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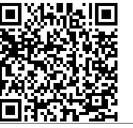
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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 149 of 1998

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE NIRZAR S. DESAI
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

==

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 ?	

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STATE OF GUJARAT
Versus
MANUBHAI DESAIBHAI BARIYA

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Appearance:
MR MANAN MEHTA ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s) No. 1
for the Opponent(s)/Respondent(s) No. 1
MR P V PATADIYA, HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 20/05/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE NIRZAR S. DESAI)

1. Feeling aggrieved and dissatisfied with the

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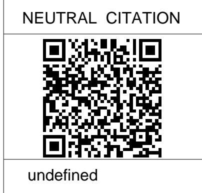

judgment and order of acquittal dated 30.8.1997 passed by the learned Additional Sessions Judge, at Nadiad in Special Case No.18 of 1997, whereby the respondent accused came to be acquitted for the offences under section 435, 436 of the Indian Penal Code and under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the appellant – State has preferred present appeal under section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. The State has preferred this appeal against the judgment and order dated 30.8.1997 passed by the learned Additional Sessions Judge, Nadiad below Exh.26 in Special Case No.18 of 1997 under Section 435, 436 of Indian Penal Code and under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 whereby the respondent accused was acquitted for the offences under Section 435, 436 of the Indian Penal Code and under Section

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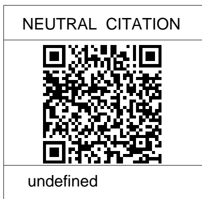

3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Heard learned Additional Public Prosecutor Mr. Manan Mehta appearing for the appellant - State and learned advocate Mr. P.V. Patadiya appearing for the original accused viz. Manubhai Desaibhai Bariya appearing through legal Aid.

4. Brief facts giving rise to the present appeal is stated as under :-

4.1 It was the case of the prosecution that complainant Bhagubhai Aajabhai Vankar a resident of Vasna Bujarg on 13.1.1997 in the evening when he was taking his meal, a resident of the same faliya Vimlaben told him that there is a fire in the backside of his residence, where grass was stored. Hence, he went to the place and found that the residence where he has stored grass had got fired and in the same residence, he has stored paddy also and therefore, he started

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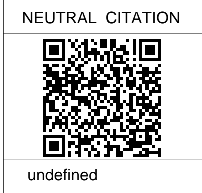

screaming and shouting for water so that fire can be extinguished and therefore, the neighbour rushed to the site and extinguished the fire. After extinguishing the fire when he along with other persons was going to the police station to inform the police about the incident, at that time, the accused person met him and said that he has set the house of the complainant on fire and the complainant may do whatever he wants to do and at a proper time, he threatened him to set entire harijanwas on fire and accordingly, on the basis of that the complainant registered a complaint alleging setting his house on fire and thereby causing a damage of around Rs.400/- to 500/- and also under the Atrocity Act and accordingly, after investigation was over, charge-sheet was filed.

4.2 In pursuance of the complaint lodged by the complainant with the Matar Police Station, Kheda for the offence under Sections 435, 436 of the Indian Penal Code and under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes

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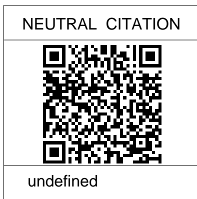

(Prevention of Atrocities) Act, 1989, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of offence, discovery and recovery of weapons and obtained FSL report for the purpose of proving the offence. After having found sufficient material against the respondent accused, charge-sheet came to be filed in the Court of learned Special Judge, Nadiad.

5. Thereafter, the case was committed and charge was exhibited vide Exh.7 against the respondent accused for the aforesaid offence and as the respondent accused pleaded not guilty and claimed to be tribe, the trial commenced.

6. In order to bring home charge, the prosecution has examined ten witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in para 4 of the impugned judgment and order.

