

(2025) 01 GUJ CK 0047

Gujarat High Court

Case No: Criminal Appeal No.237 of 2008

State of Gujarat

APPELLANT

Vs

Vs Ajabsinh Kodarsinh Parmar &
Ors.

RESPONDENT

Date of Decision: Jan. 17, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 207, 209, 313, 378(1)(3)
- Indian Penal Code, 1860 - Section 114, 323, 336, 427, 504, 506(2)
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(10)

Hon'ble Judges: S.V. Pinto, J

Bench: Single Bench

Advocate: Jirga Jhaveri, Raxit J Dholakia

Final Decision: Dismissed

Judgement

Sr. No.,PW,Name of the Witnesses,Exh.

1.,1,Dr. Vivek Mangalji Kantariya,10

2.,2,Bhikhabhai Nanabhai Senva,14

3.,3,Kapilaben Budhabhai Senva,16

4.,4,Gautambhai Budhabhai Senva,17

5.,5,Maniben Bhikhabhai Senva,18

6.,6,Chaturben Kesrabhai Parmar,23

7.,7,Ramsinh Labhubhai Khant,25

8.,8,Pravinbhai Laxmanbhai Sevna,26

9.,9,Budhabhai Nanabhai Senva,27

10.,10,Dalabhai Hirabhai Chamar,28

11.,11,Jitendrasinh Kesrisinh Gohil,29

12.,12,Rameshbhai Fulabhai Singhada,31

5.,Panchnama of body of the accused,21,

6.,Caste Certificate,22,

7.,Medical certificate of Bhikhabhai,11,

8.,Medical certificate of Gautambhai Senva,12,

9.,Medical certificate of Kapilaben Senva,13,

ii) In case of concurrent findings of acquittal, this Court would ordinarily not interfere with such view considering the principle of liberty",,,

enshrined in Article 21 of the Constitution of India 1950, unless perversity is blatantly forthcoming and there are compelling reasons.",,,

iii) Where two views are possible, then this Court would not ordinarily interfere and reverse the concurrent findings of acquittal. However",,,

where the situation is such that the only conclusion which could be arrived at from a comprehensive appraisal of evidence, shows that there",,,

has been a grave miscarriage of justice, then, notwithstanding such concurrent view, this Court would not restrict itself to adopt an",,,

oppugnant view. [Vide State of Uttar Pradesh v. Dan Singh],,,

iv) To adjudge whether the concurrent findings of acquittal are "perverse" it is to be seen whether there has been failure of justice.,,,

This Court in Babu v. State of Kerala clarified the ambit of the term "perversity" as,,,

"if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/admissible,,,

material. The finding may also be said to be perverse if it is "against the weight of evidence",,,

logic as to suffer from the vice of irrationality.",,,

v) In situations of concurrent findings favoring accused, interference is required where the trial court adopted an incorrect approach in",,,

framing of an issue of fact and the appellate court whilst affirming the view of the trial court, lacked in appreciating the evidence produced",,,

by the accused in rebutting a legal presumption. [Vide Rajesh Jain v. Ajay Singh],,,

vi) Furthermore, such interference is necessitated to safeguard interests of justice when the acquittal is based on some irrelevant grounds or",,,

fallacies in re-appreciation of any fundamental evidentiary material or a manifest error of law or in cases of non-adherence to the",,,

principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated",,,

adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside. Say in cases where the court severed the",,,

connection between accused and criminality committed by him upon a cursory examination of evidences. [Vide State of Punjab v. Gurpreet,,,

Singh and Others and Rajesh Prasad v. State of Bihar.],,,

8. The law with regard to acquittal appeals is well crystallized and in acquittal appeals, there is presumption of innocence in favour of the accused and",,,

it has finally culminated when a case ends in an acquittal. That the learned Trial Court has appreciated all the evidence and when the learned Trial,,,

Court has come to a conclusion that the prosecution has not proved the case beyond reasonable doubts, the presumption of innocence in favour of the",,,

accused gets strengthened. That there is no inhibition to re appreciate the evidence by the Appellate Court but if after re appreciation, the view taken",,,

by the learned Trial Court was a possible view, there is no reason for the Appellate Court to interfere in the same.",,,

9. In light of the above, on reappreciation of the evidence on record, the prosecution has examined Prosecution Witness No. 1 Dr. Vivek Mangalji",,,

Kantariya at Exh.10 and the witness has stated that on 24/10/2006, while he was on duty as a Medical Officer at the Referral Hospital and",,,

Community Health Centre at Balasinor, District: Kheda at around 04:40 pm, a patient named Maniben Bhikhabhai Senva was brought for treatment",,,

and she has stated that she was beaten with fist and blows by the opposite party at 02:00 pm today. On examination, following injuries were found;",,,

1. Bruise (2X1) cm size Rt side lowerlip,,,

2. Mild tenderness (+) upper part of left forearm-clinically NAD,,,

3. Mild tenderness (+) upper part of Rt forearm-clinically NAD,,,
4. Bruise (2x2) cm size lower region back of chest-Rt side,,,
5. Mild tenderness (+) upper chest Rt side,,,
6. Bruise (3x1) cm size epigastric region,,,

