(2025) 12 GUJ CK 0012

Gujarat High Court

Case No: R/Criminal Appeal No. 284 Of 2008

State Of Gujarat		APPELLANT
	Vs	
Pravinbhai Bhimjibhai Aankoliya & Ors		RESPONDENT

Date of Decision: Dec. 2, 2025

Acts Referred:

- Code Of Criminal Procedure, 1973-Section 313, 378, 378(1)(3)
- Indian Penal Code, 1860-Section 114, 143, 149, 294(b), 323, 324, 506(2)
- Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989-Section 3(1)(10), 3(1)(x)

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Shruti Pathak, Dhaval M Barot, Harshadray A Dave

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1. This appeal has been filed by the appellant - State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (the Code) against the judgment and order dated 23.03.2007, passed by the learned Additional Sessions Judge & Presiding Officer, FTC-2, Surat, in Special Case No.07 of 2005, acquitting the respondents - original accused from the offence punishable under Sections 143, 149, 323, 506(2) of the Indian Penal Code, 1860 (IPC) and Section 3(1)(10) of Atrocity Act.

2. The brief facts of the prosecution case are as under:-

The complainant Premji Keshavbhai Vadhena, lodged complaint before Varacha Police Station for the offiences punishable Under Section 143, 149, 323, 506(2) of Indian Penal Code & section 3(1)(10) of Atrocity Act stating therein that he is belonging to scheduled caste, residing at 972,

Hindu Meghvad Colony, Mahidharpura, Surat and ran tuition class. On 03/05/2002, his marriage was held with Sejalben as per custom of Hindu ceremony at Registrar Office of Marriage bureau, which was situted near Surat Bahumali. On 06/05/2002, when father of Sejalben came to know that his daughter was married with complainant and took her daughter with him, with the consent of complainant, and thereafter, father of Sejalben never allowed her daughter to go back with her husband. Pursuant to that, on 26/05/2003 and thereafter on 16/06/2003, proceedings were filed to get his wife back.

The further case of the prosecution is that on 19/01/2005, when complainant came out from temple of Umiya Mataji, at that time, one Red Maruti Zen came there and his brother in law and his uncle in law came out from the car and made the complainant sit in the car forcefully, and thereafer, they took the complainant at Diamond Nagar Society, Sardar Chowki line where from the mob of accused persons, accused Vinubhai Laljibhai inflicted blow by hitting an iron chair on the waist of complainant and accused Kamlesh Vinubhai, Hirenbhai Himmatbhai, Rajnibhai Vallabhbhai and Pravinbhai and other 20 to 25 unknown accused persons, inflicted fist blows on head, Chest, Mouth, Stomach, rib, hand and different parts of body of complainant and when the accused persons were physically assaulted the complainant vinubhai and other persons abused him of his caste and also gave filthy words against complainant caste.

2.1 Therefore aforesaid offence was registered against the respondents, with Varacha Police Station vide I-C.R. No. 24 of 2005. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation ultimately, the respondents accused were arrested and charge-sheet was filed against them. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.2 The trial was initiated against the respondents and during course of trial the prosecution examined 12 witnesses and produced 8 documents as documentary evidences. At the end of trial, after recording the statement of the accused under Section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 23.03.2007.

2.3 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court the appellant - State has preferred the present appeal.

3. It was contended by learned APP that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present respondents. Learned APP has also taken this Court through the oral as well as the entire documentary evidence.

4. Learned APP for the appellant - State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted

that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

5. 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.

5.1 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.

5.2 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.

5.3 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)

5.4 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".

5.5 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, 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."

5.6 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.

5.7 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.

6. In the aforesaid background and considering the oral as well as documentary evidence on record, following aspects weighed with this Court.

(i) The trial Court has taken into consideration the crossexamination of the complainant, vide Exhibit-29 wherein there are lot of contradiction in his testimony.

(ii) The panch witness - Rajesh J. Das has been examined, vide Exhibit-21, who has stated that while he was going to his residence, the Police has taken his signature and he has not supported the case of the prosecution and has turned hostile.

(iii) The other witness who has been examined, vide Exhibit-24, Jitendrabhai Bhupatbhai Gohel who was also panch witness turned hostile and has not supported the case of prosecution.

(iv) The prosecution has also recovered the chair and panchnama to that effect has been recorded vide Exhibit-26 and punch witness Jaisukhbhai Gajerabhai examined, vide Exhibit-25 and he has also turned hostile and has not supported the case of the prosecution.

(v) The other witness of the said punchnama Samaji Amarbhai has not been examined by the prosecution. The prosecution has also not examined any independent witness. The prosecution has also not proved as to who has assaulted the complainant. The prosecution has also not proved that whether the complainant was assaulted by the accused or the other persons who were part of the wedding celebration or the other workers who were working nearby. The prosecution has also failed to prove whether the complainant was assaulted as the people arround him thought that he was a theif.

(vi) Even Docter who has been examined vide Exhibit-51 i.e. P.W.7, Dr. Odhav M. Mangukiya has also deposed that the complainant has not stated that who had assaulted him and the complainant has not given the name of the accused being the person who had assaulted him. Even when the complainant was taken to the Police Station he had initially not given the name of the accused as person who had assaulted him.

(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.

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. This Court has gone through the judgment and order passed by the trial court. This Court has also perused the oral as well as documentary evidence led by the trial court, more particularly the R & P received from the trial court and also considered the submissions made by learned Advocate for the appellant.

7.1 The trial court while considering the evidences in detail has observed that the prosecution failed to prove the case against the has accused beyond reasonable doubt. 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 Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Ms. Shruti Pathak, learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

8. In the above view of the matter, this Court is of the considered opinion that the trial Court was completely justified in acquitting the respondents of the charges leveled against them.

8.1 This Court finds that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

8.2 This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed.

9. The judgment and order dated 23.03.2007 passed by the learned Additional Sessions Judge & Presiding Officer, FTC-2, Surat acquitting the respondents-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P to be sent back forthwith.