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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 478 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

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Approved for Reporting	Yes	No
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THAKOR AMARAJI NATHAJI & ORS.
Versus
STATE OF GUJARAT

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Appearance:
MR JM PANCHAL, SENIOR ADVOCATE assisted by MR KJ PANCHAL for the Appellant(s) no. 1
MS MONALI BHATT, ADDITIONAL PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) no. 1

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CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**

Date : 01/07/2025

ORAL JUDGMENT

1. The present appeal was filed by four appellants challenging the judgment and order of conviction and sentence pronounced on 4.3.2006 by the Presiding Officer, Fast Track Court, Ahmedabad (Rural) in Special Atrocity Case no.37 of 2004. The case against the accused was under sections 323, 452, 504, 506(2) and 114 of the Indian Penal Code, 1860 (IPC) and section 3(1)(x) of the Scheduled

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Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as "the Atrocities Act").

2. The learned Judge found the accused guilty under section 323, read with section 114 of IPC and sentenced the accused for six months rigorous imprisonment. For the section 452, read with section 114 of IPC, the sentence ordered was one year rigourous imprisonment and Rs.500/- fine, in default of payment of fine, further 15 days simple imprisonment. Further, for the offence under section 504, read with section 114 of IPC, 3 months rigourous imprisonment, and the sentence for section 506(2) with section 114 of IPC, ordered six months rigourous imprisonment, while for the offence under section 3(1)(x) of the Atrocities Act, the punishment is for one year rigourous imprisonment and Rs.500/- fine and in failure to payment of the fine, one month simple imprisonment.

3. Appellant no.1 died during the pendency of the appeal. Thus, the appeal stands abated against appellant no.1. It has been submitted that appellant no.4 was juvenile at the time of alleged offence.

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4. The case against the accused as alleged can be briefly laid down as under:-

4.1 Original complainant – Surajben Sardhanbhai Parmar resident of Jagatpur Taluka Dascroi, filed a criminal complaint on 29.5.2004 alleging that 10 years prior, accused no.1 had borrowed an amount of Rs.10,000/- from her mother-in-law, Ramiben Jenabhai Parmar, as there was an occasion of marriage ceremony of daughter of accused no.1. Inspite of repeated demands, the borrowed money was not repaid. It is stated that accused no.1 sold his land on 24.5.2004, so the complainant demanded the borrowed amount from accused no.1. It is alleged that accused no.1 got excited and retorted saying, 'what amount and what the talk' and gave threat to kill if the amount was demanded. It was further alleged that the complainant and others got frightened and dared not to say anything.

4.2 It is alleged in the complaint that on the same day, i.e. on 24.5.2004 at about 10.00 PM, accused nos.1 and 2 came with sticks and started hurling abuses loudly and dragged

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the complainant out of her house. It is alleged that accused no.1 gave a stick blow on the waist and accused no.2 gave a stick blow on the right hand and also gave pushes with stick on her right leg. It is also alleged that accused nos.3 and 4 who had also come there were standing outside the house, gave fist and kick blows to the complainant.

4.3 It is stated that the complainant raised alarm and her husband Sardhanbhai and neighbour, Ashokbhai Sombhai Parmar came there, intervened, to save her from further beatings. It is alleged that while going, the accused persons used abusive/insulting language, referring to their caste gave threat to kill, in case of demanding money.

5. Learned Senior Advocate Mr. J.M. Panchal assisted by learned advocate Mr. K.J. Panchal submitted referring to charge at Exh.4, that the dispute as alleged was about some monetary transaction, which had taken place ten years ago, thus, learned Senior Advocate Mr. Panchal submitted that the dispute was not because that the accused were of Scheduled Caste. Learned Senior Advocate Mr. Panchal has submitted that there would not be any case of disregard with the caste. Had it been so, there

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would not have been any monetary transaction with the mother. Advocate Mr. Panchal submitted that as per the charge, accused no.1 refuted the demand of money, which itself shows that the incident had nothing to do with the caste and prima facie, there was no offence under the Atrocities Act.

5.1 Learned Senior Advocate Mr. Panchal, referring to the medical evidence at Exh.25 along with the deposition of the Doctor – PW6 – Maheshbhai Narottamdas Chauhan, submitted that the victim lady – injured complainant – Surajben Sardhanbhai Parmar had only named accused no.1 while giving the history before the Doctor and the quarrel was stated to be of money and had alleged before the Doctor that the accused no.1 at about 10:00 hrs. at night, had come to her house and beaten her with the stick. Learned Senior Advocate Mr. Panchal, thus, stated that the complainant had not named any other accused and as per the deposition of the Doctor as well as the certificate, the injured was conscious and cooperative and thus, learned Senior Advocate Mr. Panchal has submitted that being in full consciousness, she would certainly have

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given the names of all those who were involved in the beatings.

5.2 Learned Senior Advocate Mr. Panchal further submitted that as per the facts of the present case, the mother of the husband of the complainant had lended Rs.10,000/- to the accused no.1 and on 24.5.2004, in the morning, the husband of the complainant – PW3 Savdhanbhai had asked for money in the morning and thus, learned Senior Advocate Mr. Panchal submitted that there was no reason for the accused to return back for the dispute during the night for the same cause.

5.3 Learned Senior Advocate Mr. Panchal has submitted that the FIR itself becomes doubtful, while comparing the facts as stated in the complaint before the Executive Magistrate for the Chapter Case under Sections 107 and 151 of the Code of Criminal Procedure, 1973 (For short "Cr.P.C."). Referring to Exh.40, learned Senior Advocate Mr. Panchal submitted that the complainant is Kundanbhai Savdhanbhai – son of the present complainant who had alleged of the incident of the same date i.e. 24.5.2004 and as per the complaint at Exh.40, the father – Savdhanbhai

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in the evening on 24.5.2004 was passing by the house of the accused no.1, at that time, father – Savdhanbhai had demanded the money and there was verbal quarrel, thereafter, there was settlement on that very day before the representatives of the Village between the complainant of Exh.40 as well as the opponents who were shown as eight in number and submitted that as per the complaint, after the settlement, on the next day i.e. 25.5.2004, as alleged, there was verbal quarrel between the complainant and eight opponents and therefore, he had filed the complaint for maintenance of peace. Learned Senior Advocate Mr. Panchal, thus, stated that the application of the son of the complainant does not refer to any weapon, nor any complaint of causing any injury to the mother or dragging her out of the house. There is no case of assault or abuse or of insulting any of them by their caste. Learned Senior Advocate Mr. Panchal, thus, stated that the son of the complainant has only referred to verbal altercation and quarrel and that there was no question of beating or dragging the complainant out of the house. Exh.40 was registered on 26.5.2004 at Sarkhej Police Station. Learned Senior Advocate Mr. Panchal contended that Kundanbhai

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was not examined, while another son- Mahesh Savdhanbhai has been examined as PW5. Learned Senior Advocate Mr. Panchal has submitted that in Exh.40, in the Chapter Case, all the family members including three ladies are implicated.

5.4 Thus, raising a difference between the charge at Exh.4 and the application under Sections 107 and 151 of the Cr.P.C. Exh.40, learned Senior Advocate Mr. Panchal submitted that the charge was framed in the matter against four accused, while the Chapter Case was against eight of them.