The witness has further stated that on the same day Gautambhai Budhabhai Senva was also brought for treatment and he had stated the same facts,,,

and he had sustained the following injuries;,,,

1. Vertical scratch mark of nail (8x1) cm size anterior aspect of left forearm.,,,
2. Vertical scratch mark of nail (3x1) cm size 2cm medial to injury no. (1),,,

That on the same day at the same time Kapilaben Budhabhai Senva was also brought for treatment and she has also stated the same facts and she,,,

had sustained the following injuries.,,,

1. Severe tenderness (+) left wrist joint-clinically NAD X-ray/ wrist-NAD,,,
2. Severe tenderness (+) left shoulder joint-clinically NAD X-ray / shoulder-NAD,,,

The witness has produced the medical certificates of the injured Maniben, Gautambhai and Kapilaben at Exh. 11, 12 and 13 respectively.",,,

During the cross examination by the learned advocate for the accused, the witness has stated that none of the injured had given the names of any",,,

person who had assaulted them and the injuries as stated in the medical certificate at Sr. No. 2,3,5 and 6 were such that could not be detected",,,

whether the patient were telling the truth or a lie. Moreover, the injuries sustained at Sr. No. 1 and 2, in the medical certificate at Exh.12, could be",,,

self-inflicted.,,,

9.1 The prosecution has examined Prosecution Witness No. 2 Bhikhabhai Nanabhai Senva at Exh. 14 and the witness is the complainant, who has",,,

fully supported the facts as narrated in the complaint, which is produced at Exh. 15. The witness has stated that he had filed the complaint and the",,,

accused had abused some words but he did not feel offended. During the cross examination by the learned advocate for the accused, the witness has",,,

stated that there was no incident that had occurred as they were of the scheduled caste and the incident that had occurred on the previous day was,,,

with Shaileshbhai Kalabhai and others and not with the present accused. That the people from village had gathered at the time of the incident and,,,

there was a lot of noise and the people of the village started pelting stones, in which, the front glass of the tempo had broken. That the members of the",,,,

Navsarjan Trust had explained to them that they have to file a complaint if there was any ill treatment meted-out to them and they were helped in,,,

filing the complaint. That the members of Navsarjan Trust were also in the Court on the day of the deposition.,,,,

9.2 The prosecution has examined the prosecution witness No. 3 Kapilaben Budhabhai Senva at Exh. 16 and the witness is the eye witness who was,,,

present in a rickshaw along with the complainant. The witness has stated that the incident has occurred while they were going in a rickshaw and,,,

during the cross examination she has admitted that a big crowd had gathered at the time of the incident and the crowd of people had assaulted them,,,

and had broken the glass of a rickshaw and the village people had injured her sister-in-law Maniben.,,,,

9.3 The prosecution has examined Prosecution Witness No. 4 Gautambhai Budhabhai Senva at Exh.17. The witness is the injured witness and has,,,

supported the case of the prosecution and during the cross examination, he has admitted that a crowd of people had gathered and they were pushing",,,,

and pulling each other at the time of the incident.,,,,

9.4 The prosecution has examined Prosecution Witness No. 5 Maniben Bhikhabhai Senva at Exh.18. The witness is also an eye-witness who was in,,,

the rickshaw along with the complainant and others and has supported the case of the prosecution. During the cross examination by the learned,,,

advocate for the accused, the witness has stated that the incident that had occurred on the previous day was between Shaileshbhai and four others",,,,

and they had given the names of Shaileshbhai Kadidas but had not named the accused. That a crowd of people had gathered at the time of the,,,

incident, who had assaulted them and had broken the glass of the rickshaw.",,,,

9.5 The prosecution has examined Prosecution Witness No. 6 Chaturben Keshrabhai Parmar at Exh.23 and Prosecution Witness No. 7 Ramsinh,,,

Labhubhai Khant at Exh. 25. Both the witnesses are the panch witnesses of the arrest panchnama of accused No. 1 Ajabsinh wherein the accused,,,

voluntarily gave the weapon that was used in the incident. Both the witnesses have not supported the case of the prosecution and have been declared,,,

hostile and have been cross examined at length by the learned APP but nothing to support the case of the prosecution has come on record.,,,

9.6 The prosecution has examined Prosecution Witness No. 8 Pravinbhai Laxmanbhai Senva at Exh.26. The witness is also an eye witness, who was",,,

in a rickshaw at the time of the incident and has fully supported the case of the prosecution. During the cross examination by the learned advocate for,,,

the accused, the witness has stated that he did not know the names of the persons from the village and the present accused was not present at the",,,

time of the incident on the previous day. That while they were going in a rickshaw to the police station, the people of the village had halted the",,,

rickshaw and in the statement before the police, they had not mentioned any names of any persons. That in the statement before the police, he has",,,

stated that one person had assaulted them and the crowd of people that had gathered had thrown the stones at the rickshaw, by which, the glass of the",,,

rickshaw was broken.,,,

9.7 The prosecution has examined Prosecution Witness No. 9 Budhabhai Nanabhai Senva at Exh.27. The witness is the driver of the rickshaw No.,,,

