

(2017) 02 GUJ CK 0138
In the Gujarat High Court
Case No : 998 of 2011

GOVINDBHAI MASHARUBHAI BHARAVAD

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 209](#), [Section 374\(2\)](#) - Power to examine the accused - Commitment of case to Court of Session when offence is triable exclusively by it - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 323](#) - Punishment for voluntarily causing hurt
[Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#), [Section 3\(1\)\(x\)](#) - Punishments for offences of atrocities

Citation : (2017) 02 GUJ CK 0138

Hon'ble Judges : Z K Saiyed

Bench : Single Bench

Advocate : Shrikar H Bhatt, N J Shah

Final Decision : Dismissed

Judgement

1. The present conviction Appeal has been filed by the appellant-original accused, under Section 374(2) of the Cr. P.C., against the Judgment and order dated 29.07.2011 rendered in Special Atrocity Case No.28 of 2009 by the learned Special Judge, Bhavnagar (Camp at Botad), whereby the appellant-accused was convicted for the offence punishable under Section 323 of the Indian Penal Code and sentenced to undergo six months simple imprisonment with fine of Rs.200/-, in default of payment of fine, further simple imprisonment of fifteen days, for the offence punishable under Section 3(1)(x) of the Atrocity Act and sentenced to undergo two years rigorous imprisonment with fine of Rs.500/-, in default of payment of fine, further simple imprisonment of one month.

2. It is the case of the prosecution in nut-shell that when the complaint and

Ranjitbhai Talshibhai were coming on motorcycle near Aveda Gate-three cross roads, the appellantaccused was coming towards the Dindayal Chowk in his Piagio Rickshaw bearing registration No.GJ-4-X-4454 and dashed with the complainant's motorcycle. Therefore, the complainant said that see and drive, to which, the appellant-accused got excited and abused him that "Dhedha tame mathabhare thai gaya chho" and thereafter, the accused gave one stick blow on the head of the complainant and thereby he received grievous injuries. When the witness Ranjitbhai intervened, the appellant-accused also gave stick blow on his head too. The complainant alleged that the accused had abused and insulted his caste with an intention to humiliate him and thereby made a breach of notification of District Magistrate, Bhavnagar.

3. Therefore, the complaint was filed by the complaint before the Botad Police Station bearing I-C.R.No.54 of 2009 against the appellant-accused. Thereafter, the investigation was carried out and statement of the witnesses were recorded. Caste certificate of the complainant was obtained and panchnama of scene of offence was drawn. Then muddamal was recovered and appellant-accused got arrested.

4. After collecting the evidence by the Investigating Agency, charge-sheet was filed before the learned Judicial Magistrate First Class, Botad, which was numbered as Criminal Case No.303 of 2009. As the said case was exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Botad committed the case to learned Special Judge, Bhavnagar under Section 209 of the Criminal Procedure Code, which was thereafter numbered as Special Atrocity Case No.28 of 2009.

5. On the basis of above allegations, charge was framed against the appellant-accused vide Exh.10 and read-over and explained to the appellant-accused for the alleged offences and plea was recorded at Exh.11, wherein, appellant-accused pleaded not guilty to the charge and claimed to be tried.

6. In order to bring home the charges against the accused person, prosecution has examined several witnesses and also produced documentary evidences.

7. Thereafter, after filing closing pursis by the prosecution, further statement of the appellant-accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded, wherein the appellant has denied the case of the prosecution and has pleaded his innocence. The appellant has submitted that a false case is filed against him.

8. After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge, Bhavnagar (Camp at Botad) vide impugned judgment and order dated held the appellant-accused guilty to the charges levelled against him and convicted and sentenced the appellant-accused as above.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of

conviction and sentence passed by the learned Special Judge, Bhavnagar (Camp at Botad), the present appellant-accused has preferred this appeal.

10. Heard Mr.Shrikar Bhatt, learned advocate for the appellant-accused and Mr. N.J.Shah, learned Additional Public Prosecutor for the respondent-State.

