

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1958 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
HEMTIBEN ISHWARJI THAKOR & ORS.

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Appearance:
MS JYOTI BHATT ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s)
No. 1
MR BHARGAV K CHAUHAN WITH MR JIGAR G GADHAVI(5613) for the
Opponent(s)/Respondent(s) No. 1,2
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 3
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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK**

Date : 29/09/2026

JUDGMENT

1. The appellant - State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order dated 26.09.2012 passed by the learned Special Judge (Atrocity), Mehsana (hereinafter be referred to as "the trial Court") in Special (Atrocity) Case No.16 of 2012, whereby the trial Court has acquitted the original accused (respondents herein) from the offences punishable under Sections 323, 504 and 114 of the Indian Penal Code (hereinafter referred to as "IPC") and Section 135 of the Bombay Police Act and Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(hereinafter be referred to as “the Atrocity Act”).

2. Short facts of the prosecution case are that on 05.10.2011, at about 21:00 hours, at Village: Chhathiyarda, the complainant was returning from the house of the witness-Thakor Becharji about the money i.e. labour charges of tap fitting and on his way, the accused gave filthy words "Sala Dhedha Amara Mahollama Aavi Kem Mathakut Kari Zaghdho Kare Chhe" to the complainant and caused grievous injuries to the complainant by inflicting stick blow, and thereby, the accused have committed an offence punishable under Section 323 read with Section 114 of the Indian Penal Code. The accused persons with the help of each other, gave filthy abuses to the complainant in public, and thereby, the accused persons have committed an offence punishable under Section 504 read with Section 114 of the Indian Penal Code. The accused persons knowing very well that the complainant belonged to the Scheduled Caste of Chamar Community by uttering filthy words "Sala Dheda Amara Mahollama Aavi Kem Mathakut Kari Zaghdho Kare Chhe" against his caste and by insulting him in public, and thereby, the accused persons, with the help of each other, have committed an offence punishable under Section 3(1)(10) of the Atrocity Act.

2.2 At the time of incident, inspite of existence provision of the Notification issued by the District Magistrate prohibiting the weapons, the same was infringed by the accused by holding weapons like dhoka and stick and thereby, the accused persons have committed an offence punishable under Section 135 of the Bombay Police Act.

2.3 The complainant-Kamleshbhai Sendhabhai Parmar registered a complaint against the accused persons with Mehsana Taluka Police

Station, Mehsana for the offence punishable under Sections 323, 504 and 114 of Indian Penal Code and Section 135 of the Bombay Police Act and Section 3(1)(10) of the Atrocity Act, 1989.

2.4 After completion of investigation the police has filed chargesheet before the Judicial Magistrate First Class, Mehsana for the offence punishable under Sections 323, 504 and 114 of Indian Penal Code and Section 135 of the Bombay Police Act and Section 3(1)(10) of the Atrocity Act, 1989. As the offences committed by accused were absolutely triable by the Court of Sessions, same was committed to the Sessions Court under Section 209 of Cr.P.C. and case was registered as Special (Atrocity) Case No.16/2012.

2.5 Thereafter, charge was framed against the respondents accused for the aforesaid offences. On being explained it to them, the accused have denied having committed any offence. The accused pleaded not guilty to the charge and claimed to be tried.

2.6 In order to bring home the charge levelled against the respondents-accused, prosecution has examined 13 witnesses and also produced 16 documentary evidence on record of the case.

3. After closure of the evidence, the statements of the accused under section 313 of the Criminal Procedure Code, 1973 have been recorded wherein they denied of having committed any offence and have stated that they are innocent.

4. After hearing both sides and considering the evidence on records, the trial Court by impugned judgment and order has acquitted the accused from all the charges levelled against them.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant – State of Gujarat has preferred this appeal.

6. Heard Ms. Jyoti Bhatt, learned Additional Public Prosecutor for the appellant – State of Gujarat and Mr. Bhargav Chauhan, learned counsel with Mr.Jigar Gadhvi, learned counsel for the respondents – accused at length.

