
(2016) 08 GUJ CK 0061
In the Gujarat High Court
Case No : Criminal Appeal No. 818 of 2001

Nanjibhai Varvabhai Chaudhari Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, Section 186, Section 427, Section 504, Section 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2017) 1 GLR 685

Hon'ble Judges : Mr. G.B. Shah, J.

Bench : Single Bench

Advocate : Mr. Umesh A. Trivedi, Advocate, for the Appellant Nos. 1 and 2; Ms. Reeta Chandarana, APP, for the Opponents/Respondents No. 1

Final Decision : Partly Allowed

Judgement

Mr. G.B. Shah, J. (CAV) - The present appeal, under Section 374 of the Code of Criminal Procedure, 1973 (for brevity, "the Code"), is directed against the judgment and order dated 28/09/2001, passed by the learned Special Judge (Atrocity), Ahmedabad (Rural), Ahmedabad, in Special Case No. 80 of 1996, whereby, the appellants herein - original accused came to be convicted for the offences punishable under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity, "the Atrocity Act") and Sections 504, 506(2), 427, 186 and 114 of the Indian Penal Code, 1860 (for brevity, "the IPC") and for the offence punishable under Section 3(1)(x) of the Atrocity Act, they were sentenced to undergo rigorous imprisonment (RI) for three years and fine of Rs. 500/- each and in default of payment of fine, to undergo, further RI for fifteen days; for the offence punishable under Section 504 of the IPC, to undergo RI for one month and fine of Rs. 100/- each and in default of payment of fine, to undergo, further RI for ten days; for the offence punishable under Section 506(2) of the IPC, to undergo RI for six months and

fine of Rs. 200/- each and in default of payment of fine, to undergo, further RI for ten days and for the offences punishable under Sections 427, 186 and 114 of the IPC, to undergo RI for two months and fine of Rs. 200/- each and in default of payment of fine, to undergo, further RI for ten days.

1.1. Before proceeding with the hearing, the learned advocate for the appellants as well as the learned Additional Public Prosecutor have drawn the attention of the Court on the Death Certificate of appellant No. 1 - Nanjibhai Varvabhai Patel of Village : Dhanap, Taluka and District : Gandhinagar and submitted that the main accused i.e. the appellant No. 1 herein has passed away on 30/11/2010. Under the circumstances, present appeal is abated qua appellant No. 1.

2. Facts in nutshell of the prosecution case are that on 10/04/1996 at about 09:30 a.m. the appellants herein - original accused, allegedly, keeping grudge against the complainant and others as to checking of their electric connection of bore for agricultural work on 09/04/1996, abused them and also insulted them as to their caste though were knowing that the complainant was belonging to the reserved caste. The appellants-accused had also broken the table glass and threatened them to death. Thus, the appellants-accused committed the offence alleged against him, for which, a complaint came to be lodged for the offences punishable under Sections 3(1)(x) of the Atrocities Act and Sections 504, 506(2), 427, 186 and 114 of the IPC. For the sake of convenience, the parties herein are referred as per their original status.

2.1. Pursuant to the complaint, investigationally was carried out. After investigationally, charge-sheet was filed and as the case was triable by the Special Court, it was committed. The trial Court framed charge against the accused, which was read over to them. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.2. In order to bring home the charge against the accused, the prosecution has examined following witnesses and also produced several documentary evidence, as under :

Oral Evidence

Sr. no.

Name of Witness

Exh.

1

PW1 Maheshbhai Virjibhai

13

2

PW2 Becharji Bapuji Chauhan

14

3

PW3 Govindbhai Manilal Pate

15

4

PW4 Jagdishbhai Chhanalal Vaghela, complainant

17

5

PW5 Rajendrasinh Kalyansinh

19

6

PW6 Somabhai Kalidas

20

7

PW7 Arvindkumar Bhagvandas Vataliya

25

8

PW8 Vajesing Gobarji

28

9

PW9 Lalsing Pratapsing

29

10

PW10 Sitaram Vishwanath More

30

Documentary Evidence

Sr. no.

Document

Exh.

1

Complaint

21

2

Panchnama of place of offence

31

2.3. At the end of the trial, after recording the Further Statements of the accused under Section 313 of the Code and hearing arguments on behalf of prosecution and the defence, the learned trial Judge concluded as aforesaid by the impugned judgment and order, giving rise to prefer the present appeal.

3. Heard Mr. Umesh A. Trivedi, the learned advocate for the appellant-original accused No. 2 and Ms. Reeta Chandarana, the learned Additional Public Prosecutor for the respondent-State.