5.5 Referring to the complaint Exh.19 dated 29.5.2004, learned Senior Advocate Mr. Panchal submitted that the delay has not been sufficiently explained. There is wide contradiction between Exhs.19 and 40. PW1, who is a Panch for the recovery of the bamboo sticks, has turned hostile. He had denied of any such production of bamboo sticks by the accused – Amaraji Nathaji and Yogeshji Amaraji. PW2 as also the Panch witness too has not supported the Panchnama at Exh.11 in connection with the bamboo sticks.

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5.6 Learned Senior Advocate Mr. Panchal submitted that the part of the body, where the injured complainant alleged to have received the beatings by the stick does not get corroboration from the injury certificate, where according to the husband, his wife was beaten at the waist, while no such injury is reflected in Exh.25. Further submitting and referring to PW4 - the injured complainant, learned Senior Advocate Mr. Panchal has stated that the injured should be reliable and truthful witness, she could not play with the life of the accused. Learned Senior Advocate Mr. Panchal has submitted that the injured complainant appears to have no regards for law. The evidence can be believed only if it is reliable and truthful. The examination-in-chief of PW4 does not say of any injury by the stick by the accused no.2 and the son of the complainant has been examined as PW5 who was staying on the upper floor, who does not say of seeing the incident. PW10 and PW11, Panchas of the place of incident do not refer to anything recovered from the place of the incident. The evidence do suggest that there were houses of Thakore community, Raval community and Harijan community in the neighbourhood, inspite of that, no one is examined. PW7–

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Ashokbhai Somabhai Parmar is an interested witness as he is related to the complainant from her parental side, while PW8 – Gangaben is the sister-in-law who had turned hostile and had not supported the case of the complainant.

5.7 Referring to the evidence of PW12, Probationer PSI, learned Senior Advocate Mr. Panchal stated that from the very beginning, the FIR disclosed the allegation under the Atrocities Act and therefore, submitted that the investigation by the Police Sub-Inspector is bad in law. The preliminary investigation becomes very vital under the Atrocities Act and no satisfactory clarification has been called, for delay in filing the FIR.

5.8 PW13 – Kantilal Laxmanbhai Chavda is the Deputy Superintendent of Police who received the charge of investigation on 30.5.2004 and according to his evidence, on that very same day, he had asked the complainant to go for the medical examination. Exh.35 – caste certificate was procured. Learned Senior Advocate Mr. Panchal, referring to the depositions of Defence Witnesses i.e. D1, D2 and D3, submitted that as per Exh.40, the Village people had gathered on 24.5.2004 and had settled the issue with

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regard to the monetary transaction and for that purpose, DW1 and DW2 were examined. There is no denial of verbal altercation, DW1 and DW2 are independent witnesses, they have not stated of any abuse with castiest remarks to the complainant or her family members. Referring to the deposition of DW3 at Exh.39, learned Senior Advocate Mr. Panchal submitted that on 24.5.2004, DW3 was ASI at Sarkhej Police Station and he had received the complaint of Kundanbhai, son of the complainant referred in Exh.40, the application was given on 25.5.2004, he had taken the statement of complainant – Kundanbhai and witness – Savdhanbhai, the father and had taken the preventive steps against the opponents and had clarified that when he recorded the statement, neither Savdhanbhai, nor Kundanbhai had alleged of any beatings or any insulting utterance with regard to their caste and that he stated that he had proceeded against eight persons under Sections 107 and 151 of the Cr.P.C. and after the arrest on 26.5.2004, he had filed Chapter Case no.175/04. In the cross-examination, the witness had referred to the facts stated in the complaint and had affirmed that in the application, there is no allegation of any incident of 10

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O'Clock night on 24.5.2004 and stated that he has no knowledge of the complaint filed by Surajben.

5.9 Learned Senior Advocate Mr. Panchal submitted that it is very hard to believe that the person would make a recovery of Rs.10,000/- which would be ten years due and that too, after the death of the mother, thus to bring pressure, a complaint has been filed to exploit the situation under the Atrocities Act and submitted that it would be a case of granting compensation to the accused since the complainant has exploited the provisions of the Atrocities Act and during the whole of the situation, they have freely added and subtracted the persons making false accusations, and stated that it is a case of extortion by the complainant herself and thus, stated that it was because of that reason, the investigation was to be directly handed over to the Deputy Superintendent of Police. Learned Senior Advocate Mr. Panchal has submitted that the accused no.4, a juvenile has also been falsely roped in the matter and submitted that the accused are required to be acquitted with exemplary cost.

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6. Countering the arguments, it was the submission of Ms. Monali Bhatt, learned APP that the complainant herself is the victim who had lodged the FIR. The corroboration could be found from the medical evidence as well as the oral evidence. The delay in filing the FIR was because of intervention of the village people, and that she was receiving threats. The circumstances explains the delay. The injury sustained by her has been explained by the Doctor in the medical evidence. There were threat by the villagers restraining her to file the complaint and thus, under the fear, there has been a delay. PW5, the son has corroborated the incident along with the husband PW3. PW7 is the independent witness who was present there, when the incident had taken place. Ms. Bhatt, learned APP has submitted that the medical history also corroborates the fact of the dispute regarding the money, which gets supported by the evidence of the husband–PW3–Savdhanbhai. Ms. Bhatt, learned APP has submitted that the offence under Section 452 of the IPC also gets proved, as the accused nos.1 and 2 had entered the house of the complainant and dragged her out and abused her in the

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public eye and thus, submitted that the conviction is just and proper.

7. In the background of the arguments and the facts and evidence, the case has to be examined from the view point as to whether the offence has been committed in a place within public view, as contemplated under the Atrocities Act. The ground is raised that appellant no.4 was juvenile at the time of the alleged offence. On 23.1.2020, the claim regarding the juvenility of the appellant no.4 was raised and as per Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Court had called upon to verify the school leaving certificate of appellant no.4 and the death certificate of the appellant no.1. The verification was done by the Police Sub-Inspector, Chandkheda Police Station, Ahmedabad City and the police had received a communication of the Principal of Swami Vivekanand Vidhyalay for the ex-student registered at G.R. no.463 and had affirmed the issuance of the school leaving certificate. The principal had also given a copy of the school leaving certificate, which was ordered to be verified as was placed by the learned advocate of the

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appellant no.4. Both are same and hence, the school leaving certificate produced by the learned advocate of the appellant no.4 was found true. The date of birth is shown as 14.7.1986 and hence, considering the date of incident as 24.5.2004, the age of the appellant no.4 would have been 17 years 10 months 10 days.

8. In the case of **Abdul Razzaq v. State of U.P.**, reported in **(2015) 15 SCC 637**, wherein it has been observed as under:-

> "9. The legal position on the subject is well settled. A person below 18 years at the time of the incident can claim benefit of the Act any time. Reference may be made to Section 7-A and 20 of the Act and Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 which are as follows:
>
> "Section 7-A. Procedure to be followed when claim of juvenility is raised before any court.—
>
> (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

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Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

"Section 20. Special provision in respect of pending cases.—Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

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Explanation.— In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

"Rule 12. Procedure to be followed in determination of age.—

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence

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whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person

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concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

11. In Hari Ram vs. State of Rajasthan and Anr., (2009) 13 SCC 211, it was observed:

"49. The effect of the proviso to Section 7-A introduced by the amending Act makes it clear that the claim of juvenility may be raised before any court which shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in the Act and the Rules made thereunder which includes the definition of "juvenile" in Sections 2(k) and 2(l) of the Act even if the juvenile had ceased to be so on or before the date of commencement of the Act.
(emphasis supplied)

50. The said intention of the legislature was reinforced by the amendment effected by the said amending Act to Section 20 by introduction of the proviso and the Explanation thereto, wherein also it has been

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clearly indicated that in any pending case in any court the determination of juvenility of such a juvenile has to be in terms of Section 2(l) even if the juvenile ceases to be so "on or before the date of commencement of this Act" and it was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when the alleged offence was committed.