7. Ms. Bhatt, learned Additional Public Prosecutor appearing for the appellant – State of Gujarat has submitted the same facts which are narrated in the memo of appeal and has also submitted that the prosecution has examined witnesses and produced documentary evidence, despite this fact, the trial Court has not considered the same in its true and proper perspective in passing the judgment and order of acquittal. Ms. Bhatt , learned Additional Public Prosecutor, while referring to the entire oral as well as documentary evidence, has assailed the impugned judgment and order and submitted that the trial Court has not taken into consideration the evidence connecting the accused to the alleged offence in its proper perspective and even the prosecution has been able to prove the charges levelled against the accused. While referring to the evidence of the witnesses and the material collected against the accused, Ms. Bhatt, learned Additional Public Prosecutor has submitted that the prosecution has established the case against the accused by examining the witnesses, who have supported the case of the prosecution, however, the trial Court has discarded and disbelieved the evidence of these witnesses. She has submitted that the witnesses have fully supported the case of the prosecution, however,

the trial Court has not appreciated the same and passed the judgment and order of acquittal which is illegal and unjust. She has submitted that it is settled legal position that the evidence of a single witness is sufficient for conviction if the same is reliable and trustworthy and in the present case, though the evidence of all the witnesses are reliable and trustworthy, without any cogent reason, the trial Court has disbelieved and discarded the evidence of the witnesses.

7.1 According to Ms. Bhatt, learned Additional Public Prosecutor, the trial Court ought to have convicted the accused and ought to have imposed necessary sentence. She has prayed to allow the present appeal and to quash and set aside the impugned judgment and order of acquittal.

8. Per contra, Mr.Gadhvi, learned counsel for the respondents - accused has supported the impugned judgment and order and has submitted that the trial Court has not committed any error of law and fact in acquitting the accused from the charges levelled against them. He has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore, the trial Court has rightly acquitted the accused as the complainant has failed to prove the charge levelled against the accused. He has also submitted that there is no iota of evidence to connect the accused with the alleged crime in question. He has prayed to confirm the impugned judgment and dismiss the present appeal.

9. I have heard the learned counsel for the respective parties and perused the materials on record. On perusal of the impugned judgment and order of acquittal passed by the trial Court, the questions that arise for determination are as under:-

- (1) whether the trial Court has rightly justified in passing the judgment and order of acquittal.
- (2) whether the trial Court has rightly appreciated the evidence led by the prosecution in recording the reasons.
- (3) whether there is any illegality, irregularity and perversity in the impugned judgment and order of acquittal.

10. Upon perusal of the records it appears that on 05.10.2011, the complainant's helper, namely, Becharji Gambhirji Thakor, who assisted the complainant in plumbing work demanded payment for the work he had undertaken along with the complainant. The complainant paid some amount to Becharji. Thereafter, Becharji again demanded a certain amount. However, as the complainant intended to visit Mehsana, he informed Becharji that he would pay the remaining amount upon his return from Mehsana. It appears that during the daytime, witness Becharji visited the house of the complainant and demanded the amount but since the complainant was not present he returned. At night, when the complainant returned from Mehsana, his wife informed him that Becharji had visited the house and demanded the money. Therefore, in order to settle the issue the complainant went to the house of Becharji wherein an altercation took place between him and the complainant, during which abusive language was exchanged by both of them. At that time, the respondents-accused, who were residing in the same locality asked the complainant and Becharji not to use abusive language in the vicinity. On account of this, an altercation took place between the complainant and the accused and it was alleged that both the respondents-accused caused injuries to the complainant with their

weapons. The complainant on the next day, visited Mehsana Civil Hospital and got himself examined and thereafter, he went to lodge the complaint at Mehsana Taluka police station, wherein all these detailed allegations were made.

11. On perusal of the deposition of the complainant, it appears that he stated that on 05.10.2011, after returning from Mehsana he visited the house of witness Becharji where an altercation took place and abusive language was exchanged between the complainant and Becharji. Since the respondents-accused were residing in the same locality, they objected to the use of abusive language. Thereafter, an altercation took place between the complainant and the accused during which the accused allegedly inflicted blows upon the complainant with their weapons, namely, wooden sticks. On perusal of the evidence, it appears that the complaint was lodged on the next day after a delay of about 20 hours. It appears that the complainant, without any police yadi, visited Mehsana Civil Hospital instead of going to the Primary Health Centre situated at village Chhathiyarda. He gave a history to the doctor stating that he had sustained injuries due to an assault by the respondents-accused with their weapons. Now, if the deposition of PW-1, Dr. Girishbhai Danabhai Zala, at Exhibit 7 is considered, he stated before the trial Court that the complainant - PW-10 was brought to Civil Hospital, Mehsana by his family members without any police yadi. The complainant described the injuries and stated before the doctor that he had sustained them as a result of an assault by the respondents-accused. However, in his cross-examination, the PW-1 admitted that the injuries found on the body of the complainant were simple in nature and were not likely to have been caused by the weapons alleged and described in the complaint. According to the doctor, such injuries could have been

caused while the complainant was performing plumbing work. Even the injury found near the right thumb could also have been caused while performing pipe-fitting or plumbing work. Thus, it appears that the injuries described by the complainant are not supported by the medical evidence.

