

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 936 of 1999****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE S.H.VORA****and  
HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

=====

STATE OF GUJARAT

Versus

NATVARSINH PRABHATSINI RATHOD &amp; 4 other(s)

=====

Appearance:

MS CHETNA M. SHAH, APP for the Appellant

ABATED for the Opponent(s)/Respondent(s) No. 1,3

MR KAIVAN K PATEL, ADVOCATE for the Respondents No. 2,4,5

=====

**CORAM: HONOURABLE MR. JUSTICE S.H.VORA**

and

**HONOURABLE MR. JUSTICE SANDEEP N. BHATT****Date : 07/03/2022****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE SANDEEP N. BHATT)**

1. Feeling aggrieved and dissatisfied with the judgment and

order of acquittal dated 30.06.1999 passed by the learned Sessions Judge, Panchmahals at Godhra in Sessions Case No.45 of 1998 for the offences under Sections 395, 427, 506(2) and 509 of the Indian Penal Code the appellant has preferred the appeal as provided under Section 378(1)(3) of the Code of Criminal Procedure, 1973 ("**the Code**" for short) inter alia challenging the judgment and order of acquittal in favour of the respondents - original accused.

2. Brief facts of the prosecution case are that, on 22.06.1997 at about 5:00 p.m., the accused, armed with axe, stick, spear, sharp edged weapon ('dhariyu'), had come to the house of the complainant and tried to loot one Water Tanker, worth Rs.20,000/-, belongs to the complainant, which was parked outside the house, by attaching it with the tractor of one of the accused and thereby committed an offence of dacoity. When the complainant had tried to prevent them, the accused got provoked and demolished the household items and beaten the family members of the complainant and threatened them to kill. Therefore, complaint has been lodged by the complainant - Ratilal Mangaldas Suthar before the Kalol Police Station for the offences punishable under Sections Sections 395, 427, 506(2) and 509 of the Indian Penal Code.

3. In pursuance of the complaint lodged by the complainant, investigating agency recorded statements of the witnesses, collected relevant evidence in form of medical evidence and drawn Panchnama(s) and other relevant evidence for the purpose of proving the offence. After having found material against the respondent accused, charge-sheet came to be filed in the Sessions Court, Godhra.

4. After filing the charge-sheet, learned trial Sessions Judge framed charge against the respondents accused for the aforesaid offence. The statement of the respondents accused has been recorded, where they pleaded not guilty and claimed to be tried.

5. In order to bring home charge, the prosecution has examined about 13 witnesses and also produced various documentary evidence before the learned trial Court as can be seen from the record of the trial Court.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondents accused so as to obtain their explanations/answers as provided u/s 313 of the Code. In the further statement, the respondents accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and false case has been filed against them. After hearing both the sides and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the respondents accused from the offences, for which they were tried, as the prosecution failed to prove the case beyond reasonable doubt.

7. Against which, the complainant has preferred this appeal before this Court. This Court has admitted the appeal vide order dated 05.04.2000, by granting leave.

8. It is noted that respondent No.1 - Natvarsinh Prabhatsinh Rathod and respondent No.3 - Makabhai @ Samantbhai Girdharbhai had expired on 30.11.2011 and 07.12.2016, respectively. Therefore, the appeal qua them is abated and is

being heard qua other respondents.

9. We have heard learned APP Ms. Shah appearing for the appellant – State and learned advocate Mr. Kaivan K. Patel, learned advocate for the respondents. We have perused the paper-book received from the trial Court.

10. The land, for which the incident has happened, has chequered history.

10.1 There was a suit being Regular Civil Suit No.1 of 1968 filed by Manilal Chhotalal Shah against the complainant, inter alia for declaration and possession of the land encroached by the complainant.

10.2 In the said suit, the complainant claimed ownership on the ground of adverse possession.

10.3 The said suit was dismissed. It has attained finality upto this Court in Second Appeal No.181 of 1973 vide order dated 09.09.1977.

10.4 Thereafter, the complainant had filed a suit being Regular Civil Suit No.106 of 1979 before the Civil Court, Kalol against the Delol Group Gram Panchayat for restraining the defendant – Panchayat to construct the wall by the complainant. It was specifically ordered that the complainant has to leave 5 feet space as road for the use of the village persons.

10.5 There were appeal and/or revision against the said order.

10.6 Ultimately, consensus had arrived by and between the parties i.e. the complainant and the Panchayat that the complainant shall leave 5 feet land as the public way for the village persons and shall not obstruct them from passing through the said land. Further, it was decided that the complainant shall not construct anything on the said land. Accordingly, the Civil Court had passed the order on said consensus on 05.12.1987.

10.7 There were CTS proceedings also before the competent authorities between the complainant and the Panchayat.

10.8 There was a suit between the complainant and the Panchayat in the year 1996.

10.9 It is this land 5 feet way, from which the village persons are passing through, on which the complainant has parked his water tanker, was tried to be removed by the accused persons.

