

a Code , FIR is registered, the remedy of revision under the Code for challenging the order under sub Section 3 of Section 156 will not be an efficacious remedy at all. For the reasons which we have recorded above, even in a case where a revision application is entertained against an order under sub Section 3 of Section 156 where FIR on the basis of the said order is already registered, in exercise of revisional jurisdiction, neither this Court nor Sessions Court can quash the FIR and proceedings b subsequent to the FIR, as what can be gone into by the Court in revisional jurisdiction is the issue of legality, validity and propriety of the orders passed by a subordinate Criminal Court.

c 14. Therefore, we accept the submission made by the learned counsel for the Applicants that a revision under Section 397 of the Code is not at all an efficacious remedy in view of registration of FIR on the basis of an order under sub Section (3) of Section 154 of the Code.

d 15. We have already come to a prima facie conclusion in the facts of the case that the learned Magistrate could not have passed an order under sub Section 3 of Section 156 of the Code. In view of the strong prima facie case made out, we are inclined to grant interim relief in terms of prayer clause (d).

16. Accordingly, we pass following order :

(a) Rule. Learned APP waives service for RespondentState;

(b) There will be interim relief in terms of prayer clause (d).

e **Result:-** Ordered accordingly.

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ABC 2016 (I) 497 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(K.J. Thaker, J.)
Criminal Appeal No. 2162 of 2005
Decided on 31 March, 2016

g STATE OF GUJARAT

- Appellant(s).

Versus

RABARI BALDEVBHAI SOMABHAI

- Respondent(s).

h **Law Covered:-** Code of Criminal Procedure, 1973 – Section 378 – Appeal against Acquittal – Indian Penal Code, 1860 – Section 325,323,504 & 506(2) – Injury – Nature of – Cross-examination –

accepted by doctor – injuries suffered by the complainant could be by way of vehicular accident – Medical certificate – nowhere stated that with what weapon the accused had inflicted the injuries on the body of the complainant – Acquittal upheld. (Para 6) a

Facts:- *It was alleged that the present accused, without any provocation and without any reason, started beating the complainant called him by his caste. The complainant was made to sit in rickshaw and was taken to the Government Hospital. Thereafter, the complaint was filed. The learned trial Judge acquitted the respondent of all the charges levelled against him. In the present appeal preferred by the State the honourable High Court upheld the acquittal.* b

Law of relief:- *Not mentioning in medical report the type of weapon used in the crime is fatal to prosecution.* c

Held:- *The learned trial Judge has examined and scrutinized the evidence of PW-12 Dr. Parulben Chandrakant Sheth Ex. 42. She had examined the complainant on 2.1.2005 between 6.00pm to 8.00pm. According to her, the injuries could be by hard and blunt substance. The said doctor has, in her cross-examination accepted the suggestion that the injuries on the body of the complainant could be by way of vehicular accident. In the certificate, it is nowhere stated that with what weapon the accused had inflicted the injuries on the body of the complainant. The evidence of the main complainant has been scrutinised by the learned trial Judge. (Para 19)* d

Counsel:- *For Appellant(s): Mr Rutoij Oza APP.*
For Respondent(s): HCLS Committee & Madansingh O Barod, Advocate. e

Cases Referred:-

1. *M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr, (2006) 6 S.C.C. 39. (Para 9)* f
2. *Chandrappa Vs. State of Karnataka, (2007) 4 S.C.C. 415. (Para 10)*
3. *State of Goa Vs. Sanjay Thakran & Anr., (2007) 3 S.C.C. 75, (Para 12)*
4. *State of Uttar Pradesh Vs. Ram Veer Singh & Ors., 2007 A.I.R. S.C.W. 5553. (Para 13)*
5. *Girja Prasad (Dead) By L.R.S Vs. State of MP, 2007 A.I.R. S.C.W. 5589. (Para 13)*
6. *Luna Ram Vs. Bhupat Singh And Ors., (2009) SCC 749. (Para 14)* g
7. *Mookkiah And Anr. Vs. State, Rep. By The Inspector of Police, Tamil Nadu, AIR 2013 SC 321. (Para 15)*
8. *State of Karnataka Vs. Hemareddy, AIR 1981, SC 1417. (Para 16)*
9. *Girija Nandini Devi V. Bigendra Nandini Choudhary (1967) 1 SCR 93: (AIR 1967 SC 1124). (Para 16)* h
10. *Shivasharanappa & Ors. Vs. State of Karnataka, JT 2013 (7) SC 66. (Para 17)*

