

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 1447 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Approved for Reporting	Yes	No
		✓

STATE OF GUJARAT

Versus

RAJUBHAI MANSUKHBHAI MAACHHI &amp; ORS.

Appearance:

MS JIRGA JHAVERI, ADDL. PUBLIC PROSECUTOR for the Appellant(s) No. 1

HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1,2,3

MRS REKHA H KAPADIA(2246) for the Opponent(s)/Respondent(s) No. 1,2,3

UNSERVED EXPIRED (N) for the Opponent(s)/Respondent(s) No. 4

UNSERVED EXPIRED (R) for the Opponent(s)/Respondent(s) No. 5

**CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK****Date : 17/06/2026****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 18.04.2009 passed by the learned Special Judge, Bharuch (hereinafter be referred to as "the trial Court") in Special (Atrocity) Case No.22 of 2008, whereby the trial Court has acquitted the original accused Nos.1 to 4 (respondents herein) from the offences punishable under Sections 323, 504, 506(2) and 114 etc of the Indian Penal Code (hereinafter be referred to as "the IPC") read with 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 the complainant Natvarbhai Motibhai Solanki, Hindu (Bhangi), was belonging to Scheduled Caste, residing at Jambusar with his family, and he was serving in the Limaj Primary School as a Teacher, since last nine years. That, the complainant was residing in the Vrundavan Society, where no one of his Bhangi community, and people of Maachhi, Vaghari, Parmar and Makwana castes were living in that society. That, the accused No.1 Rajubhai and accused No.3 Kalidasbhai Bhikhabhai were residing besides complainant. That, three years ago, the accused Nos.1 & 3 quarreled with the complainant by asking why he came to live in their society, and also beaten him and therefore, the complainant lodged complaint against the accused persons wherein, they were acquitted due to lack of evidence. That, other case was pending in the Bharuch Court and date of hearing was 08.02.2008, i.e. next day of the incident. Therefore, on the day of incident, while the complainant was returning to his home from school, at that time, the accused Nos.1 & 3 came in front of the complainant's home holding sticks, and told him not to remain present in the court next day and also gave filthy abuses to complainant and therefore, the complainant requested them not to abuses. At that time, accused No.2 Manjulaben, wife of accused No.1 and accused No.4 Maniben, wife of accused No.3 also came there. All the accused got angry and accused Nos.1 & 3 inflicted stick blows on chest, stomach, and back side of complainant. At that time, Pragnesh, son of complainant tried to save complainant, but the accused No.3 also inflicted stick blows on him and caused injuries to them, and the accused Nos.2 & 4 caught hair of complainant's wife and gave kick and fist blows, and intentionally

caused hurt to them. Thereafter, all the accused persons went away from there by giving abuses. Therefore, complaint was filed and an offence was registered as II.C.R.No.7/2008 at Jambusar Police Station, against the accused persons for offences punishable under Sections 323, 504, 506 (2) and 114 of the Indian Penal Code read with Sections 3(1) (10) of the Atrocity Act.

2.2 After completion of the investigation, charge-sheet was filed against respondents accused before JMFC, Bharuch. As the offences committed by respondents were absolutely triable by the Court of Sessions, same was committed to the Sessions Court under Section 209 of Cr.P.C. Thereafter, charge was framed against the respondents accused for the offences punishable under Sections 323, 504, 506(2) and 114 of the Indian Penal Code read with Sections 3(1) (10) of the Atrocity Act, 1989. The accused persons pleaded not guilty to the charges and claimed to be tried.

3. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

Sr. No.	PW No.	Name of the Witness	Description	Exhibit
1	1	Natwarbhai Motibhai Solanki	Complainant	15
2	2	Jayaben Natwarbhai Solanki	Wife of the Complainant and Victim Lady Witness	19
3	3	Pragnesh Natwarbhai Solanki	Son of Complainant and Victim Witness	20
4	4	Mahammad zubair Abdulla Diwan	Panch Witness of the panchnama regarding the place of offence	21
5	5	Babubhai Dhulabhai	Panch Witness of the Panchnama drawn regarding physical	22

