HIGH COURT OF GUJARAT

Bench: Honourable Ms. Justice Nisha M. Thakore

Date of Decision: 22nd May 2024

CRIMINAL APPELLATE JURISDICTION

R/CRIMINAL APPEAL NO. 775 of 2008

STATE OF GUJARAT …Appellant

Versus

RAJESHKUMAR BHIKHABHAI PATEL & ORS. …Respondents

Legislation:

Sections 323, 504 read with Section 114 of the Indian Penal Code

Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Section 135 of the Bombay Police Act

Subject: Criminal appeal against the acquittal of Rajeshkumar Bhikhabhai Patel and others in a case involving allegations of assault and caste-based abuse.

Headnotes:

Criminal Law – Appeal Against Acquittal – Section 378 of Cr.P.C. – Appeal by the State challenging acquittal by the trial court. The trial court acquitted the accused for offences under Sections 323, 504 read with Section 114 of IPC, Section 3(1)(x) of the Atrocities Act, and Section 135 of the Bombay Police Act. The High Court upheld the trial court's judgment, finding no perversity or misappreciation of evidence that would warrant interference. – Held: Appeal dismissed. [Paras 1-8]

Scope of "Public View" – Interpretation – Interpretation of "public view" within the meaning of Section 3(1)(x) of the Atrocities Act. The trial court erred by narrowly interpreting "public view" as requiring a public place. The High Court clarified that "public view" can include incidents witnessed by members of the public, even if occurring on private property. – Held: The term "public view"

must be broadly interpreted to include the presence of public witnesses. [Paras 8-10]

Appreciation of Evidence – Contradictions in Testimonies – The prosecution's case was undermined by contradictions between the FIR and the deposition of the complainant and other witnesses. The complainant's statements about the assault differed from her medical records and other witnesses' testimonies. The trial court's assessment of these contradictions was found to be reasonable and supported by the evidence. – Held: No fault in trial court's appreciation of evidence. [Paras 4-7]

Decision: The appeal is dismissed. The judgment and order of acquittal by the trial court are upheld. The evidence did not establish beyond reasonable doubt the involvement of the accused in the alleged offences. The trial court's view was found to be a plausible and reasonable interpretation of the evidence.

Referred Cases:

- Swaran Singh v. State Through Standing Counsel & Ors. (2008) 8 SCC 435
- Ravi Sharma vs. State (Government of NCT of Delhi) & Another (2022 Live Law (SC) 615)
- Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)
- Mohan alias Srinivas alias Seena alias Tailor Seena v. State of Karnataka (2021 SCC OnLine SC 1233)
- N. Vijayakumar v. State of T.N. (2021) 3 SCC 687

Representing Advocates:

Ms. Chetna M Shah, Additional Public Prosecutor for the appellant

Dr. Hardik K Raval for the respondents

ORAL JUDGMENT

1. The present appeal is filed at the instance of the State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 directed against the impugned judgment and order of acquittal dated 1.10.2007 passed by Court of learned Special Judge, Panchmahals at Godhra in Special Case No.16 of 2007 (Atrocity). By the said impugned judgment and order, the respondent

nos. 1 and 2- original accused were acquitted for the offences alleged under Sections 323, 504 read with Section 114 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocity Act,1989") and Section 135 of the Bombay Police Act.

2. In nutshell the facts giving rise to the present appeal are as under:

2.1. The complainant – Kaliben Chatrabhai Harijan had lodged a complaint before the Police Inspector, Santrampur Police Station, which was registered as CR- II- No.23 of 2006 for the offences alleged under Sections 323, 504 read with Section 114 of the Indian Penal Code and Section 3(1)(10) of the Atrocity Act and Section 135 of the Bombay Police Act.

2.2. According to the case of the complainant on 19.02.2006 at about 8;00 hours she along with her family members and other labour workers had gone to the Bhatha which was owned by Maksudbhai Musalman. At around 8'O clock in the morning she and her brother viz. Mohanbhai Chatrabhai Harijan, her sister- Bhuriben Chatrabhai Harijan, Kalubhai Koyabhai Harijan and Prakashbhai Laxmanbhai were attending the work at Bhatha. At around 10'O clock she had started with cleaning of land, at that time, the accused viz. Patel Rajubhai Bhikhabhai and Prakashbhai Hirabhai Patel of Umariya village had come with their tractors to load bricks. In the process of cleaning the land with the bricks lying at the Bhatha, the accused persons had raised dispute with regard to blow of the dust and had picked up qurrel with the complainant and his brother as to why dust has been blown , to which, the complainant had responded by saying that why they are standing nearby.

