IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 874 of 2016

FOR APPROVAL AND SIGNATURE:
HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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STATE OF GUJARAT
Versus
RAJESHBHAI RAMUBHAI PATEL & 5 other(s)

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Appearance:
MS JIRGA JHAVERI, APP for the Appellant(s) No. 1
MR SURAJ MATIEDA for MR P P MAJMUDAR(5284) for the Opponent(s)/Respondent(s) No. 1,2,3,4,5,6
MS. SHIVANGI M RANA(7053) for the Opponent(s)/Respondent(s) No. 1,2,3,4,5,6

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CORAM:**HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 01/09/2022

ORAL JUDGMENT

1. At the outset, learned advocate Mr. Suraj Matieda for learned

advocate Mr. P. P. Majmudar for the respondents states at the bar that respondent No. 6 – Jagdishbhai Hirabhai Patel has expired. Accordingly, the appeal is abated *qua* respondent No. 6.

2. This appeal is preferred by the appellant – State under Section 378(1)(3) of the Criminal procedure Code, 1973 (Code) against the judgment and order dated 31.03.2016 passed in Special (Atrocity) Case No. 18 of 2015 by the learned 7th (Ad-hoc) Additional Sessions Judge, Bardoli, Dist.: Surat, recording the acquittal of the respondents - original accused for the offence punishable under Sections 323, 504, 506(2), 143, 147 and 149 of the Indian Penal Code, 1860 (IPC) and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocity Act").

3. Brief facts of the prosecution case are that on 26.12.2013, the respondents – accused allegedly took over the possession of the land belonged to Bhagubhai Chhitiyabhai Vasava, the complainant, and started a "Kola", a country made machine for manufacturing Jaggery and hence, the complainant asked them as to why they started the Kola, due to which, the respondents – accused got excited and infuriated and uttered filthy abuses about the caste of the complainant with intention to insult and humiliate the

complainant publicly. They also threatened the complainant to death. That, accused Nos. 1 and 2 also beat the complainant with fist and kick blows. Thus, the respondents committed the offence in question for which, the complaint in question came to be registered against them.

4. 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 against them. As the offence was exclusively triable by a Court of Sessions, as per the provisions of Section 209 of the Code, the case was committed to the Court of Sessions. Thereafter, Charge was framed against the accused persons and as the accused pleaded not guilty to the charge and claimed to be tried, trial commenced. To prove the case, the prosecution has examined as many as 08 witnesses and produced several documentary evidence. 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.

5. Heard, learned Additional Public Prosecutor Ms. Jirga Jhaveri for the appellant – State and learned advocate Mr. Suraj Matieda for learned advocate Mr. P. P. Majmudar for the respondents - original accused.

5.1 The learned Additional Public Prosecutor for the appellant - State has

mainly contended that the learned trial Judge has erred in holding that the prosecution has failed to prove its case beyond reasonable doubt. The learned Additional Public Prosecutor submitted that the impugned judgment of the trial Court is based on presumptions and inferences and thereby, it is against the facts and the evidence on record. The learned Additional Public Prosecutor further submitted that the learned trial Judge has failed to appreciate the evidence on record in its true and proper perspective and thereby, has erred in recording the acquittal of the respondents – original accused.

5.2 The learned Additional Public Prosecutor for the appellant referred to the judgment and order as well as the evidence of the prosecution witnesses and the other documentary evidence and submitted that the judgment and order of acquittal passed by the learned trial Judge is contrary to law, evidence on record and the principles of natural justice and hence, the same deserves to be quashed and set aside. It is further contended that the learned trial Judge ought to have appreciated the fact that there were direct as well as indirect evidence connecting respondents with crime in question, despite the same, without properly appreciating the oral as well as documentary evidence on record of the case, straight way has arrived at the conclusion that the prosecution has failed to prove its case beyond reasonable doubt for

the alleged offence and thereby, has erred gravely.

5.3 The learned Additional Public Prosecutor has further submitted that the learned trial Judge has failed to appreciate that prosecution has proved its case beyond reasonable doubt. She submitted that the learned trial Judge has committed error in giving undue importance to minor omissions and contradictions in the evidence of prosecution witnesses and therefore, the reasons assigned by the learned trial Judge while appreciating the evidence as well as while acquitting the accused persons are improper, perverse and bad in law. Therefore, it is submitted that the present appeal may be allowed.

6. *Per contra*, learned advocate Mr. Suraj Matieda for the respondents, while supporting the impugned judgment and order of the trial Court, submitted that the learned trial Judge has, after due and proper appreciation and evaluation of the evidence on record, has come to such a conclusion and has acquitted the accused, which is just and proper. He submitted that it is trite law that if two views 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.

6.1 The learned advocate for the respondents – accused submitted that the ingredients of the offence alleged against the accused are not proved by the prosecution beyond reasonable doubt and there were several contradictions and omissions in the evidence on record and therefore, the learned trial Judge has rightly acquitted the accused of the charges levelled against them.

6.2 The learned advocate for the respondents – accused further submitted that the complaint for the offence in question was lodged belatedly that is to say, for the incident of 26.12.2013, the complaint in question was filed on 05.01.2014 for which, no justifiable explanation is coming forward on record.

6.3 Thus, making above submissions, it is urged that no interference is required at the hands of this Court and eventually, it is urged that the present appeal may be dismissed.

7. Heard the learned advocates for the respective parties and gone through the impugned judgment and order of the trial Court as well as the

material on record.

7.1 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.

7.2 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.

7.3 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.

