

(2016) 01 GUJ CK 0037

In the Gujarat High Court

Case No : Criminal Appeal Nos. 1854 and 2214 of 2006

Ramdayal Charanlal Sharma

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 302, Section 326

Scheduled Castes and the Scheduled Tribes (Preven

Citation : (2016) 01 GUJ CK 0037

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Jignesh L. Hajare, Advocate, for the Appellant; C.M. Shah, APP, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—1. Present appeals, filed by the original accused Nos. 1, 3 and 6, assail the judgment and order dated 29/08/2006 passed by the learned Additional Sessions Judge, Fast Track Court No. 7, Ahmedabad (Rural) in Special (Atrocity) Case No. 52 of 2003, whereby, while acquitting the original accused Nos. 2, 4, 5 and 7 from all the charges levelled against them, the learned trial Judge was pleased to convict the original accused Nos. 1, 3 and 6 for the offence punishable under Section 302 and 326 respectively and for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity, "the IPC"), the original accused Nos. 1 and 6 were sentenced to undergo life imprisonment and a fine of Rs. 5,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one year, whereas, the original accused No. 3 was convicted for the offence punishable under Section 326 of the IPC and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 3,000/- in default of payment of fine, to undergo further rigorous

imprisonment for six months. Accordingly, present appeals have been filed by the original accused Nos. 1, 3 and 6 against conviction.

2. Filtering the unnecessary details, the facts of the prosecution case are that keeping grudge of the fact of deceased Vijay Ratilal Parmar had worked for the Bhartiya Janata Party in the assembly elections on 12/12/2002, the accused, by forming unlawful assembly in furtherance of their common object, on 13/12/2002 at 17:30 hours, near Harsiddhi Mata temple situated at Indira Nagar - 2 at Lambha, attacked and assaulted him with deadly weapons like gupti, sword and wooden stick and when deceased Jitendra Prabhatbhai Solanki tried to intervene, they also attacked and assaulted him. In the assault, the duo sustained grievous injuries and ultimately, succumbed to the injuries. Thus, the accused committed the alleged offence for which, a complaint came to be lodged against the accused for the offence punishable under Sections 147, 148, 149 and 302 of the IPC and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 135 of the Bombay Police Act.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Sessions Court, Ahmedabad (Rural).

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 In order to bring home the charge against the accused, the prosecution has examined following witnesses and also produced several documentary evidence, as under:

2.4 At the end of the trial, Further Statements of the accused under Section 313 of Code were recorded in which they denied the evidence forthcoming on the record and pleaded not guilty and also false implication. Thus, after recording above-referred Further Statements and hearing the arguments on behalf of prosecution and the defence, the learned Sessions Judge came to the aforesaid conclusion, by the impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellants - original accused Nos. 1, 3 and 6 have preferred the present appeals against conviction.

3. We have heard Mr. Y.S. Lakhani, learned senior advocate, assisted by Mr. Jignesh Hajare and Mr. Maulin G. Pandya, learned advocates for the respective appellants in both the appeals and Ms. C.M. Shah, learned Additional Public Prosecutor, for the State.

3.1 Mr. Lakhani, the learned senior advocate for the accused, vehemently submitted that the trial Court has committed an error in convicting the present appellants - original accused. He contended that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not

properly considered the evidence led before it and looking to the provisions of law itself, it is established that the prosecution has failed to prove the whole ingredients of the offence against the present appellants. He took us to the evidence of PW-1 - Natubhai Jinabhai Solanki, the complainant at exh. 21 and PW-2 - Vishakhaben Vijaybhai Parmar, the wife of deceased Vijaybhai at exh. 95 and contended that they have not supported the case of the prosecution and though they were not declared hostile, but, in their cross-examinations, they have admitted that what was written in the complaint/statement before the police, was not known to them and they had only signed the same and had not stated any thing before the police. It was also stated by them, they had no personal knowledge of the incident nor had they any idea as to which accused was possessing which weapon and as to which accused had inflicted which injuries to the deceased persons. The learned senior advocate for the accused, inviting attention of the Court to para 83 of the impugned judgment and order, contended that the learned trial Judge has clearly observed in the said paragraph that, "in the case on hand, looking to the oral evidence adduced by the prosecution, as discussed herein above, nothing trustworthy has come on record either from the evidence of the complainant or from the evidence of any of the eye-witnesses so as to believe that the accused herein, by forming unlawful assembly in furtherance of their common object of inflicting grievous hurt to the complainant - Natubhai and deceased Vijaybhai and Jitendrabhai, have committed the offence punishable under Sections 147, 148 and 149 of the IPC". He further contended that the trial Court, only on the basis of joint recovery of the weapon at the behest of original accused No. 1, has imposed the conviction otherwise, there is nothing on record to show that present appellants - original accused were involved in the crime in question and in that view of the matter, only on the basis of Panchnama of seizure of the weapon at exh. 118, without any substantive piece of evidence on record so as to prove the guilt of the appellants - accused, conviction imposed by the trial Court cannot be upheld. He also invited attention of the Court to the observations made by this Court while granting bail to the present appellants and eventually, he requested to allow the present appeals and acquit the present appellants - original accused.