2.3. With such response, both the accused had got enraged and has started dispute with the complainant by hurling abusive words. It is alleged in the complaint that the accused had insulted them by making remarks against their caste by saying "*Bhangdao*" and had started quarrel with them. It is further alleged in the complaint that the accused Rajubhai Patel had caught hold of her hair and had pushed her towards ground and has started giving kick and fist blow.

2.4. Upon hearing the scream of the complainant, the complainant's mother and father had immediately came to the scene of the incident and had tried to intervene. At that stage, the accused Rajubhai Patel had inflicted brick blow on the left side of the ear of the father of the complainant resulting into

oozing of the blood. The mother of the complainant was also assaulted by the accused Patel Prakashbhai with brick which was inflicted on her hand. Thus, the accused have alleged to have caused injuries because of the quarrel which had taken place. The other workers and the owner of the Bhatha Maksudbhai Muslam had ran towards the scene of offence. At that stage, the accused had left place by saying the words "*Bhangdao".*

2.5. It is further stated that the complainant and her mother and other family members including Parbatbhai Bhemabhai had taken them to the Santrampur Government Hospital for the treatment of their father and thereafter she had visited the police station at Santrampur for registration of the FIR.

2.6. With such circumstances pointed out by the complainant, the FIR came to be registered with Santrampur Police Station vide CR-II-23 of 2006 for the offences alleged under Sections 323, 504 read with Section 114 of the Indian Penal Code and Section 3(1)(10) of the Atrocity Act and Section 135 of the Bombay Police Act.

3.0. Upon registration of the FIR, the Deputy Superintendent of Police who was the competent officer under the Special Act had taken over the charge of investigation. During the course of investigation, the statement of witnesses were recorded. The panchnama of place of offence was also drawn. Since sufficient evidence connecting the respondents was gathered by the Investigating Officer and the offence was made out according to the Investigating Officer, the charge sheet came to be filed against the respondent nos. 1 and 2- original accused.

3.1. The charge sheet was submitted before the Court of Judicial Magistrate, First Class, Santrampur. The offence committed by the accused persons since was exclusively triable by the Court of learned Special Judge (Atrocity). The same was committed to the Court of learned Special Judge, Panchmahals at Godhra for trial and was registered as Special Case No.16 of 2007(Atrocity). The respondentsoriginal accused had appeared before the learned Special Judge and had pleaded not guilty to the charge alleged. Hence, the trial was conducted.

3.2. Before the trial Court, the prosecution has examined six witnesses. Apart from the oral evidence, the prosecution has also led documentary

evidence. The details of the evidence led by the prosecution are reproduced in the tabular form here under:

Oral Evidence:

Witness no.	Name of the witness	Exh.
1	Kaliben Chatrabhai	6
2	Kapuriben Chatrabhai	9
3	Parvatbhai Dhulabhai Harijan	10
4	Bhuriben Chatrabhai	11
5	Dr. Rameshchandra Harjivan Shrimali	16
6	Kamleshbhai Dhirubhai Suvera	19

Documentary Evidence:

Exh.No.	Particulars
7	Complaint
8	Caste Certificate
12	Panchnama of place of incident.
13	Inquest Panchnama
16	MLC
18	Medical Certificate
20	Caste Certificate
21	School leaving certificate
22	Resolution

3.3. The prosecution has thus examined the complainant injured witness, eyewitnesses, panch witnesses, Medical Officer and the police witness, which according to the prosecution have supported their case. The prosecution has also relied upon documentary evidence in support of the oral evidence led by them before the trial Court. At the end of the evidence, the necessary pursis was presented before the trial Court declaring closure of evidence. The learned Special Judge has thereafter proceeded to record the further statements of the accused under Section 313 of the Code of Criminal Procedure. With such evidence being noticed, the learned Special Judge has arrived at a conclusion that it was a free hit by bricks which has resulted into causing injury to the witnesses. Hence, the learned Judge has concluded that the accused nos. 1 and 2 cannot be implicated in the offence alleged and has thereby recorded acquittal. Hence, this appeal.

