

(2010) 09 GUJ CK 0074

In the Gujarat High Court

Case No : Criminal Revision Application No. 124 of 2000

Chintankumar Navinchandra Zaveri

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 114, 323, 504

Citation : (2010) 09 GUJ CK 0074

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : B.J. Trivedi and J.T. Trivedi, for the Appellant; Chetna Shah, APP for Respondent No. 1 and Thakkar Assoc., for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The petitioner is the original complainant. In this revision application he has challenged legality of the judgment of acquittal dated 30.12.1999 passed by the learned Judicial Magistrate, First Class, Botad in Criminal Case No. 458 of 1996.

2. Respondents Nos. 2 to 5 were the original accused. The offences alleged against them are punishable under Sections 323, 504 read with Section 114 of Indian Penal Code and Section 135 of Bombay Police Act. By the impugned judgment, the learned Magistrate acquitted all the accused.

3. Initially this revision application was admitted by this Court and was ordered to be heard with Criminal Appeal No. 409 of 2000 (State appeal against acquittal). Subsequently on 27.7.2001 the learned Single Judge of this Court, since had dismissed the State appeal as time barred, dismissed the present revision application also since the same was ordered to be heard along with State appeal. This order was carried in appeal by the petitioner before the Apex Court and the order dated 27.7.2001 was set aside and the proceedings were remanded for fresh consideration on merits by the Apex Court by an order dated

22.4.2002.

4. Though Record and Proceedings was called for from the trial court, it appears that due to passage of time, substantial portion of Record and Proceedings have been destroyed. Counsel for the petitioner is able to reconstruct part of evidence by producing the record, deposition of some witnesses which were available with the complainant. However, full record was not available before me.

5. Counsel for the petitioner submitted that the trial court committed a serious error in acquitting all the accused though there were eye-witnesses account of the alleged evidence. He, therefore, submitted that the revision application should be allowed.

6. On the other hand, counsel for the accused opposed the revision application contending that the scope of revision is limited; order of acquittal is recorded on the basis of evidence available, no case for interference is made out.

7. With the assistance of the learned Counsel appearing for the parties, I have perused the judgment under challenge and also the documents available. It may be noted that the alleged incident was of the year 1996, the learned Magistrate had, after full fledged trial, after recording the evidence of the witnesses found that there were major discrepancies in the eye-witnesses account. Panch witness had turned hostile. Notification under the Bombay Police Act was not produced. On all counts, therefore, the learned Magistrate was of the opinion that the charges levelled against the accused for the offences under Sections 323, 504 read with Section 114 of Indian Penal Code and Section 135 of Bombay Police Act are not proved.

8. In particular, I find that the complainant's evidence suffers from number of self-contradictions noticed by the learned Magistrate in the impugned judgment. There were no independent witnesses. The learned Magistrate, therefore, found unsafe to convict any of the accused.

9. Considering above aspects of the matter and considering the scope of revision against judgment of acquittal, I am of the opinion that no case for interference is made out. Considering all these aspects of the matter and the reasons indicated by the learned Magistrate for recording judgment of acquittal and the incident had taken place way back in the year 1996, I do not find it a fit case where revisional powers can be exercised. Hence, this Revision Application is dismissed. Rule is discharged.