
(2008) 04 GUJ CK 0008
In the Gujarat High Court
Case No : Criminal Appeal No. 671 of 1994

Ashokbhai Bhupatbhai Pethani

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 323
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2008) 04 GUJ CK 0008

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Harin P. Raval, for the Appellant; P.D. Bhatte, APP for Opponent 1,
for the Respondent

Judgement

Akil Kureshi, J.—The appellant was accused No. 1. He was convicted for offence punishable u/s 323 of the Indian Penal Code and Section 3(1)(x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act (here-in-after referred to as "the Atrocities Act"), by the impugned judgement and order dated 13.5.1994, rendered by learned Additional Sessions Judge, Gondal in Sessions Case No. 102/1993.

2. Originally charge was framed against the appellant as well as six other accused at exh.5. It was alleged that on 28.4.1992 at about 9:45 at night the accused with common intention had assaulted the complainant near Premasagar Hotel road. The appellant, in particular, had beaten the complainant Jayantilal, also abused him, had hit him with soda water bottle and also bitten him on his back.

3. Jayantilal Ranabhai-PW1 was examined at exh.15. He stated that he belongs to Harijan Vankar community. On 28.4.1992 at about 9:30 to 9:45 at night, he was going to a Pan shop by name Premasagar. The appellant was sitting there on a bench. He and the appellant had an argument about the appellant not

removing his leg which was coming in way of the complainant. The appellant got angry started abusing the complainant and started beating him giving fist and kick blows. The appellant hit the complainant with a soda water bottle in the jaw causing a swelling there. Some four five more people joined him in beating the witness. The appellant also bit the complainant on the back. He identified the accused before the Court. At that time his friends Ramnik, Rajesh, Ramesh etc. came and stopped him from further beating. He stated that other than this, no other incident had taken place.

3.1 In the cross examination, he stated that hearing commotion several people gathered there. He admitted that his friends came after the incident when he started shouting.

4. Rameshbhai Jasabhai-PW2 was examined at exh.16. He stated that on 28.4.1992 when he was sitting in the chowk near Premsagar hotel, there was quarrel at the hotel. He and other friends Manji, Puna, Nandlal, etc. rushed there and saw that some five people were beating the complainant including the appellant herein. They saved the complainant from further beating and took him home. On the way, the complainant told him the reason for the fight.

4.1 In the cross examination, he admitted that in the chowk at that time many people were sitting. There were many other shops and residential house in the area. He denied that he had not seen the accused beating up Jayantilal and upon hearing the noise, he had rushed there. He however, stated that other than five persons named by him, he had not seen anybody else beating up Jayantilal.

5. Manji Puna-PW3(exh.17) stated that on the date of incident at about 10 O' Clock, he was sitting in the chowk of Premsagar hotel where Jayantilal told him that he was beaten up by the accused. The witness stated that he had seen them fighting, but other than that, he had not seen anything else. Similar account is also given by Rajesh Maganbhai-PW4(exh.18).

6. Dr. Hiralal Gordhanbhai Makadiya-PW6 was examined at exh.22. He was the medical officer at the Primary Health Centre, Patanvav. He had examined the complaint on 28.4.1992. He had noticed following three injuries on him and issued certificate accordingly:

1) Abrasion of 1 cm. x 1 cm. on Lt. Little toe of Lt. Leg. This injury may be due to frict on with hard-rousht surface and may require 7-8 days for healing.

2) Two Abrasion of 2 cm. X 1/2 cm. on back of Rt. chest on Lower bone. There is 1/2" space between two Abrasion. It is circular infarm.

This injury may be due to teeth bite and may require 7-8 days for heading provided no complication occur.

3) Bruices of 1/2" x 1/2" on Lt. side cheek. St is red in colour. This injury may be forsdued by blow with rough and hard substance and may require 7-8 days in healing.

7. This is the nutshell was the evidence led by the prosecution.

8. As already noted, the appellant herein original accused No. 1 was the only accused who was convicted by the learned Judge. Rest of the accused were acquitted. The appellant was convicted for offence punishable u/s 323 of the Indian Penal Code and Section 3(1)(x) of the Atrocities Act.

9. Insofar as, conviction u/s 3(1)(x) of the Atrocities Act is concerned, I find that there was no evidence on record whatsoever to sustain the said charge. Jayantilal injured complainant himself never stated that the appellant or any other person intentionally insulted or intimidated him with intent to humiliate him in any place within the public view. It is true that the witness did say that he was beaten up by the appellant and was also abused. However, there is no reference to the caste or the community to which the complainant belonged. No where has it been stated in his deposition or in the deposition of any of the other witnesses that any words used or act committed so as to intentionally insult or intimidate the complainant with intent to humiliate him as a member of Schedule caste or Schedule tribe. There are only general allegations of assault and of being abused. Simplicitor such allegations without there being any reference whatsoever to the caste or community to which the complainant belongs, would not in my opinion form the basis for offence u/s 3(1)(x) of the Atrocities Act. To bring home charge under the said Section, prosecution had to establish that the complainant was intentionally insulted or intimidated with intent to humiliate him.

10. Neither in the evidence of the complainant nor from the evidence of any other witnesses, such ingredients are found. Charge u/s 3(1)(x) of the Atrocities Act therefore, must fail.

11. Insofar as charge u/s 323 of the Indian Penal Code is concerned, however, I find that there was sufficient evidence to hold the appellant guilty of such offence. In his deposition, he clearly stated that on 28.4.1992 between 9:30 and 9:45, he was beaten up by the appellant. On jaw, the appellant had given blow with a soda water bottle. The appellant also bit the complainant on back and gave kick and fist blows. Other witnesses reached the spot shortly there, after hearing the commotion and saved the complainant from further beating. This evidence is corroborated by Dr. Hiralal Gordhanbhai Makadiya-PW6(exh.22) who had examined the complainant on 28.4.1992 and found multiple injuries on his body for which certificate exh.23 was issued.

12. In that view of the matter, I find that learned Judge committed no error in convicting the appellant for offence punishable u/s 323 of the Indian Penal Code.

13. As noted, he was sentenced to three months of rigorous imprisonment and was directed to pay fine of Rs. 200/-. The incident took place in the year 1992. 14 long years have passed since then. Appellant himself was relatively young man when the incident took place. After such a long gap of time, it would not be appropriate to direct him to serve out the jail term. Instead some reasonable compensation to the complainant would meet with ends of justice.

14. In the result, instead of sentencing the appellant to imprisonment and imposing fine, he is directed to pay compensation of Rs. 15,000/- to the complainant.

15. In the result, appeal is disposed of by giving following directions:

1) Conviction and sentence of the appellant u/s 3(1)(x) of the Atrocities Act are set aside.

2) Conviction of the appellant u/s 323 of the Indian Penal Code is confirmed.

3) Instead of sentence and fine imposed by the trial Court, the appellant is directed to pay compensation of Rs. 15,000/- to the complainant.

4) Such amount shall be deposited by the appellant before the trial Court latest by 31.5.2008. Upon such deposit, it will be open for the appellant to withdraw the same from the trial Court.

16. The appeal is disposed of accordingly.