7. On conclusion of evidence, on the part of the prosecution, the trial Court put various

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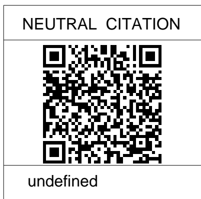

incriminating circumstances appearing in the evidence to the respondent accused so as to obtained explanation/answer as provided under Section 313 of the Code. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him.

8. We have heard learned Additional Public Prosecutor Mr. Manan Mehta appearing for the appellant - State and minutely examined oral and documentary evidence adduced before the learned Trial Court.

9. Learned Additional Public Prosecutor Mr. Manan Mehta appearing for the State made following brief submissions to indicate that the learned Sessions Judge has committed an error while acquitting the respondent - accused as under :-

9.1 The learned Judge has not appreciated the

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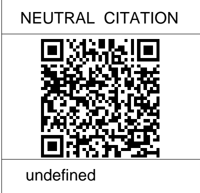

oral evidence of the complainant Manubhai Hajibhai Vankar at Exh.10, Ashabhai at Exh.12 and Maganbhai Shenva at Exh.13, Mukeshbhai Ramanbhai at Exh.14, Rambhai Galabhai Panch Witness at Exh.19, Kanubhai Pashabhai Vankar at Exh.20. It was submitted by learned Additional Public Prosecutor Mr. Manan Mehta that the complainant Bhagubhai Ajabhai Vankar has specifically stated in his deposition that when two boys of the same faliya were coming back from their field, the accused person was standing at a Panshop and by making a derogatory remarks about the caste of the complainant, he threatened to do something within half an hour and thereafter, his house was set on fire. Learned Additional Public Prosecutor Mr. Manan Mehta submitted that there are as many as 15 eye witnesses as per the deposition of the complainant and the respondent was also identified by the complainant. Learned Additional Public Prosecutor Mr. Manan Mehta submitted that there was fire and once the fire

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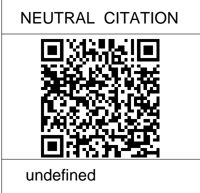

was extinguished, the complainant immediately rushed to the concerned police station at Matar but as his complaint was not registered by the Matar Police Station, he had gone to Kheda Camp where his complaint was registered.

10. Learned Additional Public Prosecutor Mr. Mehta further submitted that learned Judge has committed an error by not appreciating the version of prosecution witness Bhagubhai Ajabhai Vankar, wherein he has also specifically stated that while going to the police station, the accused respondent met them and he said that the house of the complainant was set on fire by the accused respondent and at an appropriate time, he will set entire harijanwas on fire. Learned Additional Public Prosecutor Mr. Manan Mehta further submitted that even as per the deposition of PW-2 Ashabhai Atmarambhai was examined at Exh.12, he also categorically stated that the accused respondent has made derogatory remarks about the caste of the complainant.

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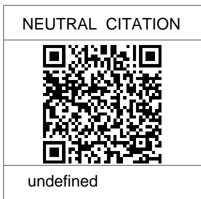

11. Learned Additional Public Prosecutor Mr. Mehta further submitted that the learned Judge has failed to appreciate the vital evidence of other eye witnesses as well as other witnesses and Panch witnesses and therefore, he has committed a grave error in acquitting the present respondent accused. He therefore submitted that when there is a clear evidence in respect of fire having taken place at the residence of complainant and it is proved beyond doubt that the resident of complainant was set on fire by the accused respondent and there is a damage of Rs.400/- to 500/-. Considering the evidence on record, learned judge ought to have convicted the accused respondent rather than acquitting him and therefore, he has committed an error by acquitting the accused respondent and therefore, impugned judgment and order is required to be quashed and set aside.

12. Learned advocate Mr. P.V. Patadiya appearing on behalf of the accused respondent

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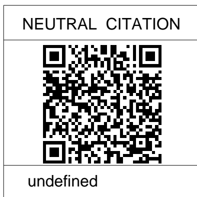

through legal Aid submitted that the entire judgment and order under challenge is absolutely just, legal and proper and does not suffer any infirmity or cannot be said to be erroneous. Learned advocate Mr. P.V. Patadiya submitted that there was no eye witness to the incident and in absence of there being any eye witness, looking to the nature of offence and material on record, the learned trial judge was right in acquitting the accused respondent.

