(2025) 12 GUJ CK 0011

Gujarat High Court

Case No: R/Criminal Appeal No. 1877 Of 2012

State Of Gujarat		APPELLANT
	Vs	
Thakor Lalaji Rawaji & Ors		RESPONDENT

Date of Decision: Dec. 2, 2025

Acts Referred:

- Code Of Criminal Procedure, 1973-Section 209, 313, 378, 378(1)(3)
- Indian Penal Code, 1860-Section 114, 323, 504, 506(2)
- Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989-Section 3(1)(10), 3(1)(x)
- Bombay Police Act, 1951-Section 135

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Yuvraj Brahmbhatt

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1. The present Appeal is preferred by the Appellant State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the order of acquittal dated 21.08.2012, passed by the learned Special Judge (Atrocity) Mehsana, in Special Atrocity case No.3 of 2011, recording the acquittal of the respondents punishable under Section 323, 504, 506(2) and Section 114 of the Indian Penal Code, 1860 and Section 3(1)(x) of the Atrocity Act and Section 135 of the Bombay Police Act.

2. The brief facts of the prosecution’s case are that on 10.09.2010, brother of the accused, Bharatji Rawaji Thakor went to Calcutta from Linch with complainant to bring his wife and on 17.09.2010, at around 09.30 hours in the morning, when the complainant went towards outpost, at that time on the way the accused persons started beating the complainant with club and because of the said blows the complainant fell down and accused persons inflicted fist blows on

him and at that point of time, from near by Police Station, some persons came and intervened in the incident and saved the complainant from further blows. The accused persons went away and threatened the complainant about the caste of the complainant with an intention to insult and humiliate the complainant publicly, therefore it is the case of the prosecution that respondents committed the offence in question for which a complaint in question came to be registered against them.

3. On the basis of the said complaint investigation was initiated and after thorough investigation as there was sufficient evidence against the respondents - accused persons, Charge-sheet was filed before the Chief Judicial Magistrate Mehsana and the offence committed by the accused persons was exclusively triable by a Court of Sessions, as per the provisions of Section 209 of the Criminal Procedure Code, the learned Judge was pleased to commit the case to the Court of Sessions and the case was transferred and placed for trial before the learned Special Judge, Atrocity Mehsana, thereafter, charge was framed against the accused persons and the accused persons pleaded not guilty to the charge and claim to be tried. The Trial commenced, to prove the case, the prosecution examined 11 witnesses as well as produced 13 documentary evidences on record, further statement of the respondent-accused under Section 313 of the Code were recorded. 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.

4. Heard, learned Additional Public Prosecutor Mr.Yuvraj Brahmbhatt for the appellant - State. On 20.06.2025 the Coordinate Bench of this Court had issued notice to original complainant Respondent No.2 which as per record is served. Appeal against Respondent No.1 has abated. However, none appeared for any of the respondents.

5. Learned APP Mr.Yuvraj Brahmbhatt for the appellant State has mainly contended that the learned Trial Court has failed to appreciate the oral evidence of 11 witnesses who have been examined by the prosecution as well as 13 documentary evidences. Learned APP has argued that the Trial Court has erred in holding that the prosecution has failed to prove its case beyond reasonable doubt. It has been argued that the impugned judgment of the Trial Court is based on presumption and inferences and the same is against the facts and evidence on record. It has also been argued that the Trial Judge has failed to appreciate the evidence on record in its true and proper perspective and thereby has erred in acquittal of the respondents-original accused.

6. The learned APP for the appellant-State submits that the impugned judgment of acquittal passed by the trial Court is vitiated by manifest errors of law and fact. The prosecution contends that the trial Court's finding that the prosecution failed to prove its case beyond reasonable doubt is unsustainable in light of the overwhelming evidence on record. A meticulous examination of the evidence adduced by the prosecution reveals that the trial Court's appreciation of evidence suffers from fundamental flaws.

7. The APP argues that the trial Court's reliance on presumptions and inferences has led to an erroneous conclusion. Furthermore, the trial Court has failed to consider the direct and circumstantial evidence that unequivocally links the respondents to the crime. The prosecution

also submits that the trial Court has placed undue emphasis on minor discrepancies in the testimony of prosecution witnesses, which does not detract from the prosecution's case.

8. The learned APP has urged this Court to set aside the acquittal, citing the judgment's inconsistency with law, evidence, and principles of natural justice. The conclusions arrived at by the trial Court are perverse and unreasonable, rendering the acquittal unsustainable in law.

