

(2015) 01 GUJ CK 0085
In the Gujarat High Court
Case No : Criminal Appeal No. 1352 of 1993

Rabari Gova Rana and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 357, 374
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10), 3(2)(5)

Citation : (2015) 3 CCR 365

Hon'ble Judges : K.J. Thaker, J

Bench : Single Bench

Advocate : V. Popat, for the Appellant; Monali Bhatt, APP, Advocates for the Respondent

Judgement

K.J. Thaker, J—The present appeal has been filed by the appellants under Section 374 of the Criminal Procedure Code, against the judgment and order dated 29.10.1993 passed by learned Special Judge and Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 134 of 1991, whereby the appellant-accused Nos. 1, 12 and 13 were convicted for the offence under Section 325 read with Section 147 and Section 323 read with Section 149 of the Indian Penal Code. The case of the prosecution in short is that:

"1.1 One Harijan Mashru Ana-original complainant is the resident of village Gola in Dhanera Taluka and is an Agriculturist who has five brothers and two sisters, out of which the youngest sister Sita aged 25 years is married to the appellant No. 2 abovenamed-original accused No. 12. It is the further case of prosecution that one Chhayaben-daughter of Lavji Hemraj, being uncle of the complainant was married to original accused No. 11-Popat Pura Harijan, who expired during the pendency of the case, but said Chhayaben was not treated well by her in-laws and, therefore, for last two years Chhayaben was residing at village Gola

with her father Lavji Hemraj Harijan. It is the further prosecution case that on account of the aforesaid, Harijan Pura Soma i.e. original accused No. 10 and his sons original accused Nos. 11, 12 and 13, were having inter se quarrel for which cross-complaints and suits were filed, which were pending in the Dhanera Court.

1.2 It is further the prosecution case that on 11th August, 1991 at about 9.00 p.m. complainant Mashru Ana Harijan was sleeping at his house after having dinner at which time at about 1 O'clock two Jeeps came from the side of village-Kuvarla and stopped near the gate of the house of the complainant. It is further the prosecution case that about 20 persons got down from the aforesaid jeeps with sticks at which time the complainant Mashru Ana Harijan, his father Ana Hemraj, his brother Taluka Ana and the family members of the complainant were present at which the aforesaid 20 persons who got down from the Jeeps started beating the said complainant's family with sticks and tried to take away complainant's sister Sita by force and put her into the Janga Jeep. It is further prosecution case that on account of the commotion, complainant's uncle Lavji Hemraj and his cousin brothers immediately came to the scene and stopped the assailants side from taking away the complainant's sister Sita. However, it is the prosecution case that Sita was forcibly put into the Jeep and all the said 20 persons got into jeeps and ran away. It is further the prosecution case that while running away, one person being a member of the assailants side who was on the back side of the jeep was pulled down by the complainant and his side. It is further the prosecution case that the complainant Mashru Ana had given blow by a stick on the chest of the original accused No. 11 who has died during the pendency of the case and thereupon the complainant side was assaulted by sticks.

1.3 It is the further prosecution case that the complainant's cousin Taluka Ana had his both hands broken and complainant's uncle Lavji Hemraj had his right hand broken and the complainant's father Ana Hemraj and his mother Rekhaben and his sister-in-law Parvatiben were also beaten by sticks. That according to the complaint made by the original complainant, the original accused No. 11 who had died during the pendency of the case, original accused No. 13-appellant No. 3 herein, original accused No. 12-appellant No. 3 herein along with Harijan Pura Soma, accused No. 10 and other persons named in the complaint were recognized by the complainant.

1.4 It is further the prosecution case that the person who was pulled down from the jeep had sustained injury on his forehead and on making inquiry, the name was found to be Rabari Gova Rana - original accused No. 1 before this Hon'ble Court, and it is further the prosecution case that on further inquiries being made, the original accused No. 1 had given names of four other persons who had come along in the jeep. That thereafter the appellant No. 1- original accused No. 1 was taken to the Dhanera Police Station and complaint was lodged at about 11.15 a.m. on 11th August, 1991, against the appellants and other 13 persons for having allegedly committed the offences under Sections 147, 148, 149, 366, 325

of I.P.C. read with Section 135 of the Bombay Police Act read with Sections 3(1) (10) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

1.5 Thereafter, investigation was carried out and charge sheet came to be filed against the accused in the Court. Thereafter, charge came to be framed and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

1.6 In order to bring home the charges against the accused, prosecution has examined several witnesses and also led documentary evidence.