			condition of Accused No. 3, Kalidas Bhikhabhai and seizure of the stick produced by him	
6	6	Jayeshkumar Ramanlal Kapadia	Circle Inspector who prepared the map of the place of offence	24
7	7	Deepakkumar Manilal	Panch Witness of the panchnama regarding the place of offence	27
8	8	Shakir Gulam Shabbir Malek	Panch Witness of the Panchnama drawn regarding physical condition of Accused No. 1 and seizure of the stick produced by Accused No. 1	28
9	9	Dr. Ramdev Baluram	The Medical Officer who provided treatment to PW Nos. 1, 2, and 3	30
10	10	Maganbhai Bhagwanbhai	Panch Witness of the Panchnama drawn regarding physical condition of Accused No. 3, Kalidas Bhikhabhai and seizure of the stick produced by him	39
11	11	Majidbhai Mohammad Bhai	Panch Witness of the Panchnama drawn regarding physical condition of Accused No. 1 and seizure of the stick produced by Accused No. 1	40
12	12	PSI Pratapsinh Dashrathsinh Parmar	Police Officer who recorded the complaint of the Complainant	41
13	13	Asst. Head Constable Ranjitsinh Bhagwansinh	P.S.O.	43
14	14	Dy.S.P. Kantibhai Kikabhai Rathod	Investigating Officer who investigated the offence	46

4. In addition to this, the prosecution has also produced the

following documentary evidence:-

Sr. No.	Description	Exhibit
1	Complaint	16
2	Panchnama regarding the physical condition of Accused No. 2, Manjulaben	18
3	Office copy of the yadi written by PW No. 14 to the Mamlatdar, Jambusar, for preparing the map of the place of offence	25
4	Map of the place of offence	26
5	Caste Certificate of the Complainant	29
6	Yadi written by PW No. 12 to the Medical Officer for treatment of the Complainant and PW Nos. 2 and 3	31
7	Medical Case Papers of the Complainant Natwarbhai Motibhai	33
8	M.L.C. Certificate of Complainant Natwarbhai Motibhai	34
9	Medical Case Papers of PW No. 3-Pragnesh Natwarbhai	35
10	M.L.C. Certificate of PW No. 3- Pragnesh Natwarbhai	36
11	Medical Case Papers of PW No. 2- Jayaben Natwarbhai	37
12	M.L.C. Certificate of PW No. 2- Jayaben Natwarbhai	38
13	Extract of the Entry No. 14 made in the Station Diary of Jambusar Police Station by PW No. 13 based on the Complainant's complaint	44
14	Yadi written by PW No. 13 regarding handing over the investigation of the offence against the accused to PW No. 14	45
15	Order passed by the Superintendent of Police, Bharuch, appointing PW No. 14 to investigate the offence against the accused	47
16	Panchnama of the place of offence	48
17	Panchnama regarding the physical condition of Accused No. 1 and seizure of the stick upon produced voluntarily by him	49
18	Panchnama regarding the physical condition of	50

	Accused No. 3 and seizure of the stick upon produced voluntarily by him	
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5. 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.

6. 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.

7. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant - State of Gujarat has preferred this Appeal. This Court on 19.01.2010 admitted the appeal and issued bailable warrant to the respondents in sum of Rs.5,000/-.

7.1 At the outset, it may be noted that during the pendency of the present proceedings, respondent No.4 - Maniben Kalidasbhai Maachi expired on 29.05.2022 and, therefore, the appeal stands abated qua respondent No.4. The death certificate to that effect is produced on record.

7.2 It may also be noted that this Court vide order dated 19.12.2024 granted permission to join the original complainant - Natvarbhai Motibhai Solanki as party respondent to the present proceedings, however, he could not be joined as party respondent as he expired on 19.09.2010 before framing of charge. The death certificate is produced on record.

8. Heard Ms.Jirga Jhaveri, learned Additional Public Prosecutor appearing for the appellant - State of Gujarat and Mrs.Rekha Kapadia, learned counsel appearing for the respondents - accused at length.

9. Ms.Jhaveri, learned Additional Public Prosecutor appearing for the appellant - State of Gujarat has submitted that the impugned judgment and order of acquittal passed by the trial Court is contrary to law and evidence on record and against the principles of justice, and therefore, the same deserves to be quashed and set aside. She has submitted that the trial Court has not appreciated the fact that the prosecution has proved the case beyond reasonable doubt by leading cogent and material evidence. She has submitted that the trial Court has not properly appreciated the oral as well the documentary evidence led by the prosecution in its true and proper spirit while passing the impugned judgment and order of acquittal. She has submitted that the trial Court has not considered the fact that the respondents accused with an intention to breach the peace gave filthy abuses to the complainant and other witnesses and also threatened to kill the complainant and other witnesses, thereby committing offence punishable under the provisions of the IPC. She has submitted that the trial Court has not properly appreciated the evidence of the complainant, who has fully supported the case of the prosecution and discarded and disbelieved his evidence while coming to the conclusion that the prosecution has failed to prove the case against the respondents beyond reasonable doubt. She has submitted that the trial Court has not considered the evidence of the injured eye-witnesses being the wife and son of the complainant. She has submitted that the trial Court has committed a grave error in not considering the evidence of the doctor, who had issued injury

certificate and stated that such injuries were possible by stick, who has fully supported the case of the prosecution and thus, the impugned judgment and order of acquittal is illegal, erroneous and unjust. Over and above the grounds agitated in the memo of appeal, learned Additional Public Prosecutor has urged that the appeal deserves to be allowed and the judgment and order of acquittal deserves to be quashed and set aside.