(emphasis supplied)

51. Apart from the aforesaid provisions of the 2000 Act, as amended, and the Juvenile Justice Rules, 2007, Rule 98 thereof has to be read in tandem with Section 20 of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006, which provides that even in disposed of cases of juveniles in conflict with law, the State Government or the Board could, either suo motu or on an application made for the purpose, review the case of a juvenile, determine the juvenility and pass an appropriate order under Section 64 of the Act for the immediate release of the juvenile whose period of detention had exceeded the maximum period provided in Section 15 of the Act i.e. 3 years.

58. Of the two main questions decided in Pratap Singh case [(2005) 3 SCC 551: 2005 SCC (Cri) 742], one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date

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of commission of the offence.

59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted."

12. The above view was reiterated by a bench of three Judges in Abuzar Hossain alias Gulam Hossain vs. State of West Bengal, (2012) 10 SCC 489, as follows:-

"39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for

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discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh (2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431 and Pawan (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522 these documents were not found prima facie credible while in Jitendra Singh (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857 the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine

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the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hyper technical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised.

13. Again, in Union of India vs. Ex-GNR Ajeet Singh, (2013) 4 SCC 186, it was held:-

“19. The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of “juvenile” to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission

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of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence.

(See Jayendra v. State of U.P. [(1981) 4 SCC 149 : 1981 SCC (Cri) 809 : AIR 1982 SC 685], Gopinath Ghosh v. State of W.B. [1984 Supp SCC 228 : 1984 SCC (Cri) 478 : AIR 1984 SC 237], Bhoop Ram v. State of U.P. [(1989) 3 SCC 1 : 1989 SCC (Cri) 486 : AIR 1989 SC 1329] , Umesh Singh v. State of Bihar [(2000) 6 SCC 89 : 2000 SCC (Cri) 1026 : AIR 2000 SC 2111], Akbar Sheikh v. State of W.B. [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431], Hari Ram v. State of Rajasthan [(2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987], Babla v. State of Uttarakhand [(2012) 8 SCC 800 : (2012) 3 SCC (Cri) 1067] and Abuzar Hossain v. State of W.B. [(2012) 10 SCC 489.

14. Reference may also be made to Jintendra Singh alias Babboo Singh and Anr. vs. State of Uttar Pradesh, (2013) 11 SCC 193 laying down as follows:

“80. The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the court concerned will continue and be taken to their logical end except that the court upon finding the juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act. Applying that proposition to the case at

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hand the trial court and the High Court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. All that the courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.

81. The matter can be examined from another angle. Section 7-A(2) of the Act prescribes the procedure to be followed when a claim of juvenility is made before any court. Section 7-A(2) is as under:

"7-A. Procedure to be followed when claim of juvenility is raised before any court.—

(1) ***

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

82. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any court, upon such court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed shall be deemed to have (sic no) effect. There is no provision suggesting, leave alone making it obligatory for the court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence not

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> triable by an ordinary criminal court. Applying the maxim expressio unius est exclusio alterius, it would be reasonable to hold that the law insofar as it requires a reference to be made to the Board excludes by necessary implication any intention on the part of the legislature requiring the courts to set aside the conviction recorded by the lower court. Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7-A(2) of the Act."

9. On careful observation of the provision and the judgments referred herein, this Court has to now examine the effect of the judgment of the conviction and also to examine the evidence on record whether the conviction would sustain against the appellant no.4 who was juvenile on the date of the commission of offence.

10. The legal position with regard to the offence under Section 3(1)(x) of the Atrocities Act has been dealt with in the cases of **Swaran Singh v. State, (2008) 8 SCC 435** and **Hitesh Verma v. State of Uttarakhand & Anr., (2020) 10 SCC 710**.

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Section 3(1)(x) of the Atrocities Act, which has stood prior to the amendment vide effect 26.1.2016, reads as under:-

> "(x) intentionally insults or intimidates with intent to humiliate a member of a Schedule Caste or a Scheduled Tribe in any place within public view;"

11. In the case of **Hitesh Verma** (supra), it has been observed as under:-

> "14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as Swaran Singh v. State, (2008) 8 SCC 435 through Standing Counsel & Ors. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view."

12. Here in this case, the place of offence has been described under Panchnama Exh.31. PW10 and PW11 are the panch witnesses who have been examined. Both are neighbours of

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the complainant and PW3 – Savdhanbhai and of the same community. The place of offence was shown by PW4, the complainant – Surajben Savdhanbhai. As noted in Exh.31, the place of offence is the backyard of the residential house of the complainant and it is noted that from the backyard, she was dragged in the Veranda of the house. The house falls on the road of Harijanvas.

13. In the case of **Swaran Singh** (supra), the distinction has been made between the expression "public place" and "in any place within public view". It was held that if the offence is committed outside the building i.e. in a lawn outside the house and the lawn can be seen by someone from the road outside the boundary wall, then, the lawn would certainly be a place within the public view.

14. Here in the present case, the place of offence was shown by the complainant as the backyard covered by net. From the backyard, the complainant was dragged in the Veranda. The further description shows that the first house in the Harijanvas is of the complainant, which is having a north facing door. Initially, there is Veranda, then a room followed by a kitchen and backyard covered with net. It is

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also noted that there is also an access from the backyard of the house. It also further describes that near the Veranda, there is 3 ft. Ota. After the steps on the northern side, there is 8 ft. RCC road of Harijanvas with east-west direction. Leaving that road on the northern side, there is an open area. Thereafter, there is a road towards Thakorvas.

15. It is further described that on the southern side after the complainant's house, there is a wall of the room belonging to accused – Amaraji Nathaji Thakore. The room was found in closed condition.

16. The injured complainant – PW4 – Surajben Savdhanbhai Parmar stated in her deposition that on 24.5.2004 at about 10:00 p.m., while she was in the kitchen, at that time, accused no.1 – Amaraji and accused no.2, his son – Yogeshbhai both came in the kitchen and dragged her out in the Veranda of her house and at that time, they had beaten her. The place, as could be noted, is the veranda of the house, which contains a door adjoined with 3 ft. Ota. The evidence of the witnesses would be required to be examined to find out whether the act alleged was in "a

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place within public view", as expressed in Section 3(1)(x) of the Atrocities Act.

17. Learned Senior Advocate Mr. Panchal has submitted that the witnesses who have been examined in the present matter are all relatives and no independent person from Thakorvas has been examined, which is near to the Harijanvas road. Learned Senior Advocate Mr. Panchal has drawn attention of the Court that there was no person from the public who could independently state of any such incident to have taken place.