11. Mr.Shrikar Bhatt, learned advocate for the appellantaccused contended that the judgment and order passed by the learned Sessions Judge is illegal, invalid and improper. He has also contended that the learned Sessions Judge has not considered the case of the defence and material evidence produced on record and has passed absolutely wrong order. He has contended that the prosecution has miserably failed to prove its case beyond reasonable doubt, yet the learned Sessions Judge has not considered the probable defence of the appellant and has wrongly convicted the appellant. Learned advocate for the appellant argued at length and contended that the judgment and order of the learned trial Judge is against the provisions of law and learned trial Judge has wrongly considered the evidence of the prosecution and wrongly convicted him for the alleged offences. Mr. Bhatt, contended that Rickshaw was lying on the left side of the road, at that time, the appellant-accused was not there and he was arrested later on, which creates doubt. He then contended that the both the witnesses received injuries due to fallen down on the earth. Even the Medical Officer opined that the said injuries could be possible due to fallen down on the earth. He further contended that the complainant stated that appellant-accused gave stick blow on the head of the complainant, however, it is not clear that on which part of the head the appellant-accused gave stick blow. He further contended that no identification was made before the Magistrate. Further, the actual place of incident in question is not coming on record and therefore, benefit of doubt is required to be given to the appellantaccused. Therefore, considering the above aspects, the learned trial Judge committed grave error by convicting the appellant-accused for the alleged offence and therefor, he prayed to allow this appeal.

12. As against this, Mr.N.J.Shah, learned Additional Public Prosecutor, has contended that the judgment and order passed by the learned Sessions Judge is absolutely just and proper. She has contended that the prosecution has proved its case beyond reasonable doubt. She has contended that looking to the overall facts and circumstances of the case, and evidence produced on record, the order passed by the learned Sessions Judge is absolutely just and legal and is not required to be interfered with. He argued that when the incident took place, the complainant advised the appellant-accused to drive slow to which, the appellant-accused got excited and humiliated the complainant regarding his caste and gave stick blow on the head of the complainant. Further, when witness Ranjitbhai intervened, he was also beaten by the appellant-accused with stick. He then argued that defence failed to establish and prove that the injured persons received injuries due to fallen down on the earth. It is required to be noted that muddamal stick was recovered from the possession of the appellantaccused which was identified by both the injured persons. Further, witness Dr.Khodabhai

Lakhabhai Dabhi, who was examined at Exh.36, stated that the injuries received by the injured were possible due to muddamal stick. It is relevant to note that there is no animosity between the appellant and injured persons. Lastly, he prayed to dismiss this appeal.

13. I have gone through the impugned judgment and order passed by the learned Sessions Judge and oral as well as documentary evidence produced on record of the case. I have read the oral evidence of prosecution witness and also perused the charge framed against the appellant.

14. The appellant-accused was identified by the present appellant-accused and muddamal stick was also recovered from the appellant-accused. Injuries caused to the injured gets substantiated through oral evidence of Medical Officer, who in his oral version stated that the injuries caused to the injured could be possible due to muddamal stick only. I have perused the caste certificate of the complainant at Exh.50, which certifies that the complainant belongs to Scheduled Caste. I have minutely perused the statement of the appellant-accused recorded under Section 313 of the Code of Criminal Procedure, wherein also, the appellant-accused could not prove his case. Present of the appellant-accused at the scene of offence is also proved and established beyond reasonable doubt. At this juncture it is necessary to take note of Section 3 of the Atrocities Act. As the Preamble to the Act provides "the Act has been enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. Mr. Bhatt, learned advocate for the appellant-accused could not convince the Court that evidence of both the injured persons are not reliable, trustworthy and acceptable.

15. I am, therefore, of the opinion that the learned trial Judge has not committed any error in holding the appellant-accused guilty for the offences alleged against him and sentence awarded him is proper and therefore, no interference is required to be called for and, therefore, I am of the opinion that present Criminal Appeal requires to be dismissed.

16. I am in full agreement with the judgment passed by the learned trial Judge. Hence, the appeal deserves to be dismissed and the same is hereby dismissed. The judgment and order dated 29.07.2011 rendered in Special Atrocity Case No.28 of 2009 by the learned Special Judge, Bhavnagar (Camp at Botad), is hereby confirmed. R & P to be transmitted to the trial Court. The bail bond of the appellant-accused who is on bail, shall stand cancelled and he is directed to surrender within four weeks from today.