

(2010) 04 GUJ CK 0103
In the Gujarat High Court
Case No : Criminal Appeal No. 534 of 1999

Omprakash Bhanvarlal Jain	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 506, 506(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7, 7(3)

Citation : (2010) 04 GUJ CK 0103

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : K.B. Anandjiwala, for the Appellant; R.C. Kodekar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—The present appeal is directed against the judgment and order passed by the learned Addl. Sessions Judge, Vadodara in Atrocity Case No. 75/97 dated 21.5.1999 recording the conviction of the accused for the offence u/s 506(1) of IPC and imposing simple imprisonment (SI) for 6 months and fine of Rs. 1,000/-, in default further SI for one month and also convicting the accused for the offence u/s 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocities Act") and imposing SI for 6 months and fine of Rs. 1,000/- and in default SI for one month.

2. The facts of the case briefly summarised are as follows:

2.1 The complainant had applied for obtaining finance from the bank for the purpose of doing business of music band. It is the case of the complainant that

he belongs to the Vankar community and he was also an educated unemployed and therefore according to the policy he had applied for such advance/loan from UCO Bank, Gorva Branch. However, the loan was not disbursed to him and the appellant-accused had even abused with regard to the caste and had also demanded that he should be paid a sum of Rs. 3,000/- out of Rs. 15,000/- and then only loan disbursement could be made. It is alleged with regard to the exact words used while humiliating and threatening the complainant stating that loan will not be disbursed and if he comes again his hand and leg would be broken and it was also uttered and abused that the government has unnecessarily pampered and therefore the complaint came to be lodged under the Atrocities Act which is at Exh. 12. On the basis thereof, investigation was made and after the investigation was over, the charge-sheet was filed.

2.2 Thereafter, the learned Addl. Sessions framed the charges against the accused for the alleged offences u/s 506(1) of IPC as well as Section 3(1)(10) of the Atrocities Act and proceeded with the trial.

3. In order to bring home the charges levelled against the accused, the prosecution examined the witnesses including the complainant.

4. The prosecution has also produced documentary evidence which shall be referred to in the judgment as and when required.

5. After recording of the evidence of the prosecution witnesses was over, the further statement of the accused was recorded u/s 313 of the Criminal Procedure Code. The defence has also examined the witness, the Principal of the school as defence witness for the purpose of genuineness of the school leaving certificate produced by the complainant.

6. After hearing the learned APP as well as the learned advocate for the accused, the learned Addl. Sessions Judge, Vadodara convicted the accused for the alleged offence and sentenced him as stated hereinabove in detail.

7. It is this judgment and order which has been assailed by the appellant-original accused on the grounds narrated in detail in the memo of appeal that the learned Addl. Sessions Judge has failed to appreciate and scrutinize the material and evidence on record including the testimony of the complainant. It is stated that the entire testimony of the complainant would suggest that his credibility is doubtful particularly when he has attempted to produce false certificates regarding caste as well as school leaving certificate.

8. Learned advocate Mr. Anandjiwala referred to the testimony of the complainant, PW 1 (Exh. 11) and submitted that it is evident that though he had applied for the loan, since he was not fulfilling the queries and the requirements in spite of sufficient opportunity, the loan was not sanctioned and therefore he has lodged such complaint to falsely implicate the appellant accused who was the manager of the bank at the relevant time. For that purpose he referred to the testimony and emphasised the admission in the cross-examination and

submitted that he has admitted that the certificate regarding the caste, Exh. 15, is stated to have been issued from the office of Narmada Bhavan and there are some interpolations. He has admitted that from the said certificate the word "District Social Welfare Officer, Panchmahal, Godhra" is removed and word "Vadodara" is hand-written and the seal is applied. Learned advocate Mr. Anandjiwala, therefore, submitted that false certificate had been sought to be produced with such interpolation. He submitted that in fact the certificate has to be from Vadodara and not from other district which he had submitted. Learned advocate Mr. Anandjiwala referred to the testimony of the defence witness who is the principal of the school where the complainant had studied and had produced the school leaving certificate. Referring to the testimony of the defence witness, Exh. 29, learned advocate Mr. Anandjiwala has stated that it has been categorically stated that the said certificate is not issued by the school and she had come with the register and other record and stated that such certificate has never been applied for or demanded by the complainant and it has not been issued by the school. The said certificate was also brought on record at Exh. 32.