18. The accused have examined DW1 – Amarsinh Bhalaji Thaker. He has stated of knowing PW3, PW4, PW7, PW8 and all the four accused since they are all residing in the Village. DW1 has affirmed of dispute regarding the money between the complainant and the accused. The witness-DW1 stated that the Panch of the Village had gathered, where PW3 – Savdhanbhai had informed the Panch that he was demanding money from the accused, while the accused have denied the same. DW1 stated that the Panch had decided to give Rs.10,000/- to the complainant and

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Savdhanbhai, the money which was borrowed by the accused – Amaraji Nathaji. DW1 stated that such a decision was taken to see that in future, no such dispute arise between the parties. DW1 stated that the money was given by the accused. Before the Panch, there were Matarbhai Dhodabhai Parmar, Chamanji Somaji Thakore, Chunilal Bhalaji Thakore and brother-in-law of PW3. In the cross-examination, DW1 stated that he has no personal information about the incident and he had come to know that the incident had taken place regarding some monetary transaction. He was not present during the payment of money, nor any transaction has taken place in his presence. He affirmed that the accused belonged to his community and further stated that no writing was executed in presence of the Panchas for the payment. From the evidence, the fact that there was dispute regarding money gets proved.

19. The incident had taken place on 24.5.2004, while the complaint at Exh.19 came to be registered on 29.5.2004. There is a delay of almost five days. The complainant, while explaining the delay in filing the FIR, stated that after her

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treatment at Sola Hospital, on the next day, the village representatives had instructed her not to file any case and asked her to settle the matter. The complainant in Exh.19 stated that thus, she had not filed any case, inspite of that, since all the four accused often gave threats to beat them, were publicly insulting them and therefore, on that day, she had come to file the complaint. The fact of settlement gets corroborated by the evidence of DW1. The evidence of the complainant confirms that something had transpired before the Village Panch. Delay in filing FIR looses the advantage of spontaneity since it has the risk of exaggerated account or concocted story as a result of consultation and deliberation. Promptness in lodging the FIR is an assurance regarding the truth of the informant version.

20. In the case of **Jai Prakash v. State of Bihar, (2012) 4 SCC 379,** it has been observed as under:-

> "12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was

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> committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

21. The aspect, which becomes noticeable by the evidence of PW9 – Vishnubhai Prajapati who is a PSO that on 29.5.2004 at Sarkhej Police Station, the complainant had gone to give her complaint. The complainant had informed that accused no.1 – Thakarji Amaraji of their Village had borrowed Rs.10,000/- from her mother-in-law – Ramiben during his daughter's marriage and as they came to know that he has received money on selling his land and therefore, they had gone demanding the money. According to the complainant, accused no.1 got angry and he did not pay the money and therefore, they returned back. Thereafter, in the evening at 22 hrs., Amaraji (A1), Yogeshji (A2) came with stick and dragged the complainant –

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Surajben from the house and brought her out and gave blows with stick, at that time, Ketanji (A4) and Dhudaji (A3) gave her kick and fist blows and since she started shouting, the witnesses came there. Before the PSO, it was stated that the accused had abused alleging about their caste stating that "at present, they are leaving from there and if they are found alone somewhere, they would be killed." PSO took the complaint accordingly and gave the further investigation to the Police Sub-Inspector – Shri Vyas. The witness identified Exh.19, the complaint, who according to him, was written down, as stated by the complainant. Exh.29 is the report produced on record to support the say that the complaint was handed over to Shri Vyas. PSO. In the cross-examination, the witness has affirmed of having not inquired about the delay in giving the complaint and he also affirmed that after hearing the complainant, he found it to be of serious nature.

22. The fact of using abusive words and insulting them by their caste got disclosed in the complaint itself. However, the witness – PSO had not forwarded the further

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investigation to the Deputy Superintendent of Police as mandated under the Atrocities Act.

23. Here the complaint filed before the PSO on 29.5.2004 was under Sections 323, 452, 504, 506(2) and 114 of the IPC and section 3(1)(x) of the Atrocities Act. The complaint was both under IPC as well as under the Atrocities Act. PSO – PW9 handed over the investigation to PW12 – Bhargav Jayantilal Vyas who was serving as Probationer Police officer at Sarkhej Police Station. During the period of his investigation, he had drawn the Panchnama of the place of offence at Exh.31. The Panchnama was drawn on 29.5.2004 between 16.45 hrs. to 17.15 hrs. PW1 – Probationer PSI after the Panchnama, made inquiry about the accused on the very same day, and in his deposition, he states that though he found complaint serious in nature, he had not informed in writing to his superior officer - Deputy Commissioner of Police, Assistant Police Commissioner, and has voluntarily stated that PSO after receiving the complaint had informed the Superintendent of Police and Deputy Superintendent of Police by wireless message. He affirmed that the investigation under the

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Atrocities Act can be conducted by the Deputy Police Commissioner and Assistant Police Commissioner.

24. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 came in force on 31.3.1995. Rule 7 lays down about the investigating officer who is authorized to conduct the investigation. Rule 7 is reproduced hereunder:-

> "7. Investigating Officer.–
>
> (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director–General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.
>
> (2) The investigating officer so appointed under sub–rule (1) shall complete the investigation on top priority and submit the report to the Superintendent of Police, who in turn will immediately forward the report to the Director–General of Police or Commissioner of Police of the State Government, and the officer– in–charge of the concerned police station shall file the charge–sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge– sheet.).

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> (2A) The delay, if any, in investigation or filing of charge–sheet in accordance with sub–rule (2) shall be explained in writing by the investigating officer
>
> (3) The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name of the Department may vary from State to State) to the State Government or Union Territory Administration, Director of Prosecution, the officer–in–charge of Prosecution and the Director–General of Police or Commissioner of Police in–charge of the concerned State or Union Territory shall review by the end of every quarter the position of all investigations done by the investigating officer."

25. In the case of **State of Madhya Pradesh v. Chunnilal @ Chunni Singh**, reported in **2010 (1) GLR 260**, it has been observed in Paragraph 6 as under:-

> "6. By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of

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> the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence."

26. Here PW12 – Probation Police Sub-Inspector – Shri Vyas, after conducting the Panchnama at Exh.31 on 29.5.2004, states that though he had found the offence to be of serious nature, he had not informed the superior officer himself and clarified that the PSO had given a wireless message to the Superintendent of Police and the Deputy Superintendent of Police. However, the PSO himself does not state of any such wireless message. Whether the drawing of Panchnama at the place of offence becomes prejudicial to the accused is required to be examined, since the investigation of the place of offence is not conducted by the authority who was empowered and duty bound to

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investigate the place of offence under the Atrocities Act and more specifically, when the offence was registered under Section 3(1)(x) of the Atrocities Act, it would have been incumbent on the authorized Deputy Superintendent of Police to investigate the place of offence and further such Panchnama is required to be drawn in presence of independent and reliable Panchas. Prior to calling any person as Panch for the place of offence, the Investigating Officer is required to examine the credibility of the Panch. Independent and respectable witnesses from the locality are required to be called. The Panchas of Exh.31, Panchnama of place of offence are Punambhai Ishvarbhai Parmar and Ganpatbhai Modibhai Parmar, both are from the same community and neighbour of the complainant and the witnesses. Place of offence becomes vital since under Section 3(1)(x) of the Atrocities Act, the analysis of evidence would be to examine of intentional insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view. Rule 7, therefore, mandates that the Deputy Superintendent of Police should be an experienced person with the sense of ability and justice to perceive the

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implications of the case and investigate along with right line within the shortest possible time. Rule 7, therefore, clearly mandates that such investigation should be by the person not below the rank of Deputy Superintendent of Police. In relation thereof, the delay in filing the complaint also becomes fatal, since the investigation is to be completed within shortest possible time. Since the part of the investigation of Exh.31 was done by the Probationer Police Sub-Inspector and though he had the knowledge that the offence was serious in nature, he had not cared to inform the superior officer in the rank of Police Commissioner or Assistant Police Commissioner. If the Probationer PSO evidence is to be believed, and when the Probationer Police Sub-Inspector had the knowledge of a wireless message to the Deputy Superintendent of Police by PSO, then he ought not to have investigated the place of offence, nor should have inquired about the accused on that day. The Deputy Superintendent of Police – Kantilal Chavda – PW13 was handed over the investigation on the next day i.e. 30.5.2004.