12. The wife of the complainant, who was examined as PW-5 – Geetaben Kamleshbhai Parmar, went further and stated that the bleeding injury of the complainant had been caused by the use of a knife. In fact, neither the complainant in his deposition nor the complaint refers to any injury caused by a knife. Therefore, it appears that the version given by PW-5 is an exaggerated version of the incident. It appears that even the evidence of the brother of the complainant who brought the complainant to the Civil Hospital in his autorickshaw, and the evidence of the wife do not provide any further corroboration to the version of the complainant. Further, from the evidence of the three police officers examined by the prosecution, it appears that the basic ingredients of Section 3(1)(10) of the Atrocity Act were also not proved by the prosecution beyond reasonable doubt. As observed by the Hon'ble Supreme Court in recent judgment, the basic ingredients of Section 3(1)(10) of the Atrocity Act are required to be proved by the prosecution. In particular, it must be established that the alleged derogatory words were used by the accused with an intent to insult the person concerned at a public place or within public view. Only in such circumstances can an offence under Section 3(1)(10) be established. In the present case, none of the witnesses has stated anything regarding the use of derogatory words by the respondents-accused at a public place or within public view.

13. At this stage, it would be appropriate to refer to the decision of the Hon'ble Apex Court in case of **Shajan Skaria Vs. State of Kerala** reported in **AIR 2024 SC 4557**, wherein, the Hon'ble Apex Court has explained the provisions of Section 3(1)(10) of the Atrocity Act, which is reiterated and clarified in the subsequent judgment of the Hon'ble Apex Court in case of **Gunjan @ Girija Kumari Vs. State (Nct Of Delhi)** reported in **2026 (0) INSC 468**, wherein the Hon'ble Apex Court has clarified that only when abusive words are uttered in a public place within public view, with an intention of insulting a particular person on the basis of his community, then under that circumstance only it attracts the ingredients of Section 3(1)(10) of the Atrocity Act and for establishing the commission of the offence, the prosecution must lead *prima facie* satisfactory, cogent, and material evidence to prove its case and herein the present case, the evidence is completely silent on that aspect and no other witnesses have supported the case of the prosecution.

14. It appears that except for the complainant, none of the prosecution witnesses have stated the above facts and deposed that the respondents-accused caused any injury to the complainant. Even the witness, namely, Becharji, who is considered an eyewitness, as the original quarrel was between Becharji and the complainant, has not supported the prosecution case at all. Therefore, after considering all these facts, the Trial Court, in paragraphs 11 and 12 of the impugned judgment, recorded detailed reasons after appreciating the evidence of the witnesses and came to the conclusion that the prosecution had miserably failed to prove the charges against the respondents-accused. Considering the facts of the case and the impugned judgment and order, I am in complete agreement with the findings recorded by the trial Court. In view of the above, I am of the

opinion that the trial Court has not committed any error of facts and law in passing the impugned judgment and order and there is no any illegality and infirmity found in the judgment and order.

15. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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 their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

16. 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 arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. 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. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

17. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. For the purpose of considering the provisions of Section 3(1)(10) of the Atrocity Act, it is worthwhile to refer to the decisions of the Hon'ble Supreme Court in the case of **Talari Naresh Vs. State of Telangana**, reported in **2026 (0) INSC 486** and in case of **Sohanvir @ Sohanvir Dhama Vs. State of U.P.**, reported in **2025 (16) JT 81**. Hence, I am in complete agreement with the findings recorded by the trial Court.

18. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble

Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise 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 emphasize 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 Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential

for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

19. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused have committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

20. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

21. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The

impugned judgment and order of acquittal passed by the trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

ANUSRI

(HEMANT M. PRACHCHAK,J)