4. Ms. Chetna M Shah, learned Additional Public Prosecutor has appeared on behalf of the appellate State. This Court at the stage of admission hearing, considering the grounds raised has admitted the appeal and had called for

Record and Proceedings of the case. The bailable warrant was directed to be issued against each of the respondents- original accused. From the record, it has transpired that the notice has been duly served, however, the respondent has chosen not to appear and contest the present appeal. Pending the final hearing of this appeal, at one stage, it was noticed that the presence of the original complainant was required in view of insertion of of sub-section 5 of Section 15A Atrocity Act (Amendment Act, 2018). Hence, this Court by order dated 11.09.2023 had permitted the original complainant to be joined as party respondent no.3 and noticed was directed to be issued upon newly added respondent. The record reveals that the notice has been duly served upon the original complainant, however she has chosen not to appear and contest the present appeal. Noticing the fact that the appeal relates to the year 2008, this Court has proceeded with the final hearing of the appeal with the assistance of learned Additional Public Prosecutor appearing on behalf of the State.

4.1. Ms. Shah, learned Additional Public Prosecutor at the outset, has invited my attention to the charge framed against the respondents -accused. The first version of the complainant in the form of FIR registered with the Santrampur Police Station was read. As against the aforesaid version, learned Additional Public Prosecutor had invited my attention to her deposition. She was examined as PW No.1 by the prosecution. She had fairly pointed out the contradiction as recorded by the learned Special Judge upon appreciation of her evidence before the trial Court as against her version in the form of complaint, more particularly, manner of occurrence of incident. Indisputably, it was submitted that upon overall appreciation of the evidence of PW No.1 presence of accused has been established and their involvement in the offence alleged has also been established by the prosecution. According to her, the contradictions noticed by the learned Special Judge can be treated as minor contradictions. It was submitted that the corroboration of her evidence can be gathered from the medical evidence which has been brought on record by the prosecution at Exhs. 16 to 18, which are the medical certificates issued by the Government Hospital.According to her, tenderness injuries were noticed by Medical Officer Dr.Ravat who could not be examined as he was reported to have expired. The aforesaid medical documents have been proved by the prosecution through the evidence of the Dr. Rameshchandra Shrimali who has been examined as PW No.5 at Exh.16. In his cross examination, the said Medical Officer has explained the injury of tenderness. She had further referred to the evidence of PW No.4- Bhuriben who is the sister of the original complainant, learned Additional Public

Prosecutor has fairly stated that the said witness has not attributed any role to accused no.2 as alleged by the original complainant in her complaint as well as in her evidence, she has deposed before the Court that her sister was beaten by the accused no.1. As against that the injury certificate produced at Exh,.16 refers to tenderness injury noticed on the right arm, chest and lumber region of the complainant. Learned Additional Public Prosecutor has further submitted that the only defence which has emerged on record as evidence from the cross examination of the complainant raised by the respondent - accused that the incident had taken place because of the fact that they took side of another group.The defence was not raised that they have been falsely implicated. Learned Additional Public Prosecutor has also referred to the evidence of injured witness Kapuriben who has been examined as PW No.2. In her evidence, it has clearly emerged on record that the Kapuriben and her husband were hit by Rajubhai-Accused no.1. Hence, it was submitted that said witness has not implicated accused no.2 Prakashbhai as alleged by the complainant. Learned Additional Public Prosecutor has fairly admitted the aforesaid contradictions noticed in the case of the complainant. She has further submitted that except for the aforesaid witnesses, no independent witnesses have been examined. One of the witnesses who happens to be the cousin brother of the complainant viz. Parvatbhai though examined as PW No.3 had has turned hostile. The father of the complainant had expired pending the trial, it is therefore submitted that his evidence has not come on record. Lastly, learned Additional Public Prosecutor has referred to the evidence of the Investigating Officer who has been examined as PW No.6. Learned Additional Public Prosecutor has further submitted that necessary documents in the nature of caste certificate of the complainant issued by the Talati cum Mantri has been brought on record at Exh.20. The school leaving certificate has also been produced on record at Exh.21. Apart from the aforesaid documentary evidence, the notification issued by the Additional District Magistrate, Panchmahals at Godhra dated 2.4.2005 under Section 37(1) of the Bombay Police Act, 1951 has also been placed on record at Exh.22. The place of offence has also been established at Exh.12 through the said witness.

