

(2011) 03 GUJ CK 0143
In the Gujarat High Court
Case No : Criminal Appeal No. 905 of 2001

Kamleshbhai Shivshanker Pathak

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Atrocities Rule — Rule 7

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 209, 313, 374

Penal Code, 1860 (IPC) — Section 114, 441, 452, 504, 506

Citation : (2011) 03 GUJ CK 0143

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

Bench : Single Bench

Advocate : B.P. Munshi, 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 the present appeal u/s 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 25th October, 2001 passed by the learned Special Judge (Atrocities), Ahmedabad (Rural), Ahmedabad, in Special Case No. 66 of 1997, whereby the learned Special Judge has convicted the Appellant-accused for the offence punishable u/s 3(1)(v)(x) and Section 441 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of six months u/s 3(1)(v) of the Atrocities Act, and also imposed fine of Rs. 500/-, and in default of payment of fine, sentenced him to undergo rigorous imprisonment for a further period of one month. The learned Special Judge has also convicted the Appellant-accused for the offence punishable u/s 3(1)(x) of the Atrocities Act and sentenced him to undergo rigorous imprisonment for a period of six months, and also imposed fine of Rs. 500/-, and in default of payment of fine, sentenced him to undergo rigorous imprisonment for a further period of one month.

2. The brief facts of the prosecution case is that on 28th February, 1997 at about

20.30 hours, the Appellant-accused along with other co-accused had illegally entered into the premises of the complainant and asked for common plot. It is also the case of the prosecution that the Appellant-accused and other co-accused used abusive language and also mentally tortured the complainant. It is also the case of the prosecution that the accused persons have intentionally insulted and intimidated the complainant by calling their caste's name and also threatened to kill.

3. Therefore, a private complaint to the said effect was lodged before the learned Chief Judicial Magistrate, Ahmedabad (Rural) against the present Appellant as well as other co-accused persons. Thereafter, the learned Chief Judicial Magistrate ordered the investigation u/s 156(3) of the Code of Criminal Procedure, 1973. Therefore, PSI, Satellite Police Station, conducted the investigation after recording statements of complainant and others and filed charge-sheet before the trial Court for the offences punishable under Sections 506, 441, 452 and 504 read with Section 114 of the Indian Penal Code as well as u/s 3(1)(v) and 3(1)(x) of the Atrocities Act. Thereafter, the Appellant-accused and other co-accused came to be arrested. Thereafter, as the case was exclusively triable by the Court of Sessions, the same is transferred to the learned Special Judge (Atrocities), Ahmedabad (Rural), Ahmedabad for adjudication.

4. Thereafter, charge was framed below Exhibit 3 against the accused persons and the accused pleaded not guilty to the said charge and claimed to be tried.

5. In order to bring the home the charge levelled against the accused persons, the prosecution has examined witnesses as also produced documentary evidence on record in support of the case.

6. Thereafter, after examining the witnesses, further statement of the accused persons u/s 313 of Code of Criminal Procedure was recorded in which the accused persons have denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the parties, the learned Special Judge (Atrocities), Ahmedabad (Rural), Ahmedabad, vide impugned judgment and order dated 25th October, 2001 held the present Appellant-accused guilty as stated aforesaid. The learned Special Judge has acquitted the original accused Nos. 2 and 3 of the charges levelled against them.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, the Appellant-accused No. 1 has preferred the present appeal.

9. Heard Mr. B.P. Munshi, learned Counsel for the Appellant and Mr. H.L. Jani, learned Additional Public Prosecutor for the Respondent-State.

10. Mr. Munshi has contended that the judgment and order of conviction and sentence passed by the learned Special Judge is unjust, improper and illegal and

against the evidence on record and therefore, the same deserves to be quashed and set aside. He further contended that looking to the charge framed, the learned Special Judge has not considered the Rule 7 of the Atrocities Act, 1995. As per the said Rule 7, an offence committed under the Atrocities Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. He has contended that in the present case, investigation was carried out by the Police Sub Inspector of Satellite Police Station. He has also contended that though the Investigating Officer, I.e. PSI, Satellite Police Station, in his evidence at Exhibit 47 admitted that it is true that the offences under the provisions of the Atrocities Act cannot be investigated by a police officer below the rank of Deputy Superintendent of Police, then also the learned Special Judge has not at all dealt with or satisfactorily clarified the same in the order and convicted the Appellant. He has also contended that even the prosecution has never produced any certificate regarding the caste. Yet the learned Special Judge has convicted the Appellant without any documentary evidence on record. Mr. Munshi has also contended that all the witnesses are relative witness. He has also contended that the complainant is very influential person. He has also contended that the alleged incident had happened on 28th February, 1997 and the Caste Certificate was issued on 13th May, 1997. Thus, the investigating officer has without any documentary evidence, filed charge-sheet for the offence punishable under the Atrocities Act. He has also contended that the learned Special Judge has without application of mind, convicted the Appellant. He has also contended that the learned Special Judge has convicted the Appellant u/s 441 of the Indian Penal Code without application of mind. Section 441 of the Indian Penal Code is definition. He, therefore, contended that the judgment and order of conviction and sentence is required to be quashed and set aside by this Court.

11. Mr.H.L. Jani has admitted that it is true that below the rank of Deputy Superintendent of Police has conducted the investigation in the present case, which is against the provision of Rule 7 of the Atrocities Act. He has also admitted that the learned Special Judge has no jurisdiction to take cognizance straightway unless provision of Section 209 of the Code of Criminal Procedure is followed.

12. I have read the judgment and order of the trial Court and also perused the oral as well as documentary evidence led by the parties before the trial Court. I have also considered the submissions advanced by the learned Counsel for the parties. It appears from the papers that though it is very clear that an offence committed under the Atrocities Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police, in the present case, investigation was carried out by PSI. The learned Special Judge has not considered the said aspect of the matter. Even prosecution has never produced any Caste Certificate, then how the learned Special Judge held the Appellant guilty for the offence punishable under the Atrocities Act. I am of the opinion that the learned Special Judge has committed grave error in convicting the Appellant.

13. In view of the above observation, present Appeal is allowed. The impugned judgment and order of conviction and sentence dated 25th October, 2001 passed by the learned Special Judge (Atrocities), Ahmedabad (Rural), Ahmedabad, in Special Case No. 66 of 1997 is hereby quashed and set aside and the Appellant-accused is hereby acquitted from all the charges alleged against him. The Appellant is on bail. This bail bond shall stand discharged. Since the Appellant is on bail, no order in respect of setting him at liberty is passed. Fine paid, if any, be refunded to the Appellant. Record and Proceedings, if any, be sent back to the trial Court concerned forthwith.