

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1690 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

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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JANAKBHAI @ ALPESHBHAI MAFATBHAI RABARI & 1 other(s)
Versus
STATE OF GUJARAT

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Appearance:

MR VIJAY H NANGESH(3981) for the Appellant(s) No. 1,2

JIGNESHKUMAR M NAYAK(8558) for the

Opponent(s)/Respondent(s) No. 2

MR CHINTAN DAVE, APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**Date : 17/03/2022****ORAL JUDGMENT**

1. Present appeal under Section 374 of the Criminal Procedure Code, 1973 (*for brevity, "the Code"*) is directed against the judgment and order dated 20.11.2017, passed by the learned 3rd Additional Sessions Judge / Special Judge, Anand in Special (Atrocity) Case No. 15 of 2015, whereby, the appellants - original

accused came to be convicted for the offence punishable under Sections 323 r/w. 114 of the Indian Penal Code, 1860 (*for brevity, 'the IPC'*) and sentenced to undergo rigorous imprisonment (RI) for one year and a fine of Rs.1,000/- each and in default of payment of fine, to undergo further RI for three months. However, the appellants - accused came to be acquitted of the offences punishable under Sections 504, 506(2), 427 r/w. 114 of the IPC and Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for brevity, "the Atrocity Act"*). Accordingly, the present appeal has been filed by the appellants - original accused against conviction.

2. Brief facts of the prosecution case are that on 19.07.2014 at about 6:30 p.m. when complainant - Mehulkumar Jayantilal Jadav was at home, accused No. 1 - Janakbhai @ Alpeshbhai Mafatbhai Rabari, who was standing near back side gate of his home and staring at the complainant with anger, the complainant asked for the reason, to which, the appellant No. 1 - accused No. 1 started abusing him and then assaulted with wooden stick on his right leg. When the father of the complainant intervened, accused No. 2 - Harjibhai @ Arjunbhai Bhagabhai Rabari, who happens to be the brother of the accused No. 1, came there with an iron pipe and assaulted his father. Thereafter, the mother of the complainant and other society people gathered and saved the complainant and his father. However, while leaving also, the accused persons threatened them and also abused them of his caste. Thus, the accused committed the alleged offence for which, a complaint came to be lodged against them.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions/Special, it was committed to the

Sessions/Special Court. The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence. In order to bring home the charge against the accused, the prosecution has examined as many as 10 witnesses and also produced several documentary evidence. At the end of the trial, Further Statements of the accused under Section 313 of the Code were recorded in which they denied the evidence and stated that a false case has been filed against them. Thus, after recording above-referred Further Statements and hearing the arguments on behalf of prosecution and the defence, the learned Special Judge convicted the accused, as aforesaid, by impugned judgment and order, giving rise to prefer the present appeal.

3. Heard Mr. Vijay Nangesh, learned advocate for the appellants - original accused, Mr. Chintan Dave, learned Additional Public Prosecutor for the respondent - State and Mr. Jigneshkumar Nayak, learned advocate for the respondent No. 2 - original complainant.

3.1 At the outset, the learned advocate for the appellants - original accused invited the attention of the Court to an affidavit duly affirmed by original complainant - Mehulkumar Jayantilal Jadav and submitted that the appellants herein and the complainant have arrived at an amicable settlement and now, no grievance is survived between them. Moreover, after the incident in question, nothing untoward has happened or reported between them and they are residing in the same village happily and peacefully and under the circumstances, without arguing the matter on merits, he requested to allow the aforesaid compromise and thereby, allow the appeal in the interest of

justice. Learned advocate Mr. Jigneshkumar Nayak for the original complainant joined with the learned advocate for the appellants and stated that he has no objection if this appeal is allowed in view of the compromise between the parties.

3.2 In support, the learned advocate for the appellants has relied upon following decisions:

- i) *Shankar Yadav and Another v. State of Chhattisgarh, (2018) 13 SCC 452;*
- ii) *Banti v. State of Rajasthan, AIROnline 2018 SC 634;*
- iii) *Khursheed and Another v. State of U.P., 2007 AIR SCW 6444;*
- iv) *Pritam Singh v. State of Haryana and others, (2005) 11 SCC 566;*
- v) *Parmar (Vankar) Nareshbhai Jivabhai v. State of Gujarat, AIROnline 2021 Guj 1498;*

4. As against this, Mr. Dave, the learned Additional Public Prosecutor for the respondent - State, submitted that it may be that the offence punishable under Section 323 of the IPC, for which the appellants are convicted, is compoundable, but the fact remains that the accused were also charged with other offence under IPC as well as under the Atrocity Act, although they were acquitted. Accordingly, he urged that the compromise may not be accepted and the appeal may be dismissed.

5. I have heard the learned advocates for the parties and gone through the matter carefully. I have also perused the aforesaid affidavit filed by the original complainant. From the facts of the case, it emerges that allegedly, the original complainant was beaten and abused by the appellants herein for which, FIR in

question had been registered. In trial, the appellants were acquitted of the charges for the offence under Atrocity Act, however, were convicted, as aforesaid, for the offence punishable under Section 323 of the IPC, which, as per Section 320(1) of the Code, is compoundable. Further, as per Sub-section (8) of Section 320 of the Code, the composition of an offence under the said section shall have the effect of an acquittal of the accused with whom the offence has been compounded. Averments in the affidavit reveal that the matter is amicably settled between the parties and no grievance is stated to be survived between them. The parties are residing in the same village happily and peacefully.

5.1 It is pertinent to note here that, as referred herein above, the appellants are convicted for the offence punishable under Section 323 of the IPC only and for the offence under the Atrocity Act, they are acquitted and no acquittal appeal appears to have been preferred by the State thereagainst. Even otherwise, the matter is settled between the parties and any further proceedings may be an exercise in futility.

5.2 The Court has also gone through the decisions relied upon by the learned advocate for the appellants a perusal of which reveals that in all such case, the compounding of offence punishable under Section 323 of the IPC is permitted and the accused therein is acquitted.

5.3 Under the circumstances, without going into the merits of the case and in the facts and circumstances of the case, this Court deems it fit to allow the aforesaid compromise by allowing the present appeal.

6. In the backdrop as aforesaid, present appeal succeeds and is allowed accordingly. The impugned judgment and order dated 20.11.2017, passed by the learned 3rd Additional Sessions Judge / Special Judge, Anand in Special (Atrocity) Case No. 15 of 2015 is modified to the extent as aforesaid and the appellants are acquitted for the offence punishable under Section 323 of the IPC. The appellants are reported to be on bail and accordingly, their bail bonds shall stand cancelled. However, in the facts and circumstances of the case, fine, if paid by the appellants, shall not be refunded and the said amount be paid to the original complainant namely Mehulkumar Jayantilal Jadav towards compensation, on proper verification. R&P, if received, be sent back to the trial Court forthwith.

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[A. C. Joshi, J.]

