

(2010) 04 GUJ CK 0063
In the Gujarat High Court
Case No : Criminal Appeal No. 38 of 1997

Prabhatsinh Bharatsinh Parmar and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 4
Penal Code, 1860 (IPC) — Section 114, 504, 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1), 3(10), 9
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7

Citation : (2010) 04 GUJ CK 0063

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : B.S. Patel and Ranjan B. Patel, for the Appellant; K.L. Pandya, Assistant Public Prosecutor for Opponent 1, 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. 72/95 recording the conviction of the accused persons for the offences u/s 504, 506(2) r/w Section 114 of IPC and also for offence u/s 3(1)(10) of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocities Act") and imposing sentence for offence u/s 504 of IPC till rising of the court and fine of Rs. 100/-, in default SI for 3 days, for offence u/s 506(2) r/w Section 114 of IPC till rising of the court with fine of Rs. 200/- and in default SI for 3 days and also imposing sentence for offence u/s 3(1)(10) of the Atrocities Act SI for six months and fine of Rs. 500/- in default of SI for one month.

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

2.1 It is the case of the prosecution that on 17.3.1995 one Danabhai residing in the police line had some quarrel with regard to gambling by the children residing in the police line including that of accused No. 1. Prabhatsinh. At that time as the complainant had intervened to rescue one Danabhai they were abused and threatened with dire consequences. It is also alleged that they were threatened that in case they tried to interfere they would be murdered and they should not utter any word for what is happening. Thus, threat was given. It is alleged that the complainant had given an application to DSP, Vadodara (Railways) and on the basis thereof to record the statements police constable one Pratapsinh who was serving in the railway police had visited the house of the complainant. Thereafter, at about 10.15 A-1 and police constable Bharat Jaiswal had visited his house and started abusing with the words which were derogatory to their community. At that time, the wife and daughter of the complainant were present. Therefore, he lodged a complaint being C.R. No. II-42/95 with the J.P. Road Police Station for the alleged offences u/s 504, 506(2) r/w Section 114 of IPC and also for offence u/s 3(1)(10) of the Atrocities Act.

2.2 On the basis of the complaint, the investigation was made and after the investigation was over, the charge sheet was filed and the learned Addl. Sessions Judge, Vadodara framed the charges levelled against the accused persons for the alleged offences u/s 504, 506(2) r/w Section 114 of IPC and also u/s 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 and also produced documentary evidence.

4. After recording the evidence of the prosecution witnesses was over, the learned Addl. Sessions Judge, Vadodara recorded further statement of the accused persons u/s 313 of Cr.P.C.

5. After hearing the learned APP as well as the learned advocate for the accused persons, the learned Addl. Sessions Judge convicted the accused persons for the offences u/s 504, 506 r/w Section 114 of IPC and also for the offence u/s 3(1)(10) of the Atrocities Act and imposed the sentence as recorded hereinabove. It is this judgment and order which has been assailed in this appeal, inter alia, on the grounds narrated in detail in the memo of appeal.

6. Learned Counsel Mr. B.S. Patel for the appellants-accused submitted that the whole trial is vitiated as Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as "the Rules") which came into force with effect from 31st March 1995 provides that such an offence has to be investigated by an officer not below the rank of Dy. S.P. which is not done and therefore the whole trial is vitiated. He has referred to the judgment of this Court in Criminal Appeal No. 200 of 1997 dated 10.3.2010 and referring to Rule 7 of the Rules he submitted that the investigation has to be by an officer not below the rank of Dy.S.P. Further, it has to be completed in a particular manner and the Home Secretaries are obliged to review. Therefore, he

submitted that as the investigation has admittedly not been made by a competent officer as provided under Rule 7 of the Rules, the trial is vitiated. He has referred to the judgment of the Hon'ble Apex Court in case of State of M.P. v. Chunnilal @ Chunni Singh reported in JT 2009(6) SC 256 wherein it has been observed,

Rule 7 of the Rules provided rank of investigation officer to be not below the rank of Deputy Superintendent of police. An officer below that rank cannot act as investigating officer. The provision in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence u/s 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid.

