
(2008) 03 GUJ CK 0027
In the Gujarat High Court
Case No : Criminal Appeal No. 1051 of 1993

Dhuliben	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 504, 506, 506(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2008) 03 GUJ CK 0027

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : M.A. Kharadi, for the Appellant; Punani, APP for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Appellant-Original accused, was convicted for offences punishable u/s 3(1)(v), 3(1)(x), 3(1)(xiv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989) (herein after referred to as "the Atrocities Act") by the learned Sessions Judge, Panchmahals at Godhra in Sessions Case No. 19 of 1992. She was also convicted for offence u/s 506(1) of IPC. She was sentenced to S.I. for six months under the Atrocities Act and for offence punishable u/s 506 of IPC she was sentenced to S.I. for one month.

2. Charge against the applicant was framed at Exh.1. As per the charge, it was alleged that on 22nd June, 1992 at about 10 O'Clock in the morning when the complainant Dhulabhai Lalbhai Vankar had gone to fetch water from a tap provided by the Panchayat for members of the public, the accused Dhuliben Ganeshbhai prevented the complainant from filling the water, used abusive and derogative language for his community and threatened him with serious injury and further threatened that if the complainant persisted in filling water from there, she would set herself on fire. It was thus alleged that she committed

offences punishable u/s 506, 504 of IPC as well as those punishable u/s 3(1)(v), 3(1)(x) and 3(1)(xiv) of the Atrocities Act.

3. Dhulabhai Lalbhai Vankar was examined as PW-1 at Exh.5. As per his deposition, in his village Gorada, there is water supply scheme. Taps have been installed in different areas of the village. Where he resides in Vankarvas, there is a tap for filling water for the members of the public nearby where the house of the accused is situated. On the date of the incident, when the complainant had gone to fill water, the accused had also gone there to fill water. When the applicant washed his pot, the accused used insulting language and blamed him for splashing water on her and threatened to beat him up and prevented him from filling water. He thereupon collected the Panch of the village. The accused came out with the Kerosene tin upon which the people who had gathered there dispersed. Next day, the witness had given complaint before the Police.

4.1 In the cross-examination, the witness stated that his house is close to the house of the accused-Dhuliben and there is distance of only about 5 Ft. between two houses. He stated that members of different communities fill water from the same tap. He stated that there are several houses of Patel community in the village and members belonging to his community go for labour work on the fields of Patels. He stated that between Somabhai and the accused, there is a quarrel about a road. Since Dhuliben had prevented Somabhai from using the road, there is a dispute between the two. He admitted that Somabhai has filed a case against Jantibhai Patel for obstructing his way. He, however, denied that he is a witness in the said case. He denied the suggestion of the defence that at the instance of the Somabhai he had filed false complaint against the accused.

6. PW-2, Ramabhai Mulabhai Vankar Exh.7 stated that on the date of the incident when the complainant had gone to fill water, accused Dhuliben was filling water. She had used foul language and told the applicant not to fill water and threatened him with serious consequences, upon which the applicant had gathered the village people. When the panch gathered, Dhuliben came out with the Kerosene tin and threatened to immolate herself, upon which the people dispersed.

6.1 In the cross-examination, the witness admitted that there was a quarrel between Somabhai and Dhuliben about the right of way. He denied that as a relative of the complainant, he was giving false evidence. He admitted that members of Vankar community regularly go for labour work in the fields of Patels and there has been no problem in the past.

7. PW-4, Kantilal Pathak Exh.10 was the Sarpanch of the village at the relevant time. The complainant is stated to have first complained to him about the incident. He, however, turned hostile and did not support the prosecution.

8. PW-5, Gangaben Dhulabha Exh.12 is the wife of the complainant. She stated that along with her husband, she had gone to fill water and at that time accused Dhuliben had quarreled with them and abused them.

8.1 In the cross-examination, she denied that in police statement she had not revealed that she had gone to fill water with her husband.

9. Somabhai Hirabhai- PW-6 Exh.13 stated that on the date of the incident after Dhuliben had gone to fill water, the complainant had also arrived at the scene and water had splashed. When Dhuliben filled water. She abused the complainant. The complainant, therefore, in the evening gathered the Sarpanch and other leading members of the Village. Dhuliben was called but she threatened to commit suicide.

9.1 In the cross-examination, he stated that he had filed a complaint against Jantibhai Ganeshbhai about obstruction of a road. He denied that in such a complaint he had cited the complainant as a witness.

10. Dhirabhai Jokhnabhai - PW-7 Exh.15 was Police Officer, who had taken down the complaint.

10.1 In his cross-examination, he admitted that a chapter case was filed against Jantibhai Ganeshbhai Patel as Chapter Case No. 6 of 1993 and the case was about Jokhabhai and his mother Dhuliben (i.e. Accused- present appellant) not permitting somabhai to pass through a road. Such complaint was produced by the witness at Exh.15 in which the complainant and PW-2 were cited as witnesses.

11. From the above evidence on record it can be seen that several eye-witnesses have narrated entire incident in more or less similar manner. The complainant himself is an eye-witness who stated that on 22nd June, 1992 at about 10 O'Clock in the morning, he had gone to fill water from the tap. Dhuliben abused him using derogatory language referring to his community and also threatened him. He had tried to take help by the Panch but the accused did not relent.

12. Deposition of the complainant is corroborated by the evidence of Ramjibhai PW-2 who also as an eye-witnesses, narrated the incident in somewhat similar fashion.

13. PW-4 Kantilal also stated similar facts. This is also supported by PW-6- Somabhai.

14. No major contradiction has been extracted in deposition of any of these witnesses. It may be recalled that the alleged incident had taken place at 10 O'Clock in the morning when at a public place, like public tap, large number of people would be present. PW-2 Ramabhai Vankar, PW-4 Kantilal Pathak, PW-6 Somabhai Hirabhai are all residents of the same locality having their houses in the close vicinity from where incident took place. Their evidence cannot be easily discarded. Their presence was also natural. Therefore, even if one were to completely discard the testimony of PW.-5 wife of the complainant, on the ground that her presence is doubtful, there was sufficient independent evidence led by the prosecution to drive home the charges. The complainant at no stage had stated that his wife had also accompanied him to fill water on the date of the

incident. His wife, however, claimed to be an eye-witness. Her deposition does not inspire confidence.

15. Even as per the defence, there is no enmity between the complainant and the accused. The defence version appears to be that there was quarrel between PW-6 Sombahai and the accused with respect to use of a road. To help Somabhai and at his instance, the complainant had lodged a false complaint. However, the chapter case which came to be filed by Somabhai regarding the disputed right of way, was lodged in January, 1993 and refers to some incident of October, 1992. Therefore it is difficult to believe that there was any quarrel in June, 1992 when the present incident is alleged to have taken place. This defence version that the complainant and other witnesses at the instance of some one else lodged a false complaint against the accused and deposed wrongly before the Court cannot be accepted.

16. Except for the suggestion that the complainant and other prosecution witnesses falsely implicated the accused at the instance of Somabhai, no other line of defence was adopted. When I find that this defence is required to be discarded and when I find that the version of the witnesses is reliable, the conviction of the appellant is required to be upheld.

17. In the result, I find no merit in the appeal. Conviction and sentence recorded by the Court below are upheld. Appeal is dismissed. Appellant shall, however, have time upto 31st May, 2008 to surrender.