

(2011) 07 GUJ CK 0076
In the Gujarat High Court
Case No : Criminal Appeal No. 73 of 2001

Patel Dineshkumar Rugnathbhai and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Atrocity Act — Section 3(1)(10)
Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 114, 323, 324

Citation : (2011) 07 GUJ CK 0076

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

Bench : Single Bench

Advocate : M.C. Barot, for the Appellant; H.L. Jani, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—This appeal is directed against the judgment and order dated 20.12.2000, passed by the learned Special Judge, in Special Case (Atrocity) No. 188 of 1997, whereby the Appellant No. 1 was convicted for the offences punishable u/s 324 of the Indian Penal Code and sentenced the Appellant to undergo S.I. for one month with fine of Rs. 100/-, in default of payment of fine, S.I. for a further period of 7 days. For the offence u/s 135 of the Bombay Police Act, the Appellant No. 1 was ordered to undergo S.I. for four months and to pay a fine Rs. 100/-, in default, to further undergo S.I. for 7 days and also the Appellant No. 1 was ordered to undergo for six months S.I. and to pay a fine of Rs. 150/-, in default, to further undergo S.I. for 10 days for the offence punishable u/s 3(1) (10) of the Atrocity Act. Learned Special Judge was pleased to convict and sentence the Appellant No. 2 to undergo S.I. for 15 days and to pay a fine of Rs. 100/-, in default, to further undergo 7 days for the offence punishable u/s 323 of the Indian Penal Code. Learned Special Judge was further pleased to order the Appellant No. 2 to undergo S.I. for six months and fine of Rs. 150/-, in default, to further undergo S.I. for 10 days for the offence

punishable u/s 3(1)(10) of the Atrocity Act. All the sentences shall run concurrently.

The brief facts of the prosecution case are as under:

2. On 6.12.1996, the complainant was coming by S.T. Bus proceedings from Jetalvasna to Visnagar via Valam and at that time, the accused - Appellants came to the complainant and took the seat near the complainant. The bus reached at Valam village, the complainant along with accused got down from the bus and the accused told the complainant why the complainant left the seat, where the accused sat and therefore, the complainant told that due to liquor smell, he stood up from the seat. Immediately, the accused got excited and abused the complainant about his caste. The accused gave fist blows to the complainant and thereafter, the accused gave knife blow to the complainant. Therefore, the complaint was lodged being C.R. I 429 of 1996 before Visnagar Police Station for the offence punishable under Sections 323, 324, 114 of the Indian Penal Code, Section 135 of the Bombay Police Act and Sections 3(1) (10) of the Atrocity Act. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, as sufficient material was found against the accused, they were arrested. After completion of investigation, charge-sheet was filed in the competent Court but, subsequently, the same was committed to the Special Court, Mehsana for trial.

3. During the trial, the prosecution has examined 8 witnesses. The prosecution had also placed reliance upon several documentary evidence.

4. At the end of trial, the Court below convicted the accused and imposed sentenced as narrated in the earlier part of this judgment. Hence, this appeal.

5. Mr. Barot learned advocate appearing for the Appellants, has submitted that the learned Special Judge has committed grave error in passing the judgment and order of conviction. Even there is no any independent witness examined by the prosecution and there are lot of discrepancies in the statement before the police and the deposition before the Court. The witnesses examined before the trial Court, are interested witnesses and there is no any independent witness. Even the medical evidence has not supported the version of the prosecution. He also submitted that as per the medical expert, the injuries caused to the complainant, is possible by hard and blunt substance. He also submitted that as per the complainant, the injury on the finger of the complainant was caused by Chhari. He also submitted that the evidence of Sadabhai ought to have been discarded by the learned trial Judge. The complaint was filed at belated stage and there was no explanation about delay, tendered by the prosecution. He also submitted the Appellant No. 2, against whom there is no case or there is no any evidence and therefore, he was wrongly arraigned in the prosecution. He also read the complaint and panchanama and submitted that there is not a single piece of evidence which corroborates the contents of the complaint. Therefore, the judgment and order passed by the learned Special Judge is required to be

quashed and set aside by allowing this Appeal.

6. Learned APP Mr. Jani has strongly opposed the submissions made by the learned advocate for the Appellants. He also submitted that the Appellants - accused are involved in serious offence and therefore, no lenient view be taken in favour of the accused. Learned trial Judge has rightly passed the order of conviction and sentence and, therefore, no interference is required to be called for.

7. Heard both the parties and perused the charge and evidence on record. I have also perused the oral as well as documentary evidence. I have also perused the evidence of P.W. 5 - Sadabhai Pujabhai Parmar Exhibit 25, eye-witness, who has admitted that after getting down from the Bus, the quarrel took place between the accused and complainant and the accused had beaten the complainant and the accused Dinesh gave knife blow to the complainant. He also admitted that the accused abused the complainant about caste. I have also perused the oral evidence of P.W.1 - complainant - Ganpatbhai Vitthalbhai Chamar at Exhibit 20. He also admitted in his evidence that the incident took place at Valam village and at the place of incident, one shop of Pan, which was in closed condition. He also admitted that P.W.5 Sadabhai was very well present and when the accused assaulted upon the complainant, the complainant shouted. The accused abused about the caste of the complainant. Therefore, from the complaint and evidence of the witnesses, the case is proved beyond reasonable doubt against the accused, by the prosecution and, therefore, I have not found any reason about the conviction and sentence imposed by the learned Special Judge. Learned advocate is unable to convince this Court that from what angle, learned Special Judge has committed error in convicting the accused. Therefore, I find no reason to interfere with the judgment and order passed by the learned Sessions Judge.

8. Learned advocate Mr. Barot has prayed to grant the probation in favour of the accused. But from the perusal of the record of the case, it appears that the accused are involved in the serious offence and the complainant being member of Schedule Caste, the accused quarreled with the complainant and abused the caste of the complainant and thereafter, gave fist and kicks blows and the accused also gave knife blow without there being any reason. Therefore, if the accused is considered for probation, then they will be inspired to repeat such kind of offence. In this case, there is no reason or any kind of animosity between the complainant and accused. Therefore, the accused are not entitled for probation.

9. In the result, the Appeal is dismissed. The judgment and order passed by the learned Special Judge, Mehsana in Special Case (Atrocity) No. 188 of 1997 dated 20.12.2000 is hereby confirmed. If the Appellants are on bail, they are hereby directed to surrender before the Jail Authority within four weeks from the date of this order, failing which, the concerned Court shall issue non-bailable warrant to effect the arrest of the Appellants. Rest of the judgment of the learned Sessions Court shall remain unaltered. Record and proceeding be sent back to concerned

trial Court.