11. *Ambalal Nandlal V. State of Gujarat*, 2004(3) GLH 691. (Para 19)

12. *Musaahemad Hajivali V. State of Gujarat* 2005(1) GLH (UJ)-4. (Para 19)

a 13. *State of Punjab V. Madan Mohan Lal Verma*, (2013) 14 SCC 153. (Para 19)

JUDGMENT

b **K.J. THAKER, J.:** - 1. The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 24.6.2005 passed by the learned Special Judge (Atrocity), 5th Fast Track Judge, Mehsana in Special Atrocity Case No. 24/2004, whereby, the learned trial Judge acquitted the original accused - the respondent herein, of the charges for the offence punishable under Section 325,323,504 and 506(2) of IPC, under section c 135 of the Bombay Police Act, and under sec. 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

d 2. The brief facts of the prosecution case are that the investigation was put into motion by the police on the complaint lodged by the complainant on 3.1.2005 for an incident which occurred on 2.1.2005. It is the case of the complainant that on the date of the incident, he had gone for labour work in the morning at about 8.00am and in the evening he returned back. He left his home at about 8.30am and while going near the road, leading from Kadi to Thor, he had e gone for the worshipping the temple of "Dashama". On his return, he went to lorry where the vendor was selling eggs. This was near the Ambuja Cement Factory. The complainant had asked for omlet with onion. At that time, the present accused, without any provocation and without any reason, stated beating the complainant called him by his f caste and asked why he come to that place having his break-fast and started beating him with iron rod. His right leg was injured and he was beaten on head and a person from his area Shri Satish Rathod saved him. At that time, the accused while going away from the place, said abuses and told him that if in future he again came to the g place, he would be mercilessly done to death. The complainant was made to sit in rickshaw and was taken to the Government Hospital, Kadi. Therefore, the complainant had filed the complaint. The necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, h respondent was arrested and, ultimately, charge-sheet was filed against him, which was numbered as Special Atrocity Case No. 24/2004. The trial was initiated against the respondent.

3. To prove the case against the present accused, the prosecution has examined the following witnesses:

1. PW-1 Popatbhai Ambalal Raval Ex. 7 a
2. PW-2 Mandhabhai Lilabhi Rabari Ex. 9
3. PW-3 Shankarji Lavingji Thakor Ex.15
4. PW-4 Bhaveshbhai Motilal Gandhi Ex. 17
5. PW-5 Satichkumar Dahyabhai Rathod Ex. 18 b
6. PW-6 Dineshbhai Revabhai Makwana Ex.19
7. PW-7 Laxmanbhai Nemaji Ex. 20
8. PW-8 Gunvantbhai Shankarbhai Chavda Ex.29
9. PW-9 Dr. Pravinkumar K. Patel Ex. 32
10. PW-10 Prahladbhai Nathabhai Prajapati Ex. 36 c
11. PW-11 ASI Vasantbhai Rajabhai Ex. 38
12. PW-12 Dr. Parulben Chandrakant Sheth Ex. 42
13. PW-13 Bahadurdas Santram Pandor Ex. 44
14. PW-14 Vishnuji Jiluji Dabhi Ex. 48

4. To bring home the charge levelled against the accused, the prosecution has produced the following documentary evidence. d

1. Panchnama of seizure of weapon
2. Yadi of Police Station, Kadi
3. Yadi given by ASI Vasantkumar
4. Caste certificate e
5. Copy of message
6. Notification
7. Panchnama of scene of offence place
8. Injury certificate of Civil Hospital, Ahmedabad.
9. Complaint f
10. Injury certificate