9. To prove the offence against the accused, the prosecution has in all examined 11 witnesses. The P.W.2-Khemabhai Hemabhai Rathod is examined vide Exhibit 14 and vide Exhibit 24 P.W.-9-Kantiji Bhemaji Thakor has been examined who are the panch witnesses. Both the witnesses have not supported the case of the prosecution and have been declared hostile.

10. P.W.-3 has been examined vide Exhibit-16 who is the complainant and there are contradictions in his evidence. In his deposition he has stated that he was hit on the hand and head when he was standing near the gate of the Police Station and in his cross-examination he had stated that he has come to the Police Station in the Rikshaw and while leaving the Police Station when he was sitting on the Motor Cycle the said incident happened and he has also stated in his cross- examination that outside the gate of the Police Station, there were 8 to 10 persons standing, and inside the Police Station, Madhaji Kalaji, Diwanji Babuji, Jayantiji Kunwarji and Vikram Narottamdas Patel were present but none of them have been examined by the prosecution.

11. P.W.-4-Ishwarbhai Karamsingh Rabari has been examined vide Exhibit 4, said witness was Police Station Officer at Langhnaj Police Station. P.W.-5-Dilipbhai Madhavbhai Ralegaonkar has been examined vide Exhibit 20, who was the Police Sub Inspector on duty and the said witness stated that on 17.09.2010 he was working as a Police Officer in Langhnaj Police Station and during his duty, the Police Sub Inspector Langhnaj Police Station, who has deposed that when the complainant had come to the Police Station, the head constable Govindji Udhaji of Linch Police Station was also there along with him.

12. P.W.6-Dr.Sharadkumar Ambalal Raval was examined vide Exhibit 21.

13. P.W.7-Jayantibhai Thakor has been examined vide Exhibit 23 and he was not the eye witness in whose presence, the incident had happened. If the entire evidence is taken on record, the Trial Court has observed that at the time of the occurrence of the incident there were many persons present, moreover, the complainant had also reached Linch Outpost in a Rickshaw and the said rickshaw driver has not been examined by the prosecution.

14. Having heard learned APP for the appellant State and having gone through the impugned judgment and order of the Trial Court as well as the material on record.

15. Before adverting 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.

15.1. 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.

15.2. 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.

15.3 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)*

15.4. 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".

15.5. 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, reappreciate 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."

15.6 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.

15.7 The principles regulating the hearing of an acquittal appeal have been very succinctly explained by the Apex Court in case of "M.S. NARAYANA MENON @ MANI VS. STATE OF KERALA & ANR", (2006) 6 S.C.C. 39, wherein in para:54, the Apex Court has observed as under:

"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well settled

principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

15.8. 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.

16. 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) The Trial Court has observed that in the examination-chief the complainant states that, the incident happened when he was entering the Police Station and in the Cross-examination he has stated that the incident had happened when he left the Police Station and when he was about to sit in the Motorcycle, therefore there are contradictions in the evidence of the complainant himself.

(ii) In the complaint it has been mentioned that the complainant reached Langhnaj Police Station by Police Jeep and vide Exhibit 29, the Head Constable Govindji Udhaji has stated that he brought the complainant in his motorcycle, therefore there are discrepancies in the testimony of P.W.10 also.

(iii) Moreover, the P.W.7-Jayantibhai Kunvarji Thakor who has been examined vide Exhibit 23 has not supported the evidence of the prosecution.

(iv) If the evidence of the Doctor produced P.W.6 vide Exhibit 21 is taken into consideration in his medical certificate also which is produced vide Exhibit 22, he has stated that there were minor injury on the complainant.

(v) The prosecution also has not proved the club which was alleged to be used to assault the complainant. The prosecution has also not proved that which accused had assaulted the complainant.

17. Therefore, the prosecution has not proved the case against the accused for the offence punishable under Section 323, 504, 506(2) and 114 of the Indian Penal Code, 1860 and Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

18. 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)(10) 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 SC or ST. 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.

19. The learned Trial Court has discussed the evidence in great detail at para no.9 to 13 in the impugned judgment and acquittal order and after scrutinizing the evidence has reached a plausible conclusion that the accused are not guilty of the charge.

20. In such view of the matter, after taking into consideration the guidelines laid down by the Hon'ble Supreme Court in the case of Mallappa & others vs. State of Karnataka reported in (2024) 3 SCC 544 and Babu Sahebgouda Rudragoudar and Others V/s. State of Karnataka reported in AIR 2024 SC 2252, by which the principles of treating appeals for acquittal have been enumerated, I find no reason to substitute any other view for the plausible view that has been taken by the learned Trial Court in acquitting the accused herein. Accordingly, the appeal is dismissed.

21. Registry is directed to return back the record and proceedings to the concerned Court.