He therefore submitted that the entire trial would vitiate. Alternatively, he submitted that in any case the conviction conviction u/s 3(1)(10) of the Atrocities Act cannot be sustained.

7. Learned Counsel Mr. Patel referred to the testimony of the complainant, PW-1 at Exh. 11. He also referred to the complaint at Exh. 12 and submitted that there is discrepancy and he has improvised in his testimony to attract the provisions of the Atrocities act. He submitted that in the complaint at Exh. 12 he has stated that both the accused came to the house of the complainant at about 10.15, whereas in the testimony he has given he has stated that the accused was outside his house so as to attract the provisions of the Atrocities Act. Learned Counsel Mr. Patel referred to the provisions of the Atrocities Act and submitted that as provided therein, unless it is a public place it would not be attracted. Therefore, as the house would be a private place, the provisions of the Atrocities Act would not be attracted and therefore he has improvised.

8. The learned Counsel has also referred to the testimony of PW-2 Exh. 15 and submitted that he has referred to the earlier incident about gambling and the complainant having rescued him. Learned Counsel Mr. Patel submitted that the complaint which is said to have been given is not brought on record but it is an admitted fact police constable Pratapsinh had come to record the statement and therefore it has reason to implicate the accused persons falsely.

9. Learned Counsel Mr. Patel referred to the testimony of the witnesses including the I.O. at Exh. 21 and submitted that as admitted in the cross-examination, PW-2 has not stated in his statement that the accused had come and started shouting and abusing in front of the house of the complainant. Learned Counsel Mr. Patel, therefore, submitted that it is required to be considered whether the Atrocities Act would be even otherwise attracted as the offence cannot be said to have taken place in a public place.

10. Another facet of the argument is with regard to the offence under Sections 504 and 506(2) of IPC. Learned Counsel Mr. Patel referred to both the provisions and submitted that the ingredients for the offences cannot be said to have been made out. In support of the submission he has referred to and relied upon the

judgment of the Hon"ble Apex Court in the case of B.R. Meena v. Mangal Das Chimanlal Barot and Anr. reported in 1988 Cri.L.J. 285 and submitted that mere utterance of abuse without anything more would not constitute the offence. He submitted that the Hon"ble Apex Court has observed that the essential requirements are that the accused must intentionally insult and such insult must give provocation to any person and further that he must have the requisite knowledge that such provocation will result in breach of public peace.

11. Learned Counsel Mr. Patel, similarly, referred to the provisions of Section 506(2) of IPC and submitted that even for that mere utterance of the word would not be sufficient unless it is made out that the threat was actual. In support of this submission he referred to and relied upon the judgment in the case of Noble Mohandass v. State reported in 1989 Cri.L.J. 669 (Madras High Court). He emphasised that to attract the provisions of Section 506(2) there has to be a real threat and mere utterance would not be sufficient. He also submitted that from the evidence on record and testimony of the witnesses, it cannot be said that the ingredients are fulfilled particularly when both the accused and the complainant are police personnel residing in the police line. Therefore, the say with regard to such threat having been given cannot be believed. He emphasised that no independent witnesses have been examined and the witnesses who are examined are only family members and one Danabhai, PW-2 who has also reason to implicate falsely because of the earlier incident. He therefore submitted that there was a strong motive for false implication because of the earlier incident. Learned Counsel Mr. Patel therefore submitted that the impugned judgment and order recording the conviction may be quashed and set aside. He also submitted that plea regarding Rule 7 is legal and therefore it could be entertained. He also referred to and relied upon the judgment reported in Moly and Another Vs. State of Kerala,

12. Learned APP Mr. Pandya referred to the testimony of witnesses and tried to submit that the complainant and PW-2 both have stated about the incident having taken place in front of the house of the complainant and therefore it cannot be said that it was in a private place and in the house of the complainant. He also submitted that as it appears from the evidence there was already a quarrel and in wake of this dispute or quarrel the threat cannot be said to be mere abuse and therefore the ingredients for the offence u/s 506(2) would be attracted.