5. 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 trial Judge acquitted the respondent of all the charges leveled against them by judgment and order dated 24.6.2005. g

6. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial Court the appellant State has preferred the present appeal. h

7. It was contended by learned APP that the judgment and order of the trial Court is against the provisions of law; the trial Court

has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the

a prosecution has proved all the ingredients of alleged charges against the present respondent. Learned APP has also taken this court through the oral as well as the entire documentary evidence. The presence of the respondent is already established and commission of offence is also established, and therefore, the present appeal deserves

b to be allowed. It is further submitted by Mr. Oza that the judgment and order of acquittal passed by the learned Judge is based on inferences not warranted by facts of the case and also on presumption not permitted by law. It is also submitted by him that the learned Judge has not properly appreciated oral as well as documentary

c evidence and thereby committed error by acquitting respondent for the alleged offence under sec.325, 323, 504, 506(2) of IPC as well as sec. 3(1)(10) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and section 135 of the Bombay Police Act. Mr. Oza learned APP submitted that the learned trial Judge not properly

d appreciated the evidence of complainant as well as injured witness Gunvantbhai Shankarbhai Chavda ex. 29, wherein, he has clearly stated the fact that on 2.1.2005, while he has gone to have a breakfast on lorry of egg, the respondent accused came there and gave filthy abuses to the complainant by saying that SALA DHEDHA why did you come here for having breakfast and thereby given filthy abuses

e relating to his caste with clear intention to insult complainant in public. He has further deposed that respondent accused had given blow of iron pipe on right leg and head. He further deposed that accused had also given kick and fist blows to him. He has further deposed that prosecution witness Satishbhai Dahyabhai had

f intervened and saved him from further beatings. He has further deposed that accused has also given threats to the complainant not to come on lorry again other wise he would cause murder. Thus, the complaint at ex. 30 is fully supported by evidence of this witness, the learned trial Judge has no reason to disbelieve the evidence of the complainant. Mr. Oza learned APP further submitted that the learned

g trial Judge has not properly appreciated the evidence of eye witness Satishbai Dahyabhai Rathod at ex. 18, wherein he has clearly stated the fact that he is serving with M/s. Madhusudan Ceramics, Kadi and his service time is from 9.00am to 6.00pm. He has further deposed that while he was returning from service, at Dashama Temple

h incident has taken place in which respondent accused had given blow of iron pipe to the complainant on his right leg. He has further

deposed that accused has also given kick and fist blows to the complainant and as a result he has received injuries on eye. Thus, so far as evidence of this witness is concerned, he is eye witness and there is no reason to disbelieve the evidence of eye witnesses. Under the circumstances, learned APP Mr. Oza submits that the present appeal deserves to be allowed. a

8. Per contra, learned Advocate Mr. Barod has taken this Court through the entire evidence on record and submitted that the impugned judgment and order passed by the learned Judge is just and proper. Mr. Barod learned Advocate further submitted that in view of the evidence on record, it cannot be said that the learned Judge has committed any error in allowing the appeal and acquitting the accused, and therefore, the present appeal deserves to be dismissed. b
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9. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of "*M.S. NARAYANA MENON @ MANI VS. STATE OF KERALA & ANR*", (2006) 6 S.C.C. 39, the Apex Court has narrated the powers of the High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under; d

"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well settled principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below." e
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10. Further, in the case of "*CHANDRAPPA Vs. STATE OF KARNATAKA*", reported in (2007) 4 S.C.C. 415, the Apex Court laid down the following principles;

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge; g

[1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. h

a [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.

b [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.

d [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.

e [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."

f 11. Thus, it is a settled principle 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.

g 12. Even in the case of "*STATE OF GOA Vs. SANJAY THAKRAN & ANR.*", reported in (2007) 3 S.C.C. 75, the Apex Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under;

h "16. From the aforesaid decisions, it is apparent that 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 any of the accused is connected with the commission of the crime he is charged with."