1.7 Thereafter, after filing closing purshis by the prosecution, further statement of accused persons under Section 313 of the Code of Criminal Procedure, 1973 was recorded. The accused persons have denied the case of the prosecution and submitted that a false case is filed against them.

1.8 At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned Judgment, convicted the appellant-accused.

1.9 Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 29.10.1993 passed by learned Special Judge and Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 134 of 1991, the appellants-accused Nos. 1, 12 and 13 have preferred the present appeal before this Court."

2. It is submitted by Mr. Virat Popat, learned Advocate for the appellants that the learned Special Judge and Additional Sessions Judge, Banaskantha, has erred in law in convicting the appellants abovenamed for offence under Sections 325, 323, 147 and 149 of the I.P.C. and has further erred in law in sentencing the appellants abovenamed on the basis of the aforesaid conviction for the said offences. He submitted that the learned Special Judge and Additional Sessions Judge, Banaskantha, has failed to appreciate and consider that a false case was filed against the appellants herein and other accused on account of the fact that there was a feeling of disharmony between the complainant family and the families of the accused since there was previous history of litigation and filing of cross-complaints against each other. He submitted that the learned trial Judge has not appreciated and considered the fact that no independent witnesses were examined by the prosecution and the witnesses examined were related to complainant. Therefore, conviction should not have been based on evidence of such witnesses. He also submitted that learned trial Judge has failed to appreciate and consider that there were material variances in the evidence of witness No. 1 i.e. the original complainant Mashru Ana Harijan recorded at Exh.27 and other witnesses who are alleged to have been present at the scene of the offence and whose evidences are contradictory to each other. He also submitted that the learned trial Judge has failed to appreciate and consider that the defence side has successfully brought out the contradiction in the evidence of

PSI Shri Khant to prove the omission, contradiction and the improvements in the evidence of various witnesses which are absolutely in contradiction to their police station, and it is obvious that such improvements are brought out to lend support to the prosecution case.

3. He also submitted that the learned trial Judge has erred in law and failed to appreciate and consider that one of the most important witnesses Sita who is alleged to have been kidnapped does not support the prosecution story. He submitted that on the basis of evidence of Sitaben and the complainant and other witnesses, it is not possible to ascertain correctly as to whether said Sitaben was at the scene of incidence or was away from the incidence on account of contradictory evidence of the said witnesses and, therefore, as the fact of said Sitaben being at the scene of offence not having been proved beyond reasonable doubt, the order of conviction could not have been passed. He also submitted that it was a false case alleged by the complainant side on account of the fact that Chhayaben, daughter of Lavjibhai Hemraj, uncle of the complainant refused to go to her in-laws house i.e. to the house of the original accused No. 11 and the accused No. 11 had refused to give divorce and because of the fact that no settlement could take place in a meeting which had taken place few days before the alleged incidence, a false case was lodged against the accused side.

4. After 21 years of the case, learned Counsel Mr. Popat submitted that the complainant had main grievance against one of the accused, who has died during the pendency of the trial and he was the person who had inflicted major blows. He also submitted that some facts were not being brought out and were being wilfully suppressed by the prosecution and the complainant side since there was no explanation of the injury sustained by the original accused No. 1 -appellant No. 1 herein Rabari Gova Hana since it is clearly in the instance of prosecution witness No. 1 i.e. original complainant Mashru Ana Harijan in his evidence recorded at Exh. 27 at paras 5 and 6 that at the time of incidence when original accused No. 1 Rabari Gova Rana was pulled down from the jeep he had not sustained any injury. But, however, in the evidence of Medical Officer, prosecution witness No. 22 recorded at Exh. 57 the injury on the forehead of accused No. 1 is clearly brought out and the said injury is nowhere explained by the complainant side in the prosecution case.