9. Learned advocate Mr. Anandjiwala also submitted referring to the testimony of I.O., PW-5 (Exh. 26) that admittedly the investigation was made by him and other police officer of the rank of Police Inspector which is in violation of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as "the Rules"). He pointedly referred to Rule 7 and submitted that it provides that the offences are required to be investigated by a police officer not below the rank of a Deputy Superintendent of police. Learned advocate Mr. Anandjiwala, therefore, submitted that the word used is "shall" and therefore this provision is mandatory and since the investigation has been made by an officer of the rank of police inspector and not the officer as contemplated in the Rules, the entire trial would vitiate.

10. In support of his submission, learned advocate Mr. Anandjiwala has referred to and relied upon the judgment of the Hon'ble Apex Court in the case of State of M.P. v. Chunnilal @ Chunni Singh reported in 2009(0) GLHEL-SC 43619 and submitted that as observed in this, the Hon'ble Apex Court has made it clear that when the investigation is made by an officer who is not appointed in terms of Rule 7 of the Rules, it would be illegal and invalid. However, when the offences complained of are both under IPC and also under the Atrocities Act, it cannot be quashed on the ground that the investigation is not made as required under the Atrocities Act by a competent officer. However, in such a situation it is clarified by the Hon'ble Apex Court that the proceedings for offence punishable under IPC notwithstanding the fact that the investigation and the charge sheet has been made by an officer not as per the provisions of the Atrocities Act and the Rules and still only such offences under the Atrocities Act cognizance may not be taken, but it would be valid for the offences under the IPC.

11. He also referred to and relied upon the judgment of this Court in Criminal Revision Application No. 423 of 1999 with Criminal Revision Application No. 400

of 1999 (Coram: Y.B. Bhatt, J.) and submitted that the very issue with regard to the effect of the investigation by the officer other than as provided under Rule 7 of the Rules and it has been observed that the investigation is in violation of the statutory rule. It is not possible to contend that the trial would be valid and he has emphasized the observations in para 7. He has also referred to and relied upon the judgment of the Andhra Pradesh High Court reported in Pandharinath Sakharam Thube Vs. Kum. Surekha Pandharinath Thube and Others, and submitted that as stated in that case the investigation is made by the police officer of the rank of Inspector which is in violation of Rule 7 of the Rules and therefore on that count alone the impugned judgment and order recording conviction is required to be set aside.

12. He further submitted that if the charges for offence under the Atrocities Act are taken away as not established, then only for the offence u/s 506(1) of IPC, hardly there is any evidence with regard to such threat. In any case, he submitted that it is only if the person is not able to carry on his daily affairs, then it could be said that there is some substance. For that purpose he referred to and relied upon the judgment of this Court (Coram: M.S. Parikh, J.) in Criminal Revision Application No. 767 of 1991.

13. Learned advocate Mr. Anandjiwala submitted that one of the ingredients for the offence u/s 506 of IPC is that the complainant should have been alarmed by the threat administered to him which will have a bearing on intention. He therefore submitted that the present appeal may be allowed.