13. Similar principle has been laid down by the Apex Court in cases of "*STATE OF UTTAR PRADESH VS. RAM VEER SINGH & ORS.*", 2007 A.I.R. S.C.W. 5553 and in "*GIRJA PRASAD (DEAD) BY L.R.s VS. STATE OF MP*", 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

14. In the case of "*LUNA RAM VS. BHUPAT SINGH AND ORS.*", reported in (2009) SCC 749, the Apex Court in para 10 and 11 has held as under;

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

15. Even in a recent decision of the Apex Court in the case of "*MOOKKIAH AND ANR. VS. STATE, REP. BY THE INSPECTOR OF*

POLICE, TAMIL NADU", reported in AIR 2013 SC 321, the Apex Court in para 4 has held as under:

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"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life.

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Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappraise the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC573]"

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16. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of *"STATE OF KARNATAKA VS. HEMAREDDY"*, AIR 1981, SC 1417, wherein it is held as under;

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"...This Court has observed in *Girija Nandini Devi V. Bigendra Nandini Choudhary (1967) 1 SCR 93:(AIR 1967 SC 1124)* that it is not the duty of the Appellate Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general

agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

17. In a recent decision, the Hon'ble Apex Court in "*SHIVASHARANAPPA & ORS. VS. STATE OF KARNATAKA*", *JT 2013 (7) SC 66* has held as under;

"That appellate Court is empowered to re- appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

18. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

19. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led before the trial court and also considered the submissions made by learned APP for the appellant-State. Mr. Barod learned advocate submitted that the accused is also belonging to the OBC, and therefore, he could not be convicted for the offence under Atrocities Act and without delving further, the impugned judgment and order of acquittal requires to be confirmed. This takes this court to the offence punishable under sec. 325,323, 504 and 506(2) of IPC. The learned trial Judge has examined and scrutinized the evidence of PW-12 Dr. Parulben Chandrakant Sheth Ex. 42. She had examined the complainant on 2.1.2005 between 6.00pm to 8.00pm. According to her, the injuries could be by hard and blunt substance. The said doctor has, in her cross-examination accepted the suggestion that the injuries on the body of the complainant could be by way of vehicular accident. In the certificate, it is nowhere stated that with what weapon the accused had inflicted the injuries on the body of the complainant. The evidence of the main complainant has been scrutinised by the learned trial Judge. It goes without saying that on the basis of the catena of decision, more particularly, going through the judgments of this court, on which, reliance was placed by the learned trial Judge in the case of *Ambalal Nandlal v. State of Gujarat, reported in 2004(3) GLH 691* and in the case of *Musaahemad Hajivali v. State of Gujarat reported in 2005(1) GLH (UJ)-4*, are pressed into service by Mr. Barod learned advocate for the respondent- accused and has submitted that the judgment does not require any interference. No ingredients of section 325,323, 504 and 506 (2) of IPC are made out, and hence, this appeal deserves to be dismissed.

Mr Oza learned APP has taken this Court through the detailed judgment of the trial Court, however, finding recorded by the learned trial Judge in the judgment will not permit this different view than that taken by the learned trial Judge. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Even looking to the medical evidence, Id. APP is not able to bring home the charge levelled against the accused and persuaded this Court to take a different view than that taken by the learned trial Judge in view of the catena of decisions of the Apex Court and the latest decision of the Apex Court in the case of *State of Punjab v. Madan Mohan Lal Verma, reported in (2013) 14 SCC 153*. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

20. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against them. I find 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. I am, 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.

21. In the result, the present appeal is hereby dismissed. R & P to be sent back to the trial Court, forthwith. Bail bond and bail, if any, stands cancelled. Surety also, if any given, stands discharged.

Result:- Appeal dismissed.

**ABC 2016 (I) 507 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(A.J. Desai, J.)

Criminal Misc.Application (For Cancellation Of Bail) No. 4497 of 2016
Decided on 22 February, 2016

STATE OF GUJARAT *- Applicant(s).*

Versus

KETUL RAMESHBHAI DHAMECHA *- Respondent(s).*

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 439(2) – Regular Bail – Application for cancellation – Indian Penal Code, 1860 – Sections 376, 493, 406, 420 & 114–