3.1. Mr. Trivedi, the learned advocate for the appellant-original accused No. 2, submitted that the trial Court has committed a grave error in convicting the accused as the impugned judgment and order of the trial Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has failed to prove the whole ingredients of the offence alleged against the present appellants-accused. He took this Court through the oral as well as the entire documentary evidence on record and contended that so far as offence under the Atrocity Act, alleged to have been committed by the accused, is concerned, if the complaint at exh. 18, lodged by the complainant, is perused minutely, nothing has been stated by the complainant in the said complaint regarding his caste and it is for the first time, in his deposition, it has come on record that he belongs to a reserved caste. Moreover, if the deposition of PW10 Sitaram Vishwanath More at exh. 30, who had investigated the offence, is perused, in his cross-examination, he has specifically admitted that he had not obtained the Caste Certificate of the complainant during the investigationally. He further submitted that under the provisions of the Atrocities Act, the investigationally must be undertaken by an officer not below the rank of Dy. S.P., however, in the case on hand, though the investigationally is stated to carried out by such an officer, factually, he was only the endorsing authority of the investigationally carried out by a below ranked officer to Dy. S.P., which is not permitted at all under the law. He submitted that PW10 Sitaram Vishwanath More, the so-called Investigating Officer, was, at the relevant time, working as SDPO (Sub Divisional Police Officer) in the cadre of Dy. S.P. and upon instructions of the concerned D.S.P. he undertook the investigationally of the case on hand, however, considering his deposition before the trial Court, it is revealed that the investigationally was entrusted to the P.S.I., who had filed the charge-sheet also. The said fact can be inferred also from the facts that this witness did not know as

to which police papers were entrusted to him; the complaint, whether was given by the complainant in person or in any other mode; he had visited the scene of offence, however, the panchnama of scene of offence was carried out earlier and he had seen it. Moreover, whatever the statements and the panchnamas had been drawn, he had endorsed them after verification. Thus, he had not carried out the investigation himself. Even, he did not aware about the date on which, the first informant had reported the incident and recording of statements of the witnesses and other such details and accordingly, though, he has stated that investigation had been carried out by him, but factually, is not correct. Moreover, PW8 Vajesing Gobarji, the then Unarmed Police Head Constable, exh. 28 has deposed that the investigation was carried out by the P.S.I. Moreover, looking to the deposition of PW7 Arvindkumar Bhagvandas Vataliya, the PSO, exh. 25, though he has admitted that the investigation was carried out by the SDPO, however, he had submitted the charge-sheet, however, in the submission of the learned advocate for the appellants-accused, the investigation includes submission of charge-sheet and hence, the aforesaid is not permissible under the law.

3.2. Further, on the other point of conviction of the accused for the offences punishable under the IPC, the learned advocate for the accused, invited attention of the Court to the depositions of PW1 Maheshbhai Virjibhai at exh. 13, PW5 Rajendrasinh Kalyansinh, exh. 19 and PW4 Jagdishbhai Chhanalal Vaghela, the complainant, at exh. 17 and submitted that there appears improvements in their versions for the reason that PW1 and PW5 talked of incident of 09/04/1996 culminated into the incident in question on 10/04/1996, however, looking to the deposition of the complainant, he is silent about the incident of 09/04/1996. Moreover, if at all the accused had any grievance about the checking made on 09/04/1996 by the complainant and others, they should have targeted the checking staff only and not others, more particularly, the complainant, who was not a member of the checking squad and accordingly, there was no question of making any utterance as to the caste of the complainant. Moreover, looking to the evidence of PW2 Becharji Bapuji Chauhan, exh. 14, he has deposed that the accused No. 1 had dashed his hand over the glass kept on the table and therefore, the glass had broken, whereas, PW3 Govindbhai Manilal Patel, exh. 15 has deposed that the accused No. 1 had kept the hand on the glass and made utterances pertaining to offence under the Atrocity Act. Thus, so far as the offence punishable under Section 427 of the IPC is concerned i.e. causing damage to the property, there is inconsistency between these witnesses. Moreover, the witnesses examined are the subordinates to the complainant and hence, there are all chances of influence against the present accused and accordingly, relying solely upon their depositions, conviction could not have been imposed by the learned trial Judge. Moreover, so far as other offences viz. offences punishable under Sections 504, 506(2) and 114 of the IPC are concerned, the ingredients of the said offences are not proved by the prosecution against the accused beyond reasonable doubt as in the heat of the moment, the