13. It was further submitted by learned advocate Mr. P.V. Patadiya that as far as there are contradictions in the deposition of the witnesses and there is no consistency in the evidence of prosecution witness, there is no direct evidence against the present accused person and there are no recovery or discovery from the present respondent accused.

14. Learned advocate Mr. P.V. Patadiya further submitted that as far as extra judicial confession made before the witness is concerned,

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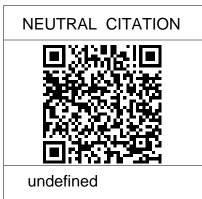

the same cannot be corroborated with other prosecution evidence and hence, the same cannot be relied upon. He submitted that PW-1 Bhagubhai Ajabhai Vankar was examined at Exh.10, whose evidence has rightly been considered by the learned Judge while acquitting the accused person as he is a hearsay witness and not an eye witness. There is no animosity or enmity between him and accused persons. He, therefore, submitted that in view of above, considering the material on record, the learned judge has rightly arrived at a conclusion and thereby acquitted the accused respondent. He therefore prayed for dismissal of present appeal.

15. We have heard learned advocates appearing for the parties and perused the record. Upon perusal of the record, I found that as far as the evidence of original complainant PW-1 Bhagubhai Ajabhai Vankar is concerned, he has categorically stated in his deposition that he came to know about the fact that his house was

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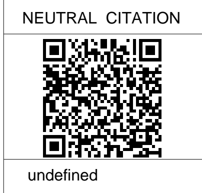

set on fire as he heard the noise from the compound that his house is set on fire. He has not seen the present respondent setting the house on fire. Further, he is not the one who heard the accused respondent making derogatory remarks of the caste of the complainant as even as per his deposition such derogatory remarks were not made in front of him. Further, there is a clear admission on his part that he has not seen that accused person setting his house on fire, such admission was made during his cross examination.

16. As far as PW-2 Ashabhai Atmarambhai Exh.12 is concerned, he also has not seen the accused setting the house on fire. Further, he also has not seen the accused respondent making any derogatory comment about the caste of the complainant.

17. We have considered the deposition of PW-4 Mukeshbhai Ramabhai at Exh.14 who in his examination in chief has stated that the accused

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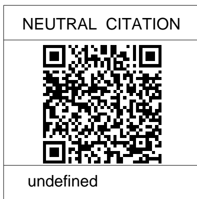

respondent met him on the way while they were going for filing police complaint and admitted that he has set the house on fire. However, he has admitted in his cross examination that he has not disclosed certain vital facts that earlier he had gone to dairy to make a call to police and that certain facts he has not stated in his statement before the police which would indicate that he has tried to improvise from his original statement.

18. Considering the aforesaid aspect we find that there is no eyewitness to the offence in question, no one has seen the accused respondent setting the house of the complainant on fire nor the allegation in respect of derogatory remarks/ comment about the caste of the complainant is proved beyond doubt.

19. Further, 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

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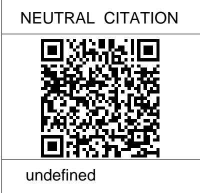

by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. ***(Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225)***. In the instant case, the learned Additional Public Prosecutor 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.

20. 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*

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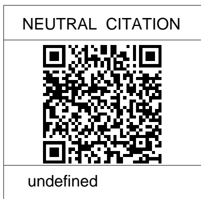

in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order 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."

21. 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

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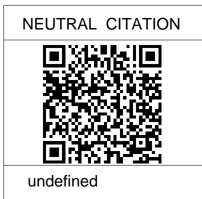

might have taken a different view.

22. 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.

23. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed.

24. Record and proceedings be sent back to the concerned Trial Court forthwith.

(NIRZAR S. DESAI,J)

(HASMUKH D. SUTHAR,J)

Pallavi

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