

(2017) 03 GUJ CK 0112
In the Gujarat High Court
Case No : 33569 of 2016

PARULBEN KARANSINH THAPA & ORS.

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 30-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 114](#),
[Section 323](#), [Section 504](#), [Section 394](#), [Section 506\(2\)](#) - Abettor present when offence is committed - Punishment for voluntarily causing hurt - Intentional insult with intent to provoke breach of the peace - Voluntarily causing hurt in committing robbery - Punishment for criminal ,intimidation

Citation : (2017) 03 GUJ CK 0112

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : NILESH I JANI, ? PATHAK

Final Decision : Allowed

Judgement

1. Rule returnable forthwith. Ms. Pathak, the learned APP, waives service of notice of rule for and on behalf of the respondent No.1. The respondent No.2-original first informant, although served with the notice issued by this Court, has chosen not to remain present before this Court either in person or through an advocate and oppose this application.

2. By this application under section 482 of the Code of Criminal Procedure, 1973, the applicants-original accused persons seek to invoke the inherent powers of this Court praying for quashing of the first information report being C.R. No.I-106 of 2016 registered with the Himmatnagar "B" Division Police Station for the offence punishable under sections 394, 323, 504, 506(2) read with section 114 of the Indian Penal Code.

3. On 26th December, 2016, the following order was passed;

"Prima facie, I am of the view that Section 394 of the IPC has no application in the facts of the case. Even if the entire case of the prosecution is accepted or believed to be true, none of the ingredients to constitute the offence of robbery are spelt out.

I am inclined to issue Notice. Let Notice be issued to the respondents returnable on 14.03.2017. Ms. Pathak, the learned APP waives service of notice for and on behalf of the respondent no.1- State of Gujarat. The respondent no.2 be served directly through the Investigating Officer of the concerned Police Station.

Since the applicants are on bail, no interim order for the present.

Notify the matter on top of the board. "

4. Having heard the learned counsel appearing for the parties and having considered the allegations levelled in the first information report, I am convinced that none of the ingredients to constitute the offence of robbery punishable under section 394 of the Indian Penal Code are spelt out. By any stretch of imagination, it cannot be said that the common intention of the accused persons was to commit robbery.

5. The law in this regard is well settled. A Division Bench of this Court in the case of Himatsing Shivsing vs. The State of Gujarat (1961) GLR 678, has very succinctly explained what amounts to robbery.

"Theft amounts to "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender for that end, voluntarily causes or attempts to cause to any person death or hurt Or wrongful restraint, or fear of instant death or or instant hurt, Or of instant wrongful restraint. Before theft can amount to "robbery", the offender must have voluntarily caused or attempted to cause to any person death or hurt Or wrongful restraint, or fear of instant death or of instant hurt) or of instant wrongful restraint. The Second necessary ingredient is that this must be in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft. The (third necessary ingredient is that the offender must voluntarily cause or attempt to cause to any person hurt etc., for that end, that is, in order to the committing of the theft or for the purpose of committing theft or for carrying away or attempting to carry away property obtained by the theft.

It is not sufficient that in the transaction 01 committing theft hurt etc., had been caused. If hurt etc., is caused at the time of the commission of the theft, but for an object other than the one referred to in Section 390 I. P. Code, theft would not amount to robbery, it is also not sufficient

that hurt had been caused in the course of the same transaction as commission of the theft. The three ingredients mentioned in Section 390, I. P. Code must always be satisfied before it can amount to robbery, and this has been explained in A.I.R. 1941 Oudh 476, in the following words ;

The words "for that end" in ST 390 clearly mean that the hurt caused by the offender must be with the express object of facilitating the committing of the theft, or must be caused while the offender is committing the theft or is carrying away or is attempting to carry away the property obtained by the theft it does not mean that the assault or the hurt must be caused in "the same transaction or in the same circumstances.

In *Karuppa Gounden v. Emperor*, A.I.R. 1918 Mad 821, which followed two Calcutta cases of *Otaruddin Manjhi v. Kafiluddi Manjhi* 5 Cal WN 372, and *King Emperor v. Mathura Thakur* 6 Cal W N 72, it has been observed at page 824 as follows :

Now it is our duty to give effect to the words "for that end". It would have been open to the legislature to have used other words which would not raise the difficulty that arises here, The Public Prosecutor, has been forced to argue that "for "that end" must be read as meaning "in those circumstances". In my opinion we cannot do that in construing a Section in the Penal Code . Undoubtedly, the words "in those circumstances" would widen the application of the Section and we are not permitted to do that. The matter has been considered in two judgments of the Calcutta High Court one of which is reported as 5 Cal WN 372. Their Lordships put the question in this way:

It seems to us that the whole question turns upon the words "for that end". Was any hurt or fear of instant hurt, that was caused in the present case, cause for the end of "the commission of the theft? We think not. It seems to us that whatever violence was used was used for the purpose of dispossessing the persons who were already in possession of the premises in question and had no relation to the commission of theft, although theft was committed at the same time.

The language used in another case reported as 6 Cal WN 72 is as follows:

The question here arises whether Mathura Thakur when he attacked Soman Dhanu, did so for the end referred to, namely, for the purpose of carrying away the paddy, which had been harvested.

Those judgments in my opinion state the obvious intention of the Section and we are bound not to give effect to it and I therefore follow the decisions in those two cases.

Ordinarily, if violence or hurt etc. is caused at the time of theft, it would be reasonable to infer that violence or hurt was caused for facilitating the commission of theft or for facilitating the carrying away of the property stolen or for facilitating the attempt to do so. But, there may be something in evidence to show that hurt or violence was caused not for this purpose but for a different purpose."

6. I am of the view that the first information report deserves to be quashed so

far as section 394 of the Indian Penal Code is concerned. So far as the other offences are concerned, the investigation should be permitted to be completed. It has been vehemently submitted that the entire first information report deserves to be quashed as it is nothing but a counter blast to the first information report registered by the applicant No.1 for the offence punishable under section 376 of the Indian Penal Code. This will be a matter of investigation. It could be a counter blast, but it is for the Investigating Officer to look into the same.

7. In the result, this application is allowed in part. The first information report, so far as the offence under section 394 of the Indian Penal Code is concerned, is quashed. The investigation shall proceed further in accordance with law so far as the other offences are concerned. Rule is made absolute to the aforesaid extent.

Direct service is permitted.