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27. The investigation with the Probationer Officer – PW12 was only for a day. It cannot be concluded that the investigation for one day was towards the sections under IPC.

28. PW9 – PSO had handed over the investigation to PW12 – Bhargav Jayantilal Vyas who on 29.5.2004 was serving as a Probationer PSI at Sarkhej Police Station who affirms that he had received the report of investigation from the PSO. He visited Jagatpur Village and called two panchas from nearby area and had drawn Exh.31, the Panchnama of the place of offence. In the cross-examination, he has affirmed that he had not asked for any clarification from the complainant, about the delay in filing the complaint. Experienced Deputy Superintendent of Police probably could have investigated on this line and would have inquired from the Village people - the village Panch about the meeting and the settlement and could have known about the actual incident. The Deputy Superintendent of Police ought to have again drawn the Panchnama of place of incident and could have overturn the Panchnama Exh.31. PW12 – PSI stated that he had visited the place of

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offence. Rule 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 refers to the duties of the Deputy Superintendent of Police on receiving the information of atrocity committed on the members of the Scheduled Caste or Scheduled Tribe. Rule 6 is extracted herein, which is about spot inspection by officers. Rule 6 reads as under:-

> "6. Spot inspection by officers.-
>
> (1) Whenever the District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of Deputy Superintendent of Police receives an information from any person or upon his own knowledge that an atrocity has been committed on the members of the Scheduled Caste or the Scheduled Tribes within his jurisdiction, he shall immediately himself visit the place of occurrence to assess the extent of atrocity, loss of life, loss and damage to the property and submit a report forthwith to the State Government.
>
> (2) The District Magistrate or the Sub-District Magistrate or any other Executive Magistrate and the Superintendent of Police/ Deputy Superintendent of Police after inspecting the place or area shall on the spot–
>
> (i) draw a list of victims, their family members and dependents entitled for relief;

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(ii) prepare a detailed report of the extent of atrocity, loss and damage to the property of the victims;

(iii) order for intensive police patrolling in the area;

(iv) take effective and necessary steps to provide protection to the witnesses and other sympathisers of the victims;

(v) provide immediate relief to the victims."

29. The evidence of the Deputy Superintendent of Police – Kantilal Laxmanbhai Chavda is at Exh.34 as PW13. According to his deposition, he was serving as Deputy Superintendent of Police, SC-ST Cell at Ahmedabad (Rural) and he received the complaint being CR no.112/04 under Sections 452, 504, 506(2) of the IPC and Section 3(1)(x) of the Atrocities Act. He took over the investigation from B.J. Vyas – PW12 on 30.5.2004. He recorded the statement of the complainant PW4, her husband PW3, Rashmikaben, wife of Ramesh Savdhan Sombhai and Gangaben – PW8. The witnesses stated that the accused nos.1 and 2 produced the stick before the Panchas. He procured the medical certificate of the complainant and the caste certificate of the witness – Savdhanbhai Jenabhai. He stated that the place of offence Panchnama was drawn by

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ASO – V.J. Vyas. He identified Exh.25 as the medical certificate of the complainant from Sola Civil Hospital– Surajben Savdhanbhai Parmar, and Exh.35 as caste certificate.

30. In the cross-examination, the Deputy Superintendent of Police stated that at 09.00 a.m. on 30.5.2004, he received the charge of the investigation, then he inquired about the place of offence, he read the complaint and further stated that on the same day, the PSO had sent the complainant for treatment. He affirmed that he had not received any medical certificate of the complainant dated 29.5.2004. While this witness has denied of complainant's son– Kundanbhai Savdhanbhai giving an application at the same Sarkhej Police Station and in connection thereof, ASI–Laxmanbhai Bababhai, Buckle no.712 filing the proceedings under Section 151 of the Cr.P.C. against eight named persons. The Deputy Superintendent of Police has affirmed that he has taken the statements of only those people who belonged to community of complainant while had not recorded any statement of other community member.

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31. Here the evidence of this Dy.S.P. witness becomes vital to the aspect that with the delay the complaint dated 29.5.2004 was filed before the PSO and the PSO forwards the investigation to Probationer Police Sub-Inspector – Shri Bhargav Vyas, but Shri Bhargav Vyas has not made any attempt to procure the medical certificate. The Deputy Superintendent of Police – PW13 states that the PSO on the very same day had sent the complainant for medical treatment, while Exh.25 is dated 26.6.2004. The date does not get corroborated of the Deputy Superintendent of Police, if that has to be believed, and, when the complaint is dated 29.5.2004 then the medical certificate ought to have been of the same date i.e. 29.5.2004. The Doctor witness PW6 – Dr. Mahesh Narottamdas Chauhan in the cross-examination has admitted the fact that in the certificate Exh.25, there is an overwriting on the month of the date of examination, but denied the suggestion that there has been an overwriting on the time noted of examining the patient. Exh.25 is dated 26.6.2004 and the Doctor deposes that he had examined the patient on 25.5.2004 at 10.50 hrs., which is noted in the injury

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certificate. The important fact is that the Doctor had not brought the original treatment papers. He had produced Exh.25 in his deposition and according to his history, he has examined the patient towards MLC no.521 of 2004 and the injury which he observed, are noted as under:-

> "(1) 3 cm x 1 cm in size bruise on lateral surface of Rt forearm 80 m above wrist joint, (2) 3 cm x 1½ cm in size bruise on anterior surface of Rt forearm on lateral side 7 cm above the injury no.1, (3) 2 cm x 2 cm in size bruise on post surface of Rt forearm 5 cm above the wrist joint."

32. The history before the Doctor was that there was a quarrel for the money with accused no.1 and on 24.5.2004 at night at about 10.00 hrs., accused no.1 had come to her house and had beaten her with the stick. The history does not suggest of any other accused coming in her house or accused no.1 and accused no.2 dragging her from inside her house to the veranda. The patient was conscious and cooperative so she could have very well informed the name of all the accused, but had not even suggested that accused no.2 also had beaten with the stick. According to the Doctor, the injuries were simple in nature and could occur with blunt substance like stick. The doctor in his

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cross-examination stated that injuries except on the elbow could be caused by the patient on her own and can also occur if she get dashed or have fall on hard substance or get pressed by hard substance.

33. Learned Senior Advocate Mr. Panchal has stated that the injuries are all bruises and states that there is no rupture of the skin, nor was any bleeding.