11. We are aware that, we are dealing the acquittal appeal of the accused. The history of the earlier civil litigations are not necessary to mention here, but there may be some relevance, therefore we thought it proper to narrate here.

12.1 From record it transpires that, at the time of incident, Natvarsinh Prabhatsinh Rathod (Accused No.1) was the Sarpanch of the Delol Group Gram Panchayat (now he is no more - as noted above).

12.2 Since the said way was kachcha road and the village persons were facing difficulties in the monsoon, the repairing work was approved by the Government.

12.3 When the time for repairing work has come, the complainant has parked his water tanker outside his house, which was the said way for public at large.

12.4 The accused had requested him to remove it and allow them to complete the repairing work of the road. Even earlier also, the village persons have made several complaints to the Panchayat about it as the tanker was on the way to village persons.

12.5 The complainant got angry and was not ready to allow the persons for repairing the said road.

12.6 The Panchayat has made a Panchnama about the stationary condition of the water tanker and then trying to remove by attaching it with one tractor.

12.7 When the said procedure was going on, there was a scuffle between the complainant and the accused.

12.8 It is these facts which was resulted into the complaint against the Sarpanch and other persons.

13. Under the above facts and circumstances of the case, there is no need to interfere with the impugned judgment, by which the trial Court has rightly acquitted the

accused. However, to satisfy the prosecution, we observed from the impugned judgment as under :

13.1 There were material contradictions between the complaint and the deposition of the complainant. In the entire complaint, he has not stated that the accused has gone at the first floor and broken the household items, whereas in his deposition, he has stated about the destruction of the household items. It shows that the version of the complainant cannot be believable. In normal circumstances, we believe that, the first version is showing the true story of the complaint. If the version is changed at the time of deposition, it means there may be exaggeration in the version by passage of time.

13.2 Further, the deposition of one Panch Witness - Rohit Dhansukhram Dave at Exh.35 cannot be believable since he was working under the son of the complainant and he was residing at Godhra City, whereas the incident was happened at Delol village, which is far away from Godhra City. Naturally, he was not available at the time of incident. The trial Court has rightly not believed the offence under Section 395 of the IPC, as there are many contradictions found in the evidence.

13.3 Further, there were contradictions in the injuries caused by the accused. Prosecution Witness - Suryaben has stated in her deposition at Exh.41 that the accused No.1 - Natvarsinh has given 'dhariya' blow at her back, whereas the complainant has stated that said accused has given 'dhariya' blow on the right hand of Suryaben. Even as per the case of prosecution, accused Nos.1 and 3 have played major role in

the incident who are now no more and present appeal is abated against them.

13.4 Further, the trial Court has observed in its judgment that, there was no evidence regarding the author of the injury sustained by Shantilal - brother of the complainant. The police had reached immediately at the scene of offence but statement of any police personnel was not recorded, nor any independent witness, though available, was examined.

13.5 Further, the trial Court has rightly observed that there are material contradictions between the complaint, the deposition of the complainant himself, the deposition of Shantilal - brother of the complainant, the deposition of Suryaben as well as evidence including medical evidence regarding the involvement of the accused in the offence and regarding the injuries sustained by the injured.

13.6 Further, the trial Court has rightly observed that looking to the fact that Divyaben was not examined by the prosecution and complainant - Ratilal or Shantilal or Suryaben have not stated in their oral evidence about the injuries caused to Divyaben by the accused. There, the question regarding the offence under Section 509 of the IPC does not arise. Said Divyben has not stated in her deposition regarding the allegations made by the complainant against accused No.2.

13.7 Further, looking to the entire facts, it reveals that, the water tanker was removed from the way of village persons by doing panchnama by the Talati - government official. It is not the case that the accused were trying to loot it and thereby

trying to commit the offence of dacoity. From the police panchnama, the tanker was found near the Panchayat. It was not that any of the accused has taken the said tanker for his use. Overall, the dispute is for the repairing the kachcha way and for the use of public at large and not the personal use of any accused.

13.8 Further, the land was possessed by the complainant since long, though initially as encroacher, but by passage of time, as adverse possessor and the competent Court has decreed so, therefore, it is in his possession, there was consensus between the Panchayat and the complainant regarding the 5 feet road for the use of the village persons in the Civil Court and now he encroaches the said space for his personal use, however, this issue is not before this Court, therefore, we do not offer any comment on it.

13.9 Under the circumstances and on our reappraisal of evidence as discussed above, the learned trial Judge has rightly acquitted the respondent - accused for the elaborate reasons stated in the impugned judgment and we also endorse the view/findings of the learned trial Judge leading to the acquittal.

14. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225).

In the instant case, the learned advocate for the appellant has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

15. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:

*"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."*

16. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

17. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while

considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

18. In view of the above and for the reasons stated above, the captioned Criminal Appeal No. 936 of 1999 deserves to be dismissed and is accordingly dismissed.

(S.H.VORA, J)

(SANDEEP N. BHATT, J)

M.H. DAVE