14. Learned APP Mr. Kodekar referred to the testimony of the complainant, PW-1 (Exh. 11) and the testimony of I.O. at Exh. 26 as well as testimony of the defence witness at Exh. 29. He submitted that the other witnesses have corroborated the testimony of the complainant when they had accompanied. He submitted that the contentions with regard to Rule 7 of the Rules have been discussed by the learned Addl. Sessions Judge in paras 33 and 34 and submitted that it is required to be interpreted whether it can be said to be mandatory. He fairly stated that the notifications may have been issued subsequently empowering the officer. Nothing has been brought on record. He also clarified that Rule 7 was not in operation at the relevant time. He therefore submitted that the judgment and order recording conviction may be confirmed.

15. In view of rival submissions made by both the sides and on evaluation and scrutiny of the material evidence on record, it is required to be considered whether the impugned judgment and order calls for any interference by this court.

16. The first aspect which has been emphasised by learned advocate Mr. Anandjiwala referring to Rule 7 of the Rules that if the investigation is made in violation of Rule 7, then the entire trial would vitiate is required to be appreciated. Rule 7 of the Rules clearly provides that an offence committed under the Atrocities Act shall be investigated by an officer not below the rank of

a Deputy Superintendent of Police. The word used is "shall" and Sub-rule (3) of Rule 7 also refers to the review at the end of every quarter with regard to the investigation suggests the legislative intention that in such cases the investigation should be done properly by the responsible officer. Therefore, it cannot be said that the rule is not mandatory. The learned Addl. Sessions Judge, therefore, while appreciating this aspect, has committed an error in observing that it is only a technical breach. It is required to be mentioned that when the law or the rule made under the special statute provides a thing to be done in a particular manner, then it has to be done in that particular manner. The language in which Rule 7 has been couched also makes it clear about the intention of the legislature and by no stretch of imagination it can be said to be only a technical evaluation of the rule. It is also required to be mentioned that subsequently to overcome some defects in such cases pursuant to such provision, general notification may have been issued empowering the officer like officer in-charge of the police station to investigate such offences by such general notification, but no such general notification has been brought on record.

17. Therefore, once it has been shown that the investigation was not conducted by a competent officer as provided under Rule 7, it would not be a mere technical lapse but it would go to the root of the matter. This is reflected in the investigation also as, while considering on merits also, the defence witness at Exh. 29 has clearly stated that they have not issued any such certificate. Had it been investigated properly, this would have been brought to the notice with regard to genuineness of such school leaving certificate. There is also a reference to a letter at Exh. 33 and she has also stated that the certificate at Exh. 32 does not bear her signature as principal. Moreover, even the testimony of the complainant himself on close scrutiny clearly reveals that even the caste certificate is not above doubt when he has admitted in the cross examination about the interpolation.

18. It is in background of these facts and on appreciation of the evidence, the court is of the opinion that the charges levelled against the accused for the offence u/s 3(1)(10) of the Atrocities Act would not be sustainable as the investigation was not made by a competent officer as provided under Rule 7 of the Rules and there was violation of Rule 7.

19. Another aspect with regard to other offence u/s 506(1) of the IPC is also required to be appreciated where the testimony of the complainant requires scrutiny as his bare words cannot be accepted. However, PW-4, who is stated to be an eye witness, in the cross-examination he has admitted that he has not stated in his statement before the police that he said that the accused bank manager had demanded Rs. 3,000/- from the loan amount of Rs. 15,000/-. Therefore, it is required to be considered whether the charges for offence u/s 506(1) of IPC can be sustained. Section 506 of IPC refers to criminal intimidation that if a threat is given to cause death or a grievous hurt or disruption of property by fire or cause the offence punishable with death...then only it would

be attracted. Accepting the version of the complainant as per his testimony, these ingredients cannot be said to have been fulfilled.

20. Therefore, the present appeal deserves to be allowed and accordingly stands allowed. The impugned judgment and order passed by the learned Addl. Sessions Judge, Vadodara in Atrocity Case No. 75/97 recording conviction of the accused for the offence u/s 506(1) of IPC as well as for offence u/s 3(1)(10) of the Atrocities Act and imposing sentence is hereby quashed and set aside. Bail Bond stands cancelled.