4.2. By referring to the aforesaid evidence as recorded,learned Additional Public Prosecutor has pointed out the Section 3(1)(x) of the Atrocity Act, 1989 and has submited that the learned Special Judge committed serious error in holding that since the place of offence which was Bhatha of private ownership of Maksudbhai cannot be treated as a place of public view only for the fact that it was property of private ownership is not correct way of interpreting the term public view appearing in Section 3(1)(x) of the Atrocity

Act. According to learned Additional Public Prosecutor sufficient material has been brought on record by the prosecution to establish the offence alleged against the respondents accused and has therefore, urged this Court to quash and set aside the impugned judgment and order of acquittal.

5. **Analysis of the trial Court order:**

I. The trial Court upon appreciation of the cross examination of the complainant has noticed the absence of any abusive words hurled by the accused. Similarly, the evidence of the prosecution witness no.4. Bhuriben Chatrabhai does not indicate the use of any abusive words by the accused. Though the witness Parvatbhai Dhulabhai Harijan has turned hostile his evidence as well as evidence of the witness Kapuriben does not referred to the use of abusive words by accused. The learned Special Judge after considering the submissions made by the learned advocates for the respective parties and on overall appreciation of the evidence led by the prosecution, has arrived at a conclusion that the prosecution has failed to establish about any specific abusive words being uttered by the respondents – accused and has thus acquitted the respondents -accused for the offence alleged under Section 504 of the IPC.

II. With regard to place of incident, the learned Special Judge noticed that indisputably the place of incident was a private ownership Bhatha and not a public place. The learned Special Judge further noticed that the accused have not been attributed with any weapon. In such circumstances, the learned Judge arrived at a conclusion that no breach of Section 135 of the Bombay Police Act has been made out.

III. The trial Court has noticed major contradictions in the remarks alleged to have been made by the accused against the complainant while appreciating the evidence of complainant as against the evidence of witness Bhuriben Chatrabhai. The close scrutiny of the evidence of witness Bhuriben Chatrabhai does not implicate the accused no.2 Prakashbhai Hirabhai Patel as regards the alleged offence. The prosecution has not examined independent witness. The witnesses who have been examined by the prosecution are the mother, sister and the brother of the complainant. The trial Court upon appreciation of the aforesaid evidence, has further noticed that the place of offence as recorded in the panchnama is a private property not open to public view, has arrived at conclusion that no offence as alleged under Section 3(1)(x) of the Atrocity Act, 1989 is established.

IV. Upon close comparison of the cross examination of the complainant as against evidence of Bhuriben the trial Court has noticed that the complainant has failed to come out with a specific case of accused having assaulted her parents. This has led the trial Court to arrive at a conclusion that the injuries to the parents of the complainant were sustained because of the free stone pelting.

V. The trial Court has thus concluded that the medical certificates brought on record at Exhs.16, 17 and 18 though being admitted has not been established as per the evidence law. The said medical certificate does not corroborate the manner in which the occurrence of incident has been projected by the complainant. Apart from the aforesaid evidence, the learned Special Judge upon appreciation of the medical evidence has noticed that the prosecution has not been able to examine Dr. Ravat who had in fact examined the complainant, injured witness – Kapuriben though their medical certificates have been established by the prosecution at Exhs. 16 & 17 through the evidence of the Medical Officer Dr. Rameshchandra Shrimali associated with the Government Hospital. The said witness has identified the signature of Dr. Ravat who had unfortunately expired and could not be examined as witness by the prosecution. Similarly, the injured witness Chatrabhai could not be examined as he had expired pending the trial.

VI. With the aforesaid findings and on overall appreciation of the evidence on record, the trial Court has recorded acquittal of the respondent accused by concluding that the prosecution has failed to prove his case beyond reasonable doubt.