13. In view of rival submissions, it is required to be considered whether the impugned judgment and order calls for any interference by this Court.

14. A few admitted facts are required to be considered. As submitted by learned Counsel Mr. Patel, the investigation is not made by the competent officer as required under Rule 7 of the Rules in light of the observations made by the Hon"ble Apex Court which is quoted hereinabove. Admittedly, the investigation is made by a P.I. and not by the Dy. S.P. as required. Therefore, without much elaboration on the aspect as to whether the offence can be said to have taken

place in the house of the complainant or in front of the house of the complainant, the offence under the Atrocities Act cannot be said to have been established and therefore the conviction cannot be sustained for the offence under the Atrocities Act.

15. Another facet of the argument with regard to the offence u/s 504 and 506(2) of IPC is required to be appreciated that both the complainant and the accused persons are police personnel residing in the police line. The abuses which have been highlighted with regard to the offence under the Atrocities Act would not be relevant in light of the observation made hereinabove qua the offence under the Atrocities Act. Therefore, whether the ingredients for the offence u/s 504 could be said to have been established, as observed by the Hon'ble Apex Court, it has to be established that intentionally insult was made and the insult must be such as to give a provocation and with the knowledge that such provocation will result in breach of public peace. There is no such evidence brought on record at all. Similarly, for the offence u/s 506(2), as rightly submitted, whether the threat could be said to be actual or illusory. Even if it is accepted that there was an abuse or harsh words were used, but still can it be said that it was a real threat? As both the accused and the complainant are from the police department and are residing in the police line itself, it cannot be readily accepted that such threat meant any real pressure. As a matter of fact, the complainant in his testimony at Exh.11 and in the cross-examination has admitted that there was a transfer order passed by the D.S.P. with immediate effect and a suggestion was made to him that to avoid such transfer he was not remaining at his house though this suggestion has been denied. The fact remains that there was such an order and there was a complaint made to the DSP as stated by the complainant himself that he made a complaint before the office of the DSP. There is a reference to the chapter case also regarding the previous incident of gambling. Therefore, the cumulative effect of the entire evidence would reveal that the motive for implicating the accused persons cannot be ruled out as there was a history of quarrel in the past. Therefore, the evidence requires a closer scrutiny as discussed above for the offence u/s 504 and 506(2) of IPC. There is no further material brought on record which can be said to be sufficient to establish the guilt of the accused for the alleged offences.

16. It is required to be mentioned that the reasoning given by the learned Addl. Sessions Judge with regard to this aspect is also highlighted by learned Counsel Mr. Patel and in para 19, referring to the judgment of the Bombay High Court, though it has been observed that unless there is an actual threat, Section 506 would not be attracted. However, it is simply stated that the facts are different without any elaboration as to how the threat could be said to be actual when both the complainant and the accused are from the police department residing in the police line. A reference to the judgment of the Hon'ble apex Court in the case of B.R. Meena (supra) has been made. However, even after referring to this judgment observations are made that the ingredients can be said to have been established observing that the complainant is in a disciplined force and therefore

he may not have been provoked, but otherwise it could result in breach of peace. These observations are without any basis or material and the findings recorded cannot be said to be supported by material and evidence on record for the alleged offences u/s 504 and 506(2) of IPC.

17. Therefore, in light of the discussions made herein above, the appeal is allowed and the impugned judgment and order passed by the learned Addl. Sessions Judge, Vadodara in Atrocity Case No. 72/95 recording conviction of the appellants-accused is hereby quashed and set aside. The appellants-accused are set at liberty immediately if their presence is not required in any other case. Bail bond, if any, stands cancelled.