34. "Contusions (bruises)", as noted in the book of the Essentials of Forensic Medicine and Toxicology by Dr. K.S. Narayan Reddy, Sixteenth Edition, 1997 on Page-140, read as under:-

> "A contusion is an effusion of blood into the tissues, due to the rupture of blood vessels, caused by blunt trauma. Contusions may be present not only in skin, but also in internal organs, such as the lung, heart, brain and muscles. The bruise is usually situated in the corium and subcutaneous tissues, often in the fat layer. In contusion, there is a painful swelling, and crushing or tearing of the subcutaneous tissues usually without destruction of the skin.

35. The complainant – PW4 – Surajben in the deposition had stated that she had given the complaint on 24.5.2004. It appears that there is some tying error in the initial part of

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the deposition as the later part clarifies that the complaint was filed on 29.05.2004. She stated in her deposition at Exh.18 as PW4 that her mother-in-law had given money to accused no.1-Amarabhai in her presence, which was Rs.10,000/- for the marriage of Amarabhai's daughter. They were often demanding the money back. Her mother-in-law too had demanded the money, but whenever her mother-in-law would go for the money, accused no.1 would assure payment of money after selling the land. She has further stated that during the lifetime of her mother-in-law, Amarabhai had never returned the money. Two years after the death of her mother-in-law, they had gone asking for money, at that time, Amarabhai (A1), abusing her husband Savdhanji by caste, threatened to kill him, if he asked for money. The complainant-witness stated that Amarabhai's son- Yogeshbhai told her husband that if he would come asking for money, he would be burnt alive.

36. This evidence of the complainant does not get corroboration from the evidence Exh.40, which is proceeding under Sections 107 and 157 of Cr.P.C. filed by the son of the complainant-Kundanbhai Savdhanbhai.

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This fact is also not corroborated by Savdhanbhai for whom it is alleged that Amarabhai (A1) and Yogeshbhai (A2) had threatened him. This evidence is not supported even by the evidence of another son of the complainant-Mahesh Savdhanbhai at Exh. 23 as PW5 and further, the complainant is not the eye-witness to this allegation as she has not stated that she had joined her husband when he had gone to Amarabhai (A1) asking for money. So this part of her evidence cannot be believed.

37. PW3-Savdhanbhai Jenabhai Parmar stated that on 24.05.2004, when he had again asked for the money, at that time, Amarabhai (A1) had come near his house in a completely inebriated state and started hurling abuses and abusing by his caste, asked him to do what he wants. Accused no.1 returned to his house and as per the witness, again accused no.1 came back with his brother and others who were, his son Yogesh, Dholaji Nathaji, the elder brother and brother's son – the juvenile. The witness stated that Amraji (A1) and Yogesh (A2) entered into his house, he was in the first room and at the rear side of his house, his wife was cleaning utensils. Accused no.1 (Amaraji) and

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accused no.2 (Yogeshji) held his wife from her hair and dragged her outside the house and started beating his wife with a stick. Witness-PW3 stated that accused no.1 had beaten his wife with the stick on the waist, she was having pain there. Accused no.2 had beaten his wife on the left hand, while other accused- Dholaji Nathaji and Ketanji Darshathji had given him kick and fist blows. According to him, at that time, they were at the front side of the house and when he raised alarm, his son-Mahesh and wife-Rashmi came from the upper floor and his neighbour Ashokbhai too had come there. The witness further stated that he tried to intervene to rescue his wife from the beatings, but they had given him kick and fist blows, at that time, other people from the vicinity came and rescued them. However, while going, the accused abusing with his caste, had threatened to kill him if he asked for money and burn putting him inside the house. The witness states that since the wife was injured, they had gone to Sola Hospital for treatment. This evidence with regard to the injury to the complainant does not find corroboration from the medical certificate-Exh.25. The husband of the injured-PW3 stated that his wife sustained injury on the waist and she was

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having pain, while no such injury is reflected in Exh.25. The pain is shown to be at the right arm. The witness also states that accused no.2 had beaten the complainant on the left hand while no injury is noted on the left hand of the complainant in Exh.25.

38. The witness PW-3 also becomes doubtful and unreliable since no complaint has been filed on the date of the incident, i.e. 24.5.2004, though he states that he had gone for the treatment. The witness evidence becomes unreliable even on the fact that he is the witness in the complaint Exh.40 filed on 26.5.2004, where the complainant does not state of abuse or beatings. Even if the statement of the injured complainant is to be believed, that they had gone the next morning for treatment at Sola Civil Hospital, then, the complaint was required to be filed on 25.5.2004. According to PW3, he had even sent the complaint to the authorities – Collector, Home Department, Sarkhej Police Station and Social Welfare Department by Registered Post A.D. No such acknowledgment receipt had been produced.

39. If such a complaint was received by the Police Station, such fact would have been revealed by the PSO of Sarkhej

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Police Station-PW9. The clarification, which he gives for the delay, is that since he had not received any reply from any of the authority, on 29.05.2004, they had gone personally to Sarkhej Police Station to give the complaint and at that time, Surajben was with him and both of them had given the complaint to the police. It is not the case of the complainant that PSO denied to register the complaint. Rule 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 refers to the action in case of refusal to register the offence. Rule 5 is reproduced hereunder:-

> "5. Information to Police Officer in-charge of a Police Station.
>
> (1) Every information relating to the commission of an offence under the Act, if given orally to an officer in-charge of a police station shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be maintained by that police station.
>
> (2) A copy of the information as so recorded under sub-rule (1) above shall be given forthwith, free of cost, to the informant.

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> (3) Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information referred to in-sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by that police station."

40. As argued by learned Senior Advocate Mr. J.M. Panchal, what has been addressed in the application to the authorities has not been known to the accused, thus, had no chance to contradict the same. In the cross-examination, the witness PW3 had stated about the monetary transaction with his mother and they had often asked for return of money from accused no.1.

41. PW3 affirmed about the doors on the rear and front of the house. The incident, which occurred on 24.05.2004, was for 5-10 minutes and has also stated that if such incident happens and if someone raises an alarm, then the people staying opposite the house and in nearby vicinity would

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certainly know about it. He has affirmed that he has not stated in his statement before the police that the accused while leaving the place, had abused him by his caste and had threatened to kill him if he would demand the money and would burn the house putting him therein. He states that when his mother had demanded the money, the accused had informed that he would pay back after selling the land.

42. Very interesting to note that even this witness PW3 affirmed of his son Kundan giving a complaint at Sarkhej Police Station, but denied of any statement recorded by the Police Station in connection with the complaint. The witness has not brought on record the medical certificate of his treatment, though he affirms of taking such treatment for the incident as stated to have occurred at 10 O'clock night on 25.04.2005.

43. As referred, Exh.40 is the complaint by the son-Kundanbhai against eight members of the accused family which is dated 26.04.2005 at Sarkhej Police Station. DW1-Amarsingh Rathore at Exh.37 and DW2 Chamanji Somaji at Exh.38 had stated about the settlement by the panchas

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in connection with the monetary transaction, while DW3-Laxmansinh Rana has given the deposition with regard to the complaint given by Kundan Savdhanbhai, where the witness DW3 has specifically stated that Kundan has not referred to any beatings on 24.07.2005, nor had he stated in the complaint of any casteist slurs.