6. Before venturing into merits of the case, it would be appropriate to reiterate the scope of Section 378 of the Code of Criminal Procedure of this Court while deciding an appeal. It would be appropriate to look into the relevant observations of the recent judgment of the Hon'ble Supreme Court in the case of **Ravi Sharma vs. State (Government of NCT of Delhi) & Another** reported in **2022 Live Law(SC) 615,** which are as under:

"8. Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495) as follows:

25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when

evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the 3 presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

9. This Court in the aforesaid judgment has noted the following decision while laying down the law: Precedents: Mohan alias Srinivas alias Seena alias Mohan alias Srinivas alias Seena alias Tailor Seena v. State of Karnataka, [2021 SCC OnLine SC 1233] as hereunder:

"20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truthand it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity, nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find,different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.

23. This court, time and again has laid down the lawon the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali v. State of Himanchal Pradesh, (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a courtbe held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under: [Babu v. State of Kerala, [(2010) 9 SCC 189]:
"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635], Excise & Taxation Officercum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & 4 Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Aruvelu v. State, [(2009) 10 SCC 206] and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636]).
" It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse, and the findings would not be interfered with.

14.3. In the recent decision of Vijay Mohan Singh v.State of Karnataka, [(2019) 5 SCC 436], this Court again had an occasion to consider the scope of Section 378 CrPC and the interference by the High Court [State of Karnataka v. Vijay Mohan Singh, 2013 SCC OnLine Kar 10732] in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai v. State of Gujarat, [(1978) 1 SCC 228] . In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under:

'10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.'

31.1. In Sambasivan v. State of Kerala, [(1998) 5 SCC412], the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming

the order of conviction passed by the High Court, this Court observed in para 8 as under:

'8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a wellconsidered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the 5 appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.'

31.2. *In K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309], after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.*

31.3. *In Atley v. State of U.P., [AIR 1955 SC 807], inpara 5, this Court observed and held as under:*

'5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came

to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the wellestablished rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State [1951 SCC 1207]; Wilayat Khan v. State of U.P. [1951 SCC 898]. In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.'

31.4. In K. Gopal Reddy v. State of A.P., [(1979) 1 SCC 355], this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule." Mohan alias Srinivas alias Seena alias

N. Vijayakumar v. State of T.N., [(2021) 3 SCC 687] as hereunder:—
"20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a "possible view", having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal 6 and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka, [(2007) 4 SCC 415] has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

"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:
(1) An appellate court has full power to review,reappreciate and reconsider the evidence upon which the order of acquittal is founded.
(2) The Code of Criminal Procedure, 1973 puts nolimitation, 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 andcompelling 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 emphasise 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 mindthat 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 thebasis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

21. Further in the judgment in Murugesan v. State, [(2012) 10 SCC 383] relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of "possible view" to "erroneous view" or "wrong view" is explained. In clear terms, this Court has held that if the view taken by the trial court is a "possible view", the High Court not to reverse the acquittal to that of the conviction. xxx xxx xxx

23. Further, in Hakeem Khan v. State of M.P., [(2017) 5 SCC 719] this Court has considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said judgment it is held that if the "possible view" of the trial court is not agreeable for the High Court, even then such "possible view" recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under; (SCC pp.722-23)

"9. Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were 7 independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may

be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact that he attended the Court at some distance and arrived by bus after the incident took place."

24. By applying the abovesaid principles and theevidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a "possible view". By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellantaccused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested by PW 11 till 7.00 p.m."

10. Applying the said principles and after goingthrough the judgment rendered by the trial Court as well as the High Court, we do feel that it is a case where the High Court has not acted within the legal parameters.