said offence might have been committed without any intention and the said offences being ancillary to the offence under the Atrocity Act, the accused cannot be convicted for the same. Moreover, so far as charge framed for the offence punishable under Section 186 of the IPC is concerned, there is a clear bar of taking cognizance thereof in view of Section 195 of the Code and accordingly, the conviction imposed upon the accused for the said offence, cannot sustain in the eye of law. Thus, so far as, the conviction for the offences under the IPC is concerned, the same being ancillary, in the submission of the learned advocate for the accused, the learned trial Judge has materially erred, however, without prejudice to his rights and contentions, he submitted that the said offences provides for sentence of imprisonment or fine or both and requested that, in view of aforesaid facts and circumstances of the case and lapse of these many years of the incident as well as no untoward incident thereafter, this Court may reduce the sentence to fine and accordingly, requested to allow the present appeal.

3.3. Mr. Trivedi has relied upon the following decisions :

3.3.1. Bharatsingh and Anr. v. State of M.P., reported in 2006 Cri.L.J. 4429, more particularly, para 15 and 16, which read as under :

"15. Having given anxious consideration to the rival contentions and judgments passed by the various High Courts directly dealing with the provisions of R. 7 of the Act, and this rule is not *pari materia* to Section 5 of the Prevention of Corruption Act, therefore, this Court is of the opinion that the investigationally done by inferior officer of the police, than the Superintendent of Police duly appointed as per the provision under R. 7 has caused prejudice to the appellants because the Investigating Officer even did not obtain the certificate from the competent authority to establish that the complainant belongs to the Scheduled Caste or Scheduled Tribe Community, shows that the Investigating Officer (Sub-Inspector of Police) was not aware of the provisions of the Act and Rules and investigated the matter in a routine manner. If investigationally would have been done by designated police officer, he would have probably first ascertained whether complainant was falling within the category of Scheduled Caste or Scheduled Tribe.

16. In the result, on the basis of the foregoing legal and factual analysis, this Court is of the view that the conviction and sentence of the appellants passed by the Court below is not sustainable. Therefore, the same is hereby set aside and the appellants are acquitted. They are on bail, the same shall stand discharged."

3.3.2. Kailas Govind Wadekar and Ors. v. State of Maharashtra, reported in 2010 Cri.L.J. 2752, more particularly, Head Notes "A" and "B", which read as under :

"(A) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(iii) (xi) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules (1995), R.7 Scheduled Castes and Scheduled Tribes Prevention of Atrocities investigationally Police Officers Offence committed u/S.3 of Act investigationally Shall be carried out by Police Officer Not below rank of

Dy. Superintendent of Police. (Para 4)

(B) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3 Scheduled Castes and Scheduled Tribes Prevention of Atrocities Certificate Offence under Ingredients. It should be committed in respect of members of S.C. or S.T. By person who is not member of S.C. or S.T. There should be attempt to produce Caste Certificate of victim on record. (Para 4)."

3.3.3. Mr. Trivedi, submitted that the aforesaid decision of the Bombay High Court was challenged before the Hon"ble Apex Court and while deciding the matter, the Hon"ble Apex Court has made some passing observations in para 10 of its decision, reported in AIR 2011 SC 598, however the Hon"ble Apex Court has not decided any law thereby and the same are only the passing observations, which reads as under :

"10. We are surprised that the conviction of the accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hyper technical grounds that the Caste Certificate was not produced and investigational by a Police Officer of the rank of Deputy Superintendent of Police was not done. These appear to be only technicalities and hardly a ground for acquittal, but since no appeal has been filed against that part of the High Court judgment, we are now not going into it."

4. Per contra, Ms. Chandarana, the learned Additional Public Prosecutor for the respondent-State, supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that the prosecution has successfully proved the case against the accused beyond reasonable doubt and the learned trial Judge, after taking into consideration all the aspects of the matter, has come to such a conclusion, which is just and proper and accordingly, it is requested that this Court should not interfere in appeal. She took the Court through the relevant oral as well as documentary evidence on record and submitted that considering the averments made in the complaint, which have been supported by the complainant and other prosecution witnesses, the learned trial Judge has rightly convicted the accused, considering the gravity of the offence. Eventually, she requested to dismiss the present appeal confirming the impugned judgment and order.

5. I have considered the above-referred rival submissions made by the learned advocates for the parties and also gone through the evidence on record and re-appreciated and re-evaluated the same on the touchstone of the latest decisions of the Hon"ble Apex Court. I have also gone through the impugned judgment and order.