44. PW5 is the son of the PW3-Savdhanbhai, while PW7 Ashokbhai is the neighbour and a relative from matrimonial side of the complainant and PW8-Gangaben Parmar is the sister-in-law of the complaint, who is the wife of younger brother of Savdhanbhai. Witnesses are related to the complainant, they are interested witnesses.

45. The deposition of PW8-Gangaben refers to the date as 20 and year as 2004, the witness does not recollect the month. According to the witness, there was a quarrel between Savdhanbhai and the accused no.1-Amarabhai and his son-accused no.2-Yogesh. At the time of incident, she was ill, so was sleeping. After hearing the shouts, she came out and when she reached the place of offence, she came to know that Amaraji (A1) and Yogeshji (A2) had beaten the complainant with a stick, who had sustained

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injury on the right side of the body. According to this witness, her sister-in-law (PW4) and the accused were insulting each other. She does not remember of any incident, in which, the brother-in-law Savdhanbhai had sustained grievous injuries. She does not know the quarrel, she does not remember of any stick in the hands of the accused. The witness does state of any casteist remarks by any of the accused. Since she did not support the prosecution case, she was declared hostile.

46. The son-Maheshbhai Savdhanbhai Parmar is not the eye witness to the incident who was examined as PW5. He was on the first floor of his house. He came down with his wife and said that his mother was crying and according to his evidence, his mother on her right leg and right arm had received injury, but had not given any further description of other injury in the evidence. He further states that his father had informed him that the accused had given him a push. However, the said fact does not get corroborated by the evidence of the father who alleges of receiving kick and fist blows. There is no medical evidence to support the say of the father.

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47. The abusive language against the caste of the witness were alleged to have been uttered by all the accused while leaving the house, while as per PW5 son, he does not even remember the name of the person who had given beatings to his father. However, he states that the another person was Dolaji Nathaji (A3). As per PW5, the casteist slurs were spoken in his presence. The evidence of witnesses do not corroborate with each other. The statement of PW3 does not find corroboration with PW5. Another son Kundan had not stated of such incident before Sarkhej Police Station on 25.07.2004. While on 29.05.2004 by the complaint Exh.19, all such new facts are incorporated after delay of five days. Delay while giving such a complaint looses the value of the FIR Itself. Delay in filing the FIR often results in embellishment as well as introduction of a colored version or exaggerated story and the FIR looses it value and authenticity. PW8 does not support the version of PW3 and she has been declared hostile. It is not specifically alleged against individual accused of passing casteist remarks.

48. PW7-Ashok Somabhai Parmar is not the eye-witness. However, according to him at about 9 to 10 O'clock at

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night on 24.05.2004, he states that there was verbal quarrel at the house of Savdhanbhai. Therefore, he reached there and saw Surajben had received injury on the right hand and right leg. The witness states that accused no.1 and the accused no.2 had beaten her with the stick. The witness also states of casteist remarks and about threat to kill if they were found alone. The evidentiary value of this witness is to be examined by the corroborative evidence of others. Present witness is the relative of complainant.

49. PW4 - the complainant – Surajben Parmar at Exh.18 stated about the incident on 24.5.2004 that at about 10:00 p.m., she was working in the kitchen, at that time, Amaraji (A1) and Yogeshji (A2) both dragged her from the kitchen to the veranda (Aanganu), at that time, Amaraji (A1) had beaten her with the stick on her waist and Yogeshbhai (A2) on the right hand and leg, gave her pushes and therefore, she started screaming. She further stated that they started beating her badly, at that time, Ashokbhai Somabhai and her son who was on the terrace also came there and others from the vicinity also had come there, who saved her and her husband. This evidence of the complainant does not

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state about any beatings to the husband. The injury which had been caused by accused no.1 at the waist with the stick is nowhere reflected in Exh.25 - the medical evidence. Further, the complainant herself does not state of any injury by the accused no.2 with the stick. The injuries which get reflected in Exh.25 are the one which the Doctor – PW6 stated that they are simple injuries, which could be caused by sticks. Hence, the allegation against accused no.2 of giving pushes on the right hand and leg does not get corroborated by the evidence of Dr. Mahesh Chauhan and allegation of beatings with the stick on the waist attributed to accused no.1 also does not get corroboration from Exh.25, nor with the evidence of Dr. Mahesh Chauhan. The certificate Exh.25 does not state of any injury caused to the complainant by Yogesh (A2). Exh.25 is about the injury caused by accused no.1 with the stick. However, the attributed injury to accused no.1 – Amaraji is not reflected in the document at Exh.25. In order to further attribute the injuries to accused no.3 – Dhudaji Nathaji, complainant states that he too had come there and had given pushes and kick and fist blows and accused no.4-juvenile was also attributed with the kick and fist blows,

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but such injuries do not find place in the medical evidence Exh.25. The presence of accused nos.3 and 4 at the place of incident is shown after the complainant's son and Ashokbhai Somabhai and others had come there, the complainant does not get the support from the evidence of her son. The son – Mahesh stated that his mother had informed him that Amaraji Nathaji (A1) and Yogeshji (A2) had beaten her with the stick. Deposition does not state of any injury caused by accused nos.3 and 4 to the mother, while the father who was there, he informed the son Maheshbhai that he had received kick and fist blows from one Ketanji Dashrathji (A4) and another accused whose name he does not remember.

50. While the evidence of PW7 – Ashokbhai Parmar attributes the injury to accused nos.1 and 2 to have been caused to the wife of Savdhanbhai, the complainant on right hand and right leg, while no such beatings have been attributed by PW7 to accused nos.3 and 4, while PW7 stated that accused nos.3 and 4 were abusing them by their caste and threatening Savdhanbhai to kill him when they would meet him alone. By further providing the evidence, PW7 stated

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that the utterance was by all of them. There is no person individually named, addressing them by castiest abuse and threatening them. Accused no.4 is shown to be juvenile and accused no.3 is shown to be a person who had no eye visibility during night.

51. The evidence of all the witnesses do not corroborate each other, they are not consistent, they are uncertain. There was delay in filing the FIR and Exh.40, complaint by Kundanbhai Savdhanbhai on 26.5.2004 were the proceedings under Sections 107 and 151 of the Cr.P.C. against eight opponents. There are no such allegation of beatings or giving any casteist slurs. The only fact as was noted was of verbal quarrel on 24.5.2004 in the evening of accused no.1 with the father – Savdhanbhai when he had asked for the money. The complainant son Kundanbhai states that on that day, the Village people had gathered and there was settlement and thereafter, again on 25.5.2004, there was verbal quarrel between the applicant and eight of the opponents as shown in Exh.40 which includes the present 4 accused. In that matter, the witnesses cited were the complainant – Kundanbhai

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Savdhanbhai himself and father Savdhanji Jenabhai. Exh.40 thus clarifies that till 25.5.2004, there was no case of any beatings by the accused or any casteist remarks to Savdhanbhai Surajbhai. It appears that the complaint, which has been filed is to bring pressure on the family of the accused and the accused themselves. Exh.25, medical certificate also notes overwriting. There is a overwriting even on the time recorded for the examination of the injured complainant. In the history before the Doctor, except accused no.1, none have been named. While the Deputy Superintendent of Police who had investigated the matter, had stated that he had procured the certificate Exh.25 from Sola Civil Hospital. Exh.25 does not suggest that the patient had come with police yadi as the column is blank, while the Deputy Superintendent of Police has stated that the complainant was sent for the medical treatment by the PSO on the date of the complaint, which is 29.5.2004.