5. Mr. Popat further submitted that the learned trial Judge has failed to appreciate and consider that the evidence of the injured witnesses was in contrast to the evidence of the Medical Officer and, therefore, the said evidence of injured witness was not reliable to form basis of conviction. That the learned Special Judge and the Additional Sessions Judge has failed to appreciate and consider that on the basis of the evidence on record it was not possible to reach to a definite conclusion beyond reasonable doubt that all the original accused have been found unlawful assembly to bring out their common intention and had committed an offence alleged to have been committed by them more particularly when the fact of kidnapping of Sitaben is not clearly established on account of

evidence of said Sitaben. He, therefore, submitted that looking to the young age of the accused and in view of the fact that almost 20 years have elapsed from the date of the incident, in view of the decision of the Hon'ble Apex Court in Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 4 ABR 648 : (2013) 9 AD 294 : AIR 2013 SC 2454 : (2013) CriLJ 3044 : (2013) 7 JT 26 : (2013) 2 RCR(Criminal) 1036 : (2013) 6 SCALE 778 : (2013) 6 SCC 770 , which is followed by this Court in a number of decisions, this Court may invoke the provisions of Section 357 of the Cr.P.C.

6. On the other hand, Ms. Bhatt, strongly opposed the present appeal and supported the order of the trial Court, stating that the accused-appellants went to the house of the complainant at night with weapons and caused injuries to them. Ms. Bhatt submitted that considering the evidence on record more particularly the ocular version and the medical evidence, the presence of the accused at the scene of offence is proved. She submitted that in fact the injuries sustained by the accused proves that they were involved in the incident and therefore the trial Court has rightly convicted the accused. She submitted that the evidence of the complainant and eye-witnesses and the medical evidence clearly establish that the accused have committed the offence as alleged. Therefore, the impugned judgment is required to be upheld and the present appeal may be dismissed.

7. Ms. Bhatt states that looking to the offence committed by the accused, they will not be entitled for benefit under Section 357 and she has relied on the latest decision of the Apex Court and submitted that this is not a case where leniency should be shown just because of passage of time as even the learned trial Judge has not shown leniency while granting probation to other accused persons.

8. I have heard learned advocates for the both sides and perused the materials on record. Learned trial Judge has granted probation to some of the accused, however, such benefit is not granted to the present appellant-accused Nos. 1, 12 and 13 and convicted them. The evidence of PW-8 has been scanned by this Court. The role attributed to the accused Nos. 1, 12 and 13 is seen, they have caused hurt. Since it is proved that the accused-appellants were present at the time of the incident and since nothing is brought before this Court by learned Counsel, Mr. Popat to show that the accused had not participated in the commission of offence, this Court is of the view that the conviction cannot be set aside or annulled and the appellants are not entitled for clear acquittal. However, looking to the role ascribed to the appellants, and considering the fact that 21 years have passed and in view of the provisions of Section 357, which are pressed in service by learned Counsel, Mr. Popat, relying on the decision of the Ankush Shivaji Gaikwad v. State of Maharashtra (supra) and decision of this Court in Criminal Appeal No. 1552 of 2004, wherein, it is held that the principle of Sub-section (3) of Section 357 of Cr.P.C. is empowering the Court to award compensation and Hon'ble Apex Court has referred to catena of decisions and, therefore, I find that it shall be in the interest of justice if the accused are

directed to pay compensation to the injured in lieu of the sentence. Therefore, the appeal is partly allowed and conviction of the appellants is altered.

9. The Criminal Appeal is partly allowed. The judgment and order dated 29.10.1993 passed by the learned Special judge and Additional Sessions Judge, Banaskantha at Palanpur, in Special Case No. 134 of 1991 is modified to the following extent. Simple imprisonment imposed upon the appellants-accused for offence under Section 323 read with Section 149 of the Indian Penal Code shall remain, however, it is reduced to the period already undergone by them as under-trial prisoners. As far as punishment under Section 325 read with Section 149 of the Indian Penal Code is concerned, the same is converted to Section 324 read with Section 149 of the IPC and the fine is enhanced to Rs. 10,000/- each. Out of the total amount of fine, Rs. 2,000/- shall go to the State and rest of the amount shall be treated as compensation to the injured victim to be paid under Section 357 of the Criminal Procedure Code. Time of eight weeks is granted to the appellants to deposit the amount of fine, failing which they shall suffer the imprisonment as imposed by learned Additional Sessions Judge. Record and proceedings be sent back to the trial Court concerned forthwith.