
(2010) 09 GUJ CK 0069
In the Gujarat High Court
Case No : Criminal Appeal No. 464 of 1996

Laljibhai Dhulaji Thakore

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320, 374(2)
Penal Code, 1860 (IPC) — Section 338, 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10)

Citation : (2010) 09 GUJ CK 0069

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

Bench : Single Bench

Advocate : Ashok N. Parmar, for the Appellant; H.H. Parikh, Ld. APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The present appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 14.6.1996 passed by the learned Special Judge (Atrocity) in Special Case No. 25/1992, whereby, the learned Special Judge has convicted the appellant u/s 338 of IPC and sentenced and sentenced to undergo R/I for one year and to pay a fine of Rs. 1000/- in default, to undergo further R/I for 4 months. The appellant is also convicted u/s 506(2) of IPC and sentenced to undergo R/I for a period of one year and to pay a fine of Rs. 500/ - in default, to undergo further R/I for 4 months. The appellant is also convicted u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo R/I for a period of six months and to pay a fine of Rs. 250/ -, in default, to undergo further R/I for a period of two months, which is impugned in this appeal.

2. The brief facts of the prosecution case is as under:

3. It is the case of the prosecution that on 30.9.1991, at about 17.30 hours or

during that period at village Manka, near the well of Sukhdan Halaji Gadhavi, the appellant had caused injury by Air-gun to the witness Harijan Somabhai Ramabhai. It is further the case of the prosecution that on 11.10.1991, at about 10.00 hours, appellant had also abused the complainant and witness Harijan Somabhai Ramabhai about their caste and also threatened them.

4. Therefore a complaint came to be filed by the complainant. The police has recorded the statements of the witnesses and on completion of the investigation, charge-sheet was filed in the Special Court, Palanpur, which was given number as Special Case No. 25/1992.

5. Thereafter, the charge was framed at Ex. 4 against the appellant. The appellant - accused has pleaded not guilty and claimed to be tried.

6. In order to bring the home the charge levelled against the appellant- accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

7. Thereafter, after examining the witnesses, further statement of the appellant-accused u/s 313 of Code of Criminal Procedure was recorded in which the appellant-accused has denied the case of the prosecution.

8. After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge vide impugned judgment and order dated 14.6.1996 held the appellant - accused guilty to the charge levelled against him and convicted and sentenced the appellant accused, as stated above.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Palanpur, the present appellant has preferred this appeal.

10. Heard Mr. Ashok N. Parmar learned advocate for the appellant and Mr. H.H. Parikh Learned APP for the respondent-State.

11. Mr. Ashok N. Parmar learned advocate appearing for the appellant has submitted that the dispute between the parties have amicably settled outside the Court on account of the intervention of responsible people of the community. He further submitted that no untoward incident has taken place between the parties after the alleged incident and that the original injured witness has willingly and under no duress has sought permission of this Court to compound the offences.

12. In support thereof, the learned advocate has produced the affidavit dated 16.8.2010, filed by the complainant and the injured person. In the said affidavits, it has been stated that the parties have amicably settled the dispute between them and they are willing to compound the offences in view of the order dated 23.8.2010 passed by this Court, which reads as under:

Learned advocate Mr. Ashok N. Parmar has kept the appellant -Laljibhai Dhulaji Thakore present in the Court and the injured - Somabhai Ramabhai with his father - Ramabhai Khushalbhai are also present.

Learned advocate Mr. Ashok N. Parmar has stated, on instructions, that as transpired earlier the appellant is ready to deposit an amount of Rs. 50,000/- (Rupees Fifty Thousand only) and requested for some time. Accordingly, time is granted upto 3.9.2010 to deposit the said amount. SO to 3rd September, 2010.

13. Mr. Ashok Parmar learned advocate has submitted that as per the above order, the appellant has deposited Rs. 50,000/- before this Court on 1.9.2010 and has produced the receipt along with the affidavits. Mr. Parmar has fairly submitted that the appellant has no objection if the said amount of Rs. 50,000/- deposited by the appellant before this Court is given to the injured witness - Harijan Somabhai Ramabhai, by way of compensation. Mr. Parmar has also submitted that this Court has allowed the parties to compound the offences in Criminal Appeal No. 829/2000 vide judgment and order dated 27.9.2010.

14. I have given my anxious consideration to the case and also the plea put forward for seeking permission to compound the offences. I have also examined the provisions of Section 320 of Code of Criminal Procedure which deals with compounding the offence and also perused the order dated 23.8.2010 passed by this Court in this appeal. It is pertinent to note that the parties are residents of village Manka, Tal. Palanpur and no untoward incident had taken place after the alleged incident. I am satisfied that the complainant and the original injured witness have voluntarily desire to compound the offence with the accused person for sufficient and genuine reasons stated in the affidavits.

15. In the case of AIR 1988 2111 (SC) State of U.P. Vs. Fazilur Rehman, Badrilal v. State of M.P. reported in 2005 SCC 1597, Jetha Ram V/s. State of Rajasthan reported in 2006 (9) SCC 255 , Ishwar Singh Vs. State of Madhya Pradesh, and Manoj and Anr. v. State of M.P. reported in 2009 (2) GLH p. 56, the Apex Court while taking into account the fact of compromise between the parties, has reduced the sentence imposed on the accused to already undergone though the offences were not compoundable. Thus, the compounding of offences is legal and valid. This Court, in the case of Rupabhai Bhalabhai Bharwad Vs. State of Gujarat and Another, has also held that if the compromise is honest, genuine, true and voluntary and will bring harmony and peace in the area, setting at naught the caste-hatred and conflicts arising therefrom, then there is indeed no harm in accepting the same.

16. Considering the totality of the facts in the backgrounds of the settled legal position, we allow the parties to compound the offences. Thus, the appeal is partly allowed. The impugned judgment and order dated 14.6.1996 passed by the learned Special Judge (Atrocity) and Addl. Sessions Judge, Banaskantha, at Palanpur in Special Case No. 25/1992 is modified in view of the compromise arrived at between the parties, more particularly the affidavit filed by the complainant - Harijan Ramabhai Khushalbai and injured person named Harijan Somabhai Ramabhai, and in view of the settled principle of law of compounding the non compoundable offences to the extent hereinbelow:

17. The conviction recorded by the learned Special Judge is confirmed. However, so far as the sentence is concerned, the same is modified to the extent that the sentence already undergone by the appellant-accused shall be treated to be sufficient sentence, in view of the compromise arrived at between the parties. Appellant-accused is on bail, his bail bonds stand cancelled. The sentence with regard to payment of fine is not disturbed.

18. Further, the amount of Rs. 50,000/ - deposited before this Court by the appellant-accused, the Registry is directed to give the said amount of Rs. 50,000/ - to the injured person - Harijan Somabhai Ramabhai by way of A/c payee cheque. The Trial Court is also directed that the amount of fine of Rs. 1750/ -, which has been deposited by the appellant-accused before the trial Court, out of which, Rs. 1000/ - is ordered to be given to the injured person - Harijan Somabhai Ramabhai after making proper verification. R and P to be sent back to the trial court, forthwith.