GJ-7-TT-6091. The witness was also present when the incident had occurred and he has stated that he had halted a rickshaw in front of Balibenâ€™s",,,

Shop and at that time Baliben was abusing them and hence he kept the rickshaw and ran away and went home. During the cross examination by the,,,

learned advocate for the accused, the witness has stated that he immediately left after someone caught his shirt and he had informed the police as per",,,

the say of his relatives.,,,

9.8 The prosecution has examined Prosecution Witness No. 10 Dalabhai Hirabhai Chamar Buckle No. 1376 at Exh.28 and the witness had taken,,,

down the complaint of the complainant and registered the same at C.R.No. 121 of 2006 under Sections 336, 323, 427, 504,5046(2) and 114 of the IPC",,,

and Section 3(1)(10) of the Atrocities Act.,,,

9.9 The prosecution has examined Prosecution Witness No. 11 Jitenrasinh K Gohil at Exh.29. The witness is the Police Inspector, Balasinor Police",,,

Station, who had taken over the investigation and handed over the investigation to Dy.S.P. R.F.Singhada.",,,

9.10 The prosecution has examined Prosecution Witness No. 12 Rameshbhai Fulabhai Singhada at Exh.31. The witness is the Investigating Officer,,,

who has narrated in detail the entire procedure that was undertaken by him during investigation for the offences. During the cross examination by the,,,

learned advocate for the accused, the witness has stated that the incident that had occurred on the day of the complaint was in relation to the incident",,,

which was occurred on the previous day and none of the accused were present or named in the incident which had occurred on the previous day.,,,

10. On minute dissection of the entire evidence of the prosecution, none of the witnesses have stated the clear role played by the accused at the time",,,

of incident and as per the case of the prosecution, immediately after the incident, the injured and other witnesses had gone for treatment to the",,,

Referral Hospital and Community Health Centre, Balasinor, but in the history before the Medical Officer, none of the accused persons have been",,,

named as the persons who had assaulted the complainant and other witnesses. Admittedly, all the injured have received simple injuries, which could be",,,

false as there were no visible injuries on the body of injured. As per the case of the prosecution, a number of people have gathered at the place of",,,

incident and all the witnesses have stated that a crowd that had gathered had started pelting stones, in which, the glass of the rickshaw was broken. If",,,

the entire evidence is perused minutely, there is no clear evidence as to which of the accused had uttered which caste slur and the words that were",,,

used were only regarding the caste of the accused and they cannot be said that the accused had used any caste-slur at the time of the incident. The,,,

genesis of the incident is the incident that had occurred on the previous day but there is no iota of evidence that any such incident had occurred on,,,

previous day and it is admitted that the accused were not present in the incident that had occurred on the previous day and hence there is a great,,,

doubt on the case of the prosecution regarding the motive for the incident to have occurred. The learned trial Court has considered each and every,,,

oral and documentary evidence and has concluded that there was a crowd of people at the time of the incident who started pelting stones and the,,,

glass of the rickshaw broke but there is no evidence that any of the present accused had pelted stones and broke the glass of the rickshaw. As,,,

discussed above, the exact words spoken by the accused have not come on record and there is no iota of evidence that the accused had used any",,,

caste slur but there is evidence that only the caste was named by the accused but that does not amount to any offence. Moreover, the injury sustained",,,

by the injured are not corroborated by the medical evidence and the learned trial Court has rightly found that the prosecution has not proved the case,,,

beyond reasonable doubt. The view taken by the learned Trial Court in acquitting the accused is fairly possible and there is no illegality and perversity,,,

in the impugned judgment and order of acquittal.,,,

11. In view of the settled position of law in the decisions of Chandrappa (Supra) and Sri Dattatraya (Supra), the learned trial Court has appreciated the",,,

entire evidence in proper perspective and there does not appear to be any infirmity and illegality in the impugned judgment and order of acquittal. The,,,

learned Trial Court has appreciated all the evidence and this Court is of the considered opinion that the learned Trial Court was completely justified in,,,

extending benefit of doubt and acquitting the accused of the charges leveled against him. The findings recorded by the learned Trial Court are,,,

absolutely just and proper and no illegality or infirmity has been committed by the learned trial Court and this Court is in complete agreement with the,,,

findings, ultimate conclusion and the resultant order of extending benefit of doubt and acquittal recorded by the learned Trial Court. This Court finds no",,,

reason to interfere with the impugned judgment and order and the present appeal is devoid of merits and resultantly, the same is dismissed.",,,

12. The impugned judgement and order of acquittal passed by the learned Special Judge and Presiding Officer, (4th Fast Track Court), Nadiad, in",,,

Special Case No. 1 of 2007 on 15.03.2007, is hereby confirmed.",,,

13. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.,,,