7.4 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".*

7.5 Yet in another decision in ***Chaman Lal v. The State of Himachal Pradesh, rendered in Criminal Appeal No. 1229 of 2017 on 03.12.2020***, ***2020 SCC OnLine SC 988*** the Apex Court has observed as under:

> *"9.1 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. In paragraphs 12 to 19, it is observed and held as under:*
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> > *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. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)*
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> > *13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial*

Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court 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.*
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> *(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."

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

"20. … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28) "(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanapal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised 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."

9.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn

(1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636)." (emphasis supplied)

9.3 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

9.4 In the recent decision of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)

> *"10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be*

applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1. In Sambasivan v. State of Kerala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court.

While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

"8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing

with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 80910) "5. It

has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.P.C came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but

barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

(emphasis supplied)."

7.6 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 weighed with by the Court:

i) *a perusal of deposition, more particularly, the cross-examination of PW-1 Bhabubhai Chhitiyabhai Vasava, Exh. 13, the complainant, reveals that after Durlabhbhai had died, Jagdishbhai and Parbhubhai had constructed the house in the land in question and in the rest, started a Kola in the year 2013. However, the complainant appears to have filed no complaint while such Kola was started initially. The complainant has further admitted that when they reached the spot, Kola was on and there was stock Jaggery lying over there. He has also admitted that 15-20 labourers were working in the said Kola as well as of Kola of Balvantbhai. He has further stated that he had lodged the complaint on the date of incident only. Further, he has stated that he had not narrated in the complaint that when the incident had occurred, many people had gathered*

there and that, he and his wife had left the place escaping from the clutches of the accused. He had also not narrated in the complaint that he and his wife had gone to Tadkeshwar Out Post chowki and informed to the police jamadar present there about the incident in question. However, a perusal of the complaint, Exh. 14 reveals that the same was registered on 05.01.2014 i.e. almost after 11 days;

ii) *though as per the complainant, many people had gathered at time on incident, none of them appears to have been examined by the prosecution;*

iii) *PW-2 Jashuben Bhagubhai Vasava, Exh. 17, who is the wife of the complainant, in her cross-examination, had firstly stated that Kola was being run for last one year, then she told that it was being run since last two years and thereafter, she stated that the same was being run since last three years. She has further admitted that the incident had occurred with three persons (however, the complaint is given against six persons). She has also stated that after the incident, they had met an advocate, who had drafted an application and then went to the*

police station. She has also admitted that after 26.12.2003, police had not recorded her statement;

iv) *PW-3 Pravinaben Munnabhai Rathod, Exh. 18, PW-4 Pravinbhai Lallubhai Pate, Exh. 20, PW-5 Arvindbhai Maganbhai Patel, Exh. 22 have declared hostile and thus, not supported the case of the prosecution;*

v) *PW-6 Dr. Pankajkumar Ramsingbhai Gamit, Exh. 24 has clearly stated in his examination-in-chief that on 05.01.2014 the complainant was brought to him for treatment and the complainant had given the history that on 26.12.2003, at 10:00 in the morning, respondent Nos. 1 and 2 had assaulted him. He, in his cross-examination, has admitted that in the certificate, Exh. 26 given by him, he had not mentioned the age of the injuries. Further, the injuries were simple in nature;*

vi) *PW-7 Rajeshkumar Harilal Gadhiya, Exh. 27, DySP and investigating officer, has stated in his examination-in-chief that the offence was registered on 05.01.2014. He had carried out the investigation and collected the Certificate, Exhs. 28 and 29*

and submitted the Charge-sheet. In his cross-examination, he had admitted that he had not recorded the statements of the persons, whose fields shown situated nearby in the panchnama of place of occurrence.

vii) *PW-8 Kantilal Bhaidas Indve, Exh. 30 was serving as PSO at the relevant time. He has admitted in his cross-examination that the complaint is given belatedly i.e. after 11 days of the incident in question had occurred.*

viii) *further, the standard of proof in criminal cases is beyond reasonable doubt.*

7.7 Thus, on re-appreciation and reevaluation of the oral as well as documentary evidence on record, as referred to herein above, it transpires that there are contradictions and omissions in the evidence of the prosecution witnesses. The learned trial Judge has observed that on considering the evidence on record there appears no trustworthy evidence on record to prove the charge levelled against the accused and the prosecution has failed to bring home the charges levelled against the accused inasmuch as the ingredients of the offence alleged are not fulfilled. Further, the

complaint in question is given after almost 11 days for which, no satisfactory explanation is coming forward on record and it appears to be an afterthought. Further, admittedly, the incident had occurred with three persons, however, the complaint was lodged against six persons. This Court has gone through in detail the impugned judgment and order and found that the learned trial Judge has meticulously considered the depositions of all the witnesses and came to the conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubt and in the considered opinion of this Court, the learned trial Judge has rightly come to such a conclusion, which does not call for any interference at the hands of this Court.

8. In view of the aforesaid discussion and observations, in the considered opinion of this Court, the prosecution has failed to bring home the charge against accused for want of sufficient material. The findings recorded by the learned trial Judge do not call for any interference. Resultantly, ***in fleri***, the appeal fails and is dismissed accordingly. Impugned judgment and order dated 31.03.2016 passed in Special (Atrocity) Case No. 18 of 2015 by the learned 7th (Ad-hoc) Additional Sessions Judge, Bardoli, Dist.: Surat, recording the acquittal of the respondents - accused is confirmed. Bail bond, if any, shall stand cancelled. R&P, if received, be

transmitted back forthwith to the trial Court concerned.

[A. C. Joshi, J.]

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