5.1. If we peruse the deposition of PW8 Vajesing Gobarji, Unarmed Police Head Constable, recorded vide exh. 28, he has deposed that he had received Vardhi of the offence in question through wireless send by the PSI, Dabhoda Police Station and accordingly, he had visited the scene of offence and also deposed that the

investigationally of this case was done by PSI Shri Vataliya. The another police witness i.e. PW9 Lalsing Pratapsing has also been examined by the prosecution vide exh. 29, who was the PSO of Pethapur Police Station at the relevant point of time i.e. on 10/04/1996. This witness (PW9) has also deposed that he had received written complaint of Deputy Engineer Shri Vaghela, which was registered and entrusted the further investigationally to PSI and forwarded the complaint, exh. 18 towards him. If we peruse the deposition of PW7 Arvindkumar Bhagvandas Vataliya, the PSI, recorded at exh. 25, he has deposed that PSO had registered the complaint of Mr. Vaghela and forwarded the same to the Investigating Officer and after investigationally made by the Divisional Police Officer, he had entrusted the further investigationally to him and as there was sufficient evidence against the accused, he had filed the charge-sheet in the Court. In this background, now, so far as the offence charged against the accused under Atrocity Act is concerned, it is an undisputed fact that the Caste Certificate, which is to be availed under the provisions of law in such cases, is not collected during the course of investigationally and there is nothing to show that any attempt had been made to that effect. Moreover, considering the evidence of PW10 Sitaram Vishwanath More at exh. 30, he has specifically stated that he had not procured the Caste Certificate of the complainant. Moreover, further perusal of the deposition of this witness reveals that though he was assigned the investigationally being an officer of the rank of Dy. S.P., however, he had not carried out the investigationally himself and had made only the endorsement on the papers after verification, which is also not permissible under the law as under the Atrocity Act, the investigationally is to be undertaken by an officer not below the rank of Dy. S.P. and the investigationally includes recording of statements of the witnesses till submission of the charge-sheet. It is also revealed that though this witness had stated to have carried out the investigationally, he did not have knowledge of many important aspects of the case. Moreover, it is also revealed that after investigationally, the charge-sheet had been submitted by the PSI and not by this witness. Thus, there appears material lapse on the part of the prosecution. It appears that the prosecution has failed to fulfil the mandatory provisions under the Atrocity Act and the case of the prosecution suffers from material illegality and perversity so far as the offence under the Atrocity Act is concerned. Besides, if the facts of the case are taken into consideration, this Court is nonplussed as to the aspect of lodging of the complaint by a person, who was not a member of the checking squad and accordingly, the accused, if at all they had any grievance, had nothing to do with this person. Moreover, the witnesses, which are examined, undisputedly are the subordinates to the complainant and in my opinion, it is difficult to impose conviction solely relying upon their testimonies, more particularly, in view of the aforesaid facts and circumstances, and lapses on the part of the investigating agency. Accordingly, I am of the view that the learned trial Judge has failed to consider these important aspects, which the prosecution has failed to prove beyond reasonable doubt and accordingly, the accused are required to be acquitted from the offence under the Atrocity Act.

5.2. So far as the conviction of the accused for the offences under the IPC are concerned, in the facts and circumstances of the case and from the evidence on record, it appears that the alleged incident had occurred in the spur of the moment and prima facie, there appears no mens rea. However, without entering much into the merits of the case, this Court deems it fit to accept the request made by the learned advocate for the accused to reduce the sentence of imprisonment to fine as the offences for which, the accused have been charged with, provide for sentence of imprisonment or fine and accordingly, in the considered opinion of the Court, the interest of justice would serve if the sentence of imprisonment is reduced to fine and to that extent the impugned judgment and order is modified.

6. In view of the aforesaid discussion, present appeal succeeds in part and the impugned judgment and order dated 28/09/2001, passed by the learned Special Judge (Atrocity), Ahmedabad (Rural), Ahmedabad, in Special Case No. 80 of 1996, is hereby modified to the aforesaid extent and so far as offence under the Atrocity Act for which the appellants accused are convicted and sentenced is concerned, they are acquitted of the said charge, however, so far as the offences under the IPC are concerned, so far as appellant No. 2 - original accused No. 2 is concerned, the sentence of imprisonment is hereby reduced to fine of Rs. 15,000/-, over and above the fine imposed by the trial Court, as the present appeal is abated, as aforesaid, qua appellant No. 1 - original accused No. 1. The aforesaid amount of fine is to be deposited within four weeks from today before the trial Court concerned, failing which, the appellant No. 2-original accused No. 2 shall have to undergo the sentence imposed upon him for the offences under the IPC. Registry to return the R&P to the trial Court forthwith.