

(2011) 04 GUJ CK 0094
In the Gujarat High Court
Case No : Criminal Appeal No. 915 of 2000

Bhagabhai @ Shailesh Kumar Bachubhai	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 323, 504, 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10)

Citation : (2011) 04 GUJ CK 0094

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : R.D. Dave, for the Appellant; H.L. Jani, LD. Addl. Public prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The Appellant has preferred this Appeal against the judgment and order of conviction and sentence dated 29th August 2000 passed by the learned Additional Sessions Judge, Nadiad, in Special Case No. 106 of 1998, whereby the learned Judge has convicted the Appellant-accused under Sections 323 of the Indian Penal Code and sentenced him to undergo simple imprisonment for a period one year, and also imposed fine of Rs. 1,000/-, and in default of payment of fine, sentenced him to undergo simple imprisonment for a further period of three months whereas the original accused No. 2 was acquitted from the charges levelled against him.

2. It is the case of the prosecution that on 04th October, 1998 at about 09.00 hours, when the witness of the complainant was at near cross roads of primary school, the present Appellant-original accused No. 1 had given blow by handle of spade on his head, left ears and thus, injured the witness of the complainant. It is also the case of the prosecution that the original accused No. 2 has abused the complainant and witness by using words against their community. Therefore, a

complaint to the said effect was registered with Mehmdabad Police Station.

3. Thereafter, investigation was carried out and as sufficient evidence was found out against the accused persons, charge-sheet came to be filed on 17th December, 1998 against them in the Court of learned Sessions Judge, Nadiad for the offence punishable under Sections 323, 504 and 114 of the Indian Penal Code as well as u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Subsequently, Section 506(2) of the Indian Penal Code came to be added in the charge at Exhibit 7.

4. Thereafter, charge came to be framed against the accused persons at Exhibit 7 and the accused persons pleaded not guilty and claimed to be tried.

Thereafter, the trial was conducted before the learned trial Judge. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence.

5. Thereafter, u/s 313 of the Code of Criminal Procedure, 1973 further statements of accused persons were recorded. The accused persons have denied the case of the prosecution and submitted that they have been falsely involved in the case.

6. After hearing both the sides, the learned Additional Sessions Judge, Nadiad, by his judgment and order of conviction dated 29th August, 2000 passed in Special Case No. 106 of 1998, convicted the Appellant as stated above and acquitted the original accused No. 2 from the charges levelled against him.

7. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 29th August, 2000 passed by the learned Additional Sessions Judge, Nadiad, the Appellant hereinabove has preferred the present Criminal Appeal before this Hon'ble Court.

8. I have heard Mr. R.D. Dave, learned Counsel for the Appellant and Mr. H.L. Jani, learned Additional Public Prosecutor appearing on behalf of the Respondent-State.

9. The judgment and order of conviction and sentence is challenged on various grounds as mentioned in the memo of appeal and while arguing the present case, Mr. R.D. Dave, learned Counsel appearing for the Appellant, has divided his arguments in two folds. Under the first fold, he has attempted to carve out a defence that the evidence is inadequate to link the Appellant with the crime and the learned trial Judge has grossly erred in holding the Appellant guilty. Mr. Dave has also taken me through the evidence of prosecution witnesses and the documentary evidence and submitted that from the evidence produced on record it is established that the prosecution has failed to prove its case beyond reasonable doubt. Considering this defence, the Appellant ought to have been acquitted from the charges levelled against him. The second fold of argument is that the alleged wrong was committed in the year 1998 and at that point of time, he was 29 years old. Mr. Dave has also contended that the Appellant is a poor

person. He has contended that he is not arguing the matter on merits, but simply arguing the matter for the quantum purpose only. He has further contended that looking to the facts of the case as well as evidence produced on record, conviction imposed upon the Appellant is very harsh and therefore, some lenient view is required to be taken in the matter. He, therefore, contended that sentence imposed upon the Appellant may kindly be reduced.

10. Heard Mr. H.L. Jani, learned Additional Public Prosecutor for the Respondent-State. He has supported the judgment and order of conviction passed by the learned trial Judge. He has contended that looking to the charge framed against the Appellant, order passed by the learned Judge is absolutely just and proper. He has also read the documentary evidence produced on record and contended that learned trial Judge has not committed any error in convicting the Appellant-accused. He, therefore, contended that the present appeal is required to be dismissed.

11. I have gone through papers produced before me and the judgment and order passed by the learned trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned Counsel for the parties.

12. It appears that the incident in question had happened in the year 1998 and now after a period of 12 years, the present appeal is listed before this Court for final disposal. At the time of incident the Appellant was 29 years old. I have also considered the submission made by Mr. Dave that the Appellant is very poor person. Even, the prosecution has not examined any independent witnesses though the alleged incident has occurred in public place. Therefore, I am of the opinion that conviction imposed upon the Appellant is very harsh. Hence, if the sentence imposed upon the Appellant may be reduced, same would meet with the ends of justice. Even looking to the submissions advanced by the learned Counsel for the Appellant and circumstances of the case, sentence imposed upon the Appellant is required to be reduced and modified on the ground of sympathy also.

13. Hence, in view of the foregoing reasons, present appeal is partly allowed. The judgment and Order of conviction dated 29th August, 2000 passed by the learned Additional Sessions Judge, Nadiad, in Special Case No. 106 of 1998 is hereby confirmed; however, the judgment and order of sentence dated 29th August, 2000 passed by the learned Additional Sessions Judge, Nadiad, in Special Case No. 106 of 1998 is hereby reduced and modified to the extent that now the Appellant shall have to undergo simple imprisonment for a period of three months instead of simple imprisonment for a period of one year for the offence punishable u/s 323 of the Indian Penal Code. The rest of the judgment and order dated 29th August, 2000 shall remain unaltered. The Appellant is on bail. This bail bond shall stand cancelled. The Appellant is, therefore, directed to surrender himself before the Jail Authority within a period of four weeks from today, failing which the trial Court concerned is directed to issue Non-bailable

warrant against the Appellant to effect his arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.