. None of these facts were ever stated by the complainant in his police complaint or in his previous statement. Not only that, but in his further statement given to the police, he made further improvements and additions, stating that he was carrying a stick at the time of the incident, that the accused snatched the stick from him, that he himself was the first to be attacked, and that he too had struck the accused. However, during the cross-examination, he denied having given such a further statement or that the incident occurred in the manner recorded therein. He has denied the suggestions of having made such statement. Moreover, from the evidence produced during the investigation, it also emerges that the first person to become aware of the incident was the complainant's son, Mithun. When the complainant was lying injured on the outskirts of the village, near the boundary of the

field, Mithun was passing on his way to call him. He saw the complainant in an injured condition, and the complainant told him that he had been assaulted by some unknown persons. Mithun thereafter went home and informed the family about the incident. However, during cross-examination, the complainant denied having spoken to his son Mithun, and also denied that Mithun was the first person to meet him after the incident. This denial is contradicted by all the remaining witnesses—Pramaben, Dhirubhai, and Karmaben—each of whom has stated that after the incident, the complainant first spoke to Mithun. In addition to this, the contradictions appearing in the complainant's deposition have also been proved through the testimonies of the Investigating Officer and the medical witnesses. There are also inconsistencies regarding the nature of injuries allegedly caused by the accused. The complainant has failed to clearly specify in his testimony as to what weapon the accused used and on which part of his body the blows were inflicted. In his police complaint, in his further statement, and in his deposition before the Court, he has narrated different and inconsistent versions of the incident, the place of occurrence, and the injuries sustained.

17. Thus, the evidence advanced by the complainant before the Court appears to be doubtful. The contradictions between his deposition, his police statements, and the initial complaint are serious and inconsistent. Furthermore, his testimony does not corroborate with the medical evidence or the medical witnesses. There is no doubt that the testimony of an injured witness is generally considered the best and most reliable evidence. However, such evidence must be consistent, trustworthy, and credible and in absence of corroboration from other witnesses, the Court cannot rely upon such evidence.

18. Insofar as the charge of offence punishable under Section 307 of

the IPC is concerned, admittedly though evidence has been produced by the prosecution showing the involvement of the accused in commission of the crime; but the prosecution has measurably failed to prove the said fact in view of the contradictions and omissions as discussed in the foregoing paragraphs. Since the prosecution has failed to establish the said fact, the findings arrived at by the learned Special Court acquitting the accused for the offence punishable under Section 307 of the IPC cannot be interfered with. It is the sole duty of the prosecution to prove its case to the touchstone of the evidence led by it and here the evidence so led by the prosecution is not sufficient to prove the charges levelled against accused beyond all reasonable doubt. In the present case, neither the intention of the accused to cause the death of the complainant at the place and time of the incident, nor the intention or knowledge to inflict such injuries as were likely to cause death, stands proved from the evidence on record. At the most, from the evidence produced by the complainant before the Court, it is established that injuries were found on the body of the complainant; however it has not been proved that the accused, or any one of them, had inflicted the injuries which were found on the body of complainant. Even if, for the sake of assumption, it is accepted that the injuries found on the complainant were caused by the accused, on the basis of the evaluation of the evidence as aforesaid, the charge under Section 307 of the Indian Penal Code cannot be sustained since to prove the said charge, the prosecution has to establish the intention and knowledge of the accused regarding the nature of the injuries and likely consequence. From the evidence emerging from the record, the prosecution has failed to prove such intention and knowledge.

19. Now, insofar as the offence punishable under the Atrocities Act is concerned, this Court is in complete agreement with the findings arrived at by the learned Special Court in this regard recording that prosecution

has failed to prove the said offence as the complainant has failed to produce any such certificate showing that he belongs to the schedule caste and merely saying that he belongs to schedule caste is not sufficient and thus the first and foremost requirement is not satisfied to attract the ingredients of the offence punishable under the Atrocities Act. Secondly, the prosecution has also failed to establish that even if for the sake of convenience and belief it is to be believed that complainant belongs to schedule caste; then investigation of such offence is required to be conducted by the officer not below the rank of Dy.SP which in the present case is lacking and therefore, on aforesaid count the prosecution has measurably failed to prove that offence under the Atrocities Act is proved and the learned Special Court has rightly recorded the findings recording acquittal of the respondents – accused.

20. At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of ***Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

“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.”

21. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]*** the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt

of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

22. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned Special Court, the present appeal fails and is accordingly dismissed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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