11. In this connection, we would like to note thefollowing paragraphs of the High Court, wherein it did concur with the views of the trial Court with respect to the last seen theory:
"12. It is from this cross-examination the learned Trial Court concludes that the last seen evidence as deposed by Jawahar Singh is an after-thought and in fact in retrospect when the family of the deceased had strong suspicion that Ravi was the accused, statement dated May 30, 2011 was introduced by the Police claiming him to be the last seen witness. A perusal of the cross examination of Ashok can reasonably lead to the inference as has been drawn by the learned Trial Court.
13. Inspector Vijay Sirotiya PW-14 the investigatingofficer in his cross examination has stated that the father and brother of the deceased had arrived at the spot around 7.30/7.45 AM, however at that point of time they did not disclose the name of any person whom they could suspect as the perpetrator of the murder as they were crying and were in a bad condition. He stated that statement of Ashok and Jawahar Singh were recorded on the same day i.e. May 30, 2011 somewhere in the afternoon after the body had been subjected to post-mortem. In crossexamination he stated that the name of the suspect had come in the statement without any further address of the suspect and thus his house could not be visited at that point of time, though the witnesses mentioned some Gali number as well as the house number but since it was a Katcha colony it was difficult to locate the said address, unless the address was specifically ascertained with the help of witness or other sources.

14. In view of this cross-examination of Ashok Kumarand Vijay Sirotiya we cannot hold that the finding of the learned Trial Court on the point that the last seen evidence is not reliable is perverse. Though both views are possible, however the view taken by the learned Trial Judge is also a plausible view.

12. Thus, when the last seen theory is found to be nottrue, there has to be much more concrete and clinching evidence to implicate the appellant. PW1 is the father of the 8 deceased who not only deposed that there was no animosity between the deceased and the appellant, but also that he did not know about the past transaction.

13. Having accepted the views of the trial Courtholding that the last seen theory has not been proved, a conviction cannot be rendered on the basis of evidence, which was rejected qua motive, through the mouth of PW2. The trial Court gave its reasons for rejecting the evidence of PW2. It had the advantage of seeing and assessing the demeanor of this witness, which the High Court did not have. PW2 has stated that there was a money transaction which led to a dispute between the accused and the deceased and that he had assured the appellant that it would be repaid. This also occurred few days before the date of occurrence. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence. This position of law has been dealt with by this Court in the case of Tarsem Kumar v. Delhi Administration (1994) Supp 3 SCC 367 in the following terms:

"8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. ……."

14. We do find that there is no sufficient link to cometo the irresistible conclusion pointing the guilt only to the appellant. We do not wish to multiply the settled position of law regarding the circumstantial evidence, except to quote the following decision in Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706:

"10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that

when a case rests upon circumstantial evidence such evidence must satisfy the following tests:
"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(2) those circumstances should be of a definitetendency unerringly pointing towards guilt of the accused;
(3) the circumstances, taken cumulatively, should forma chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra [(1982) 2 SCC 351]." 9

15. However, once again, we would like to reiteratethe settled position of law that a mere suspicion, however, strong it may be, cannot be a substitute for acceptable evidence, as held in Chandrakant Ganpat Sovitkar v. State of Maharashtra, (1975) 3 SCC 16. "16. ……It is well settled that no one can be convicted on the basis of mere suspicion, however strong it may be. It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety. ….."

16. Much reliance has been made on the recoveriesmade. When the observation Mahazar was prepared along with the sketch and the inquest conducted, admittedly, scores of persons were present. No independent witness was made to sign and the evidence on behalf of the prosecution that they did not volunteer to do so, cannot be accepted. A witness may not come forward to adduce evidence at times when asked to act as an eyewitness. However, when a large number of persons were available near the dead body, it is incomprehensible as to how all of them refused to sign the documents prepared by the police.

17. Similarly, the trial Court rightly doubted therecovery under Section 27 of the Act. There was no need to take PW2 and thereafter make him to sign. There are a lot of contradictions in the evidence rendered. PW2 has stated that many persons were available at the time of the recovery, but no statement has been obtained from any of them. PW11, the Head Constable says that the Investigating Officer PW14, did not ask any neighbor to join the investigation. PW8, who is the Sub-Inspector of Police has deposed that none was forthcoming. A similar statement was also made by the Investigating Officer. There is a discrepancy on the mode of traveling to the place from where the recovery under Section 27 of the Act was made, along with the witnesses, namely PWs 2, 8, 11 and 14. While PW2 has stated that the police team used a jeep and motorbike. The other witness has stated that it was either motorbike or by foot, while one witness says that it was a Gypsy. We do find contradictions with respect to the place of arrest followed by the disclosure statement.