10. On the other hand, Mrs.Kapadia, learned counsel for the respondents has submitted that the trial Court has rightly passed the impugned judgment and order of acquittal and there is no any illegality or any infirmity in the impugned judgment and order and, therefore, no interference is required to be called for. She has supported the reasonings stated by the trial Court and submitted that the respondents have been falsely roped in the alleged offence. She has submitted that the prosecution has failed to prove the charges levelled against the respondents before the trial Court by leading cogent and material evidence and therefore, the appeal being meritless deserves to be dismissed and the judgment and order of acquittal deserves to be confirmed.

11. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. I have also gone through the impugned judgment and order passed by the trial Court and the oral evidence of the witnesses recorded by the trial Court. The question arises for consideration before this Court is that, whether the trial Court was right and justified in passing the impugned judgment and order of acquittal in favour of the respondents or not, whether the trial Court has rightly appreciated the oral evidence led by the prosecution while passing the impugned

judgment and order of acquittal or not, whether the trial Court has committed any illegality or any perversity while recording the acquittal or not. For considering all these aspects, the evidence led by the prosecution before the trial Court is required to be looked into which is discussed hereunder.

12. The complainant - Natrvarbhai Motibhai Solanki PW-1 registered FIR against the present respondents for the offences punishable under Sections 323, 504, 506(2) and 114 of the IPC read with Section 3(1) (10) of the Atrocity Act. The provisions of the aforesaid Sections are reproduced hereunder :

**323. Punishment for voluntarily causing hurt.—**

*Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

**504. Intentional insult with intent to provoke breach of the peace.—**

*Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

**506. Punishment for criminal intimidation.—**

*Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

**If threat be to cause death or grievous hurt, etc.—**

*And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

**114. Abettor present when offence is committed.—**

Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

**Section 3(1)(10)** - *intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.*

13. In order to see as to whether the ingredients of the aforesaid sections are satisfied or not, the evidence of the witnesses being PW-1 - Natvarbhai Motibhai Solanki - Exh.-15, PW-2 - Jayaben Natvarbhai Solanki - Exh.-19 and PW-3 - Pragnesh Natvarbhai Solanki - Exh.-20 are required to be closely scrutinized. From the evidence of these three witnesses, it appears that there was a prior animosity between two families and one criminal case was also pending between them. From the evidence of PW-1 Natvarbhai, it appears that he was in a habit of filing such false complaints and every time he used to get compensation from the social welfare department and also while settling the dispute, he used to get some compensation from the accused persons. PW-9 - Dr. Ramdev Baluram - Exh.-30, who at that relevant point of time, was a Medical Officer at Referral Hospital & C.H.C., Jambusar, had examined all the three witnesses being PW-1, PW-2 and PW-3, who were brought to Referral Hospital with police yaadi. From the bare perusal of the evidence of this witness, it appears that the incident narrated by the PW-1, PW-2 and PW-3 is not supported by the evidence of this doctor. It is also pertinent to note herein that the incident had happened at the door step of the complainant, which was not a public place within public view as alleged by the complainant and in view of 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, on the contrary, the case is put forward that the respondent No.2 - Manjulaben, wife of respondent No.1, who sustained injury, was about to register an FIR against the present complainant and his family members as a counter blast. It appears that the present offence is registered by the Investigating Officer.

14. Looking to the facts of the present case and the evidence of the witnesses being PW-1, PW-2 and PW-3, it is clearly established that the prosecution has miserably failed to prove the case against the respondents and under such circumstances, the trial Court after appreciating the evidence of the witnesses has dealt with the depositions of the witnesses in paras 8 to 20 of the impugned judgment. The trial Court has also recorded that the complainant has registered many complaints under the provisions of the Atrocity Act and it was admitted by the complainant that he had received

compensation from the social welfare department in respect of the offence registered by him. Though the complainant was serving as a teacher and was a socially responsible person in the society, he was indulging in the filing of such complaints, which is nothing but, misuse of the provisions of the Act. The trial Court has recorded the findings as to why the order of acquittal has to be passed in favour of the present respondents and after going through the same and on perusal of the evidence recorded by the trial Court, I do not find any illegality or any perversity in the findings recorded by the trial Court.

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.

**(HEMANT M. PRACHCHAK,J)**

Dolly