52. The evidence of beatings to the complainant does not get proved by the evidence of other witnesses. The medical evidence do not support the oral evidence. The version of

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all the witnesses are inconsistent. The learned Trial Court Judge has failed to appreciate the case in accordance with the evidence on record and has not gone in detail to analyze the evidentiary value of the oral evidence of the witnesses with the documentary evidence in the form of medical evidence as well as the deposition of the Doctor. The prosecution has failed to prove the offence under Section 323 of the IPC the evidence does not find consistency of all the witnesses. The delay in filing the FIR has gone fatal to the root of the case. The documentary medical evidence itself becomes doubtful since the date on which the Doctor had examined the injured - complainant does not get proved. Exh.25 has overwriting on the date and time. The medical examination date of the complainant does not get the support from the evidence of the Investigating Officer. Even the versions of all the witnesses with regard to injury to the complainant are contrary. The evidence, thus, for the conviction under Section 323 of the IPC cannot be believed.

53. The case under Section 452 of the IPC also becomes doubtful which is for house trespass for hurt, assault or

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wrongful restraint. The allegation of house trespass is against accused nos.1 and 2. However, in the medical evidence, there is no such history accused no.1 entering the house and hurting the complainant. The trespass allegation becomes doubtful even on the fact of the case that there is an access from the backyard of the house to enter the kitchen, where the wall of the premises of the accused is adjoining to that of the complainant. As per the Panchnama, there is a direct access. That access has not been used by the accused. The complainant as well as her husband stated that accused nos.1 and 2 had entered the house from the front door to reach to the kitchen. Accused no.2 has not been named in the history before the medical officer. In the same way, at Exh.40, there is no allegation of house trespass on 24.5.2004, nor on 25.5.2004. It is clearly on record that such facts have been created to allege the offence against the accused and since there is no independent evidence/witness supporting the case of the complainant, no reliance can be placed on the evidence of the witnesses, who are relatives of the complainant and are interested witnesses.

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54. The case under Sections 504 and 506(2) of the IPC and Section 3(1)(x) of the Atrocities Act cannot be said to be made out in the present case, since the evidence of the husband – PW3 – Savdhanbhai clearly states that he had not got it recorded in the police statement that the accused, while leaving their house, had abused them by their caste and had threatened to kill them in case of demanding the money and to burn him by putting him in the house. These allegations were made by the complainant alleging that the utterance by all the accused were made outside the house of the complainant, which does not find support from the evidence of PW3. The Panchnama of the place of offence had not been drawn by the Deputy Superintendent of Police. He had placed reliance on the Panchnama drawn by the Probationer Police Sub-Inspector – Exh.31. The Deputy Superintendent of Police has failed to further get the clarification from the Panchas of Exh.31 who, as noted hereinabove, are also interested persons since they are neighbours of the complainant. Whether the place at the Veranda as noted in Panchnama Exh.31 could be considered as falling in the "public view", would be a question of fact, which was to be

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proved by member of public who as per the complainant had also gathered there. There were people of Thakore community on the north and south direction of complainant's house, but none examined. The alleged utterance does not find support from evidence of PW3 as well as Exh.40. There is no independent person of the public who had been examined to state that they had heard such castiest remarks insulting the complainant or her husband. The veranda is a place which is attached to the house. As per the Panchnama, the house is falling on the road of Harijanvas. After that road, leaving certain area, there is a road towards Thakorevas. None have come forward to state that they being a member of public have seen such incident from the road on the veranda. The Panchnama Exh.31 is not supported by map drawn by the Probationer PSO with the help of expert, nor the Deputy Superintendent of Police had made any attempt to get the clarification of the place of offence through any sketch or map, nor has he himself drawn the Panchnama of the place of offence since the investigation with regard to the offence under the Atrocities Act should be by the Deputy Superintendent of Police. The Panchnama drawn by the

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Probationer Police Sub-Inspector thus cannot be relied upon as the evidence for investigation in connection with the provision under the Atrocities Act. Even otherwise, if at all the Panchnama is to be relied upon, the utterance by the accused of any such casteist remarks are not proved by PW3 as well as the son Kundanbhai Savdhanbhai through his application Exh.40.

55. The learned Trial Court Judge has failed to appreciate the sequence of events and has also failed to consider that though there was an application on 26.5.2004 for the proceedings as Chapter Case under Sections 107 and 151 of the Cr.P.C., by ASI of the same Police Station, then why and under what circumstances, the complaint alleging the incident of 24.5.2004 came to be filed. The learned Trial Court Judge has failed to consider this aspect that such allegations of beatings, injury and casteist remarks have not been made in the application Exh.40 and the said fact has been proved by the evidence of DW3 – Laxmansinh Rana at Exh.39 who has very categorically stated that there was no such statement by Savdhanbhai and even by Kundanbhai as well as Savdhanbhai of any beatings or

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casteist remarks. The prosecution had failed to prove the offence under the Atrocities Act. The offence under Section 3(1)(x) of the Atrocities Act was not proved during the trial. The learned Trial Court Judge has failed to appreciate the evidence in its right perspective. The evidence has not been analyzed properly by detailing the evidence and appreciating in accordance with law. Since this Court does not find evidence against all the accused including the juvenile to uphold the conviction, there would not be any necessity for referring the matter of the appellant no.4 to the Juvenile Board. The conviction and sentence is not proper and just.

56. So far as the argument with regard to the compensation for the appellant - accused on the ground of false accusation is concerned, it requires to be noted that the matter is under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989. Compensation is primarily meant for the victims of the atrocity, not for those falsely accused. The Act focuses for providing relief and rehabilitation to the victims of the atrocity. It does not offer explicit provision for compensating the individuals who are

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falsely accused. If an individual is falsely accused and later acquitted, they may have ground to pursue legal action for defamation or malicious prosecution depending on the specific circumstances. The Act does not make specific provisions for the false accusations, but the Act outlines various forms of reliefs, including monetary compensation, restoration of property and other support services for the victims of atrocity. If an individual can prove that the accusations were false, malicious and caused them damage, they may be able to seek compensation through a separate Civil Suit for defamation of malicious prosecution and this would require demonstrating that the accuser acted with malice and without reasonable and probable cause. The Act does not contain provisions for punishment of false witnesses and those who fabricate evidence. The Atrocities Act focuses on providing relief to the victims of the atrocity.

57. The Courts of India have judicially addressed the issue of misuse of anti-atrocity laws in several instances. People tend to use as a tool to fulfill their ulterior motive like blackmailing and settling the disputes, be that monetary or

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any other political kind of dispute etc., while Parliament has denied coming up with any safeguarding measures or provision to prevent this misuse on the ground that it will destroy the very essence of the Act for which it has been enacted.

58. In the result, the appeal is allowed. The conviction and sentence dated 4.3.2006 by the Fast Track Court, Ahmedabad (Rural) in special atrocity case no.4 of 2004 is quashed and set aside. Since the case against the appellant no.1 had been abated, rest of the appellants are acquitted. Record and proceedings be sent back to the concerned Court.

(GITA GOPI,J)

Maulik/Caroline