18. The report of the Ballistic Expert is obviously ascientific evidence in the nature of an opinion. It is required to use this evidence along with the other substantive piece of evidence available. The report is inconclusive with respect to the firearm belonging to the appellant being used for committing the offence. 19. All the aforesaid aspects have been considered threadbare by the trial Court. We do not find any perversity in it and the law presumes double presumption in favour of

the accused after a due adjudication by the trial Court. We do believe that the High Court could have been slower in reversing the order of acquittal rendered by the Court of First Instance.
20. On the aforesaid analysis, the order of conviction rendered by the High Court of Delhi stands set aside, by restoring the acquittal by the trial Court. The appeals stand allowed."

7. Applying the aforesaid principles and on evaluation of the evidence on record in the case on hand, in absence of any perversity with regard to the aforesaid findings recorded by the trial Court, any erroneous approach of appreciation of the evidence or any irregularity pointed out by the learned Additional Public Prosecutor, the scope of the present appeal is circumscribed so as to ascertain whether the decision of the trial Court is both possible and plausible view. It is settled legal position that once two views are possible, one taken by the trial Court in case of acquittal has to be followed on the touchstone of liberty along with the advantage of having seen the witnesses.

8. The learned Additional Public Prosecutor has argued that the learned Special Judge committed gross error in treating the term *public view* as *public place*. In my opinion, the learned Special Judge committed error in giving narrow meaning to the word "public view" as "public place". What is to be regarded as a *""place in a public view"* has been considered by the Hon'ble Supreme Court and High Courts in various cases. In the case of **Swaran Singh vs. State Through Standing Counsel & Ors** reported in **2008(8) SCC 435,** the Hon'ble Supreme Court ruled out that place of the offence must be seen by the public. It also added that even if the crime is committed inside the building if some members of public are present who are witness to such act then such place can be considered as "place in public view". In my opinion, such narrow interpretation does not serve the ultimate object of the Atrocity Act, 1989. Having held so and applying the principles highlighted by Hon'ble Supreme Court in the case of **Ravi Sharma(supra),** in the facts of the case, upon appreciation of the evidence brought on record the view taken by the trial Court recording the acquittal of the respondent accused is possible as well as plausible view. The oral evidence which has come on record mainly includes the relatives of the original complainant which is Kapuriben – mother of the complainant, PW No.3- Parvatbhai Harijan cousin brother (turned hostile) and PW No.4 Bhuriben- sister of the original complainant. Thus, no independent witnesses have been examined by the prosecution. In order to assess the veracity of the evidence of the complainant on comparison of the version narrated before the police officer at the time of recording of complaint as against the evidence produced before the trial Court, major contradictions has been noticed with regard to the occurrence of incident involving the

accused. Before the police officer the complainant had stated that when she had responded to the accused, the accused had got enraged and has used filthy language whereas in the deposition before the trial Court she had uttered different version and she has not mentioned about the role of the accused no.1. In her cross examination, she has stated that she was pushed towards the ground and was dragged on ground for 8-10 foot which had caused abrasion injuries on her body. The aforesaid version of the complainant upon comparison with the medical evidence being brought on record at Exh.18 does not inspire any confidence. The involvement of the accused no.2 has been rightly ruled out by the trial Court in absence of any corroboration of such evidence of the complainant. As rightly noticed by the trial Court, no role has been attributed to accused no.2 by the said witness Bhuriben. Even close reading of the cross examination of the said witness and the medical evidence at Exhs. 16, 17 and 18 indicates no reference of any history of assault or accused being named by the injured witness. The evidence of Kapuriben projects a different version of occurrence of incident. As per the evidence of the said witness, she was hit by accused no.1 Rajubhai Patel. The said witness has not implicated accused no.2 as per the version of the complainant. With such evidence on record, the medical case papers placed for consideration does not corroborate the case of the prosecution. With such evidence on record, the trial Court has rightly taken the view of acquittal . In my opinion, no fault can be found with the approach of the trial Court to arrive at a conclusion that the prosecution has failed to prove the case beyond the reasonable doubt. Hence, present appeal is not entertained and is hereby dismissed. Record and proceedings, if any, sent back to the concerned Court forthwith. Bailable warrant issued upon the respondents-accused stands cancelled.