4. On the other hand, Mr. Shah, the learned Additional Public Prosecutor for the State, while supporting the impugned judgment and order, took us to the evidence on record and contended that in view of the evidence on record, it is clearly a case of culpable homicide amounting to murder, which is required to be viewed very seriously. She took us to the evidence of PW-1 - Natubhai Jinabhai Solanki, the complainant, exh. 21 and the evidence of PW-2 - Vishakhaben Vijaybhai Parmar, the wife of deceased Vijaybhai, exh. 95 in particular, and submitted that they have supported the case of the prosecution. She heavily relied upon the evidence of PW-8 - Prabhatbhai Kalubhai, exh. 129 and contended that this witness has clearly stated in his deposition that there was an ongoing quarrel between men of accused Dharampal and deceased Vijay Paramar and while he was standing on the road, his son namely deceased Jitendra went

at the spot to watch the same. The said quarrel run for about ten minutes. He had also seen the accused possessing the different weapons like gupti, sword and wooden stick. In that view of the matter and other oral as well as documentary evidence on record, she submitted that the prosecution has successfully proved the case against the accused beyond reasonable doubt. Last but not least, Ms. Shah, the learned Additional Public Prosecutor, submitted that the offence is already proved against the present appellants - accused beyond reasonable doubt and when, the trial Court has dealt with each and every aspect of the matter minutely, this Court may not interfere in appeal.

5. We have examined the matter carefully and gone through the evidence on record. We have re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon"ble Apex Court. On going through the evidence of PW-1 - Natubhai Jinabhai Solanki, exh. 21 and PW-2 - Vishakhaben Vijaybhai Parmar, exh. 95, it is true that they are the complainant and the wife of the deceased Vijaybhai respectively, however, on perusal of their respective cross-examinations, it appears that they have not supported the case of the prosecution and their evidence is rightly not believed by the trial Court. In our view, the trial Court ought to have declared them hostile but it is not the case else the case of the prosecution would be different footing. Further, it appears that the trial Court has mainly relied upon the Panchnama of seizure of weapon at exh. 118 for basing the conviction, which cannot be said to be a substantive piece of evidence. At this juncture, the observations made by this Court in order dated 24/10/2007 passed in Criminal Misc. Application Nos. 13747 of 2006 and 7277 of 2007 while granting bail to the appellants - accused, as referred by the learned senior advocate for the appellants - accused, appear to have been relevant and hence, are extracted hereunder:

"7. We are not entering into the merits or demerits of the matters at this stage. We are also not evaluating the evidence on record. We have gone through oral evidence of three witnesses shown to us by the learned counsel for the applicants namely, Vishakhaben Vijaybhai Parmar P.W.2 Ex. 95, Prabhatbhai K. Solanki, P.W.8 Ex. 29 and Nathubhai J. Shrimali, P.W.1 Ex. 21. We have also gone through the relevant portion of the judgment more particularly the conclusion arrived at by the learned trial Judge in paragraph 83 of the judgment wherein he has categorically come to the conclusion that as far as oral evidence are concerned, the complainant and other eye witnesses of the case have deposed before the Court but their evidence are not trustworthy. He has also dealt with sections 147, 148 and 149 of IPC and has come to the conclusion that the prosecution has failed to prove the guilt against all the accused regarding illegal assembly. It is clear from the judgment of the court below that the court below has convicted the accused only on the basis of joint discovery panchmama. Court below has not believed the evidence of the complainant and other witnesses stating that they are not satisfactory one. Court below has also believed that there was no sufficient material to hold the applicants guilty for the charge under Secs. 147, 148 and 149 of IPC. Therefore, the whole base of the conviction is the

joint discovery panchnama Ex. 118 and, therefore, the applicants are required to be released on bail."

(emphasis supplied)

5.1 The aforesaid observations found to be true as on going through the entire evidence on record, there appears no substantive piece of evidence forthcoming on record so as to suggest that the appellants - accused were involved in the crime and it is very difficult for us to approve the impugned judgment and order sans any direct or substantive evidence, only on the corroborative piece of evidence like aforesaid Panchnama of seizure of weapon at exh. 118 and the names mentioned in the history narrated in the medical evidence. Thus, we are of the opinion that the prosecution has failed to prove the case against the accused beyond reasonable doubt and that the approach of the Court below appears to have been vitiated by some manifest illegality or that the decision is perverse or that the Court below has failed to appreciate the evidence on record in its true perspective. In that view of the matter, we are of the considered opinion that the Court below has committed an error in imposing conviction. Sans any substantive piece of evidence, the conviction cannot be uphold and the same requires to be reversed by setting aside the impugned judgment and order of the trial Court.

6. In view of the aforesaid discussion, present appeals succeed and the impugned judgment and order dated 29/08/2006 passed by the learned Additional Sessions Judge, Fast Track Court No. 7, Ahmedabad (Rural) in Special (Atrocity) Case No. 52 of 2003, is hereby set aside and the appellants herein - original accused Nos. 1, 3 and 6 are acquitted of all the charges levelled against them. The accused are reported to have been on bail and hence, they are not required to surrender to custody, except they are required in any other case and their bail bonds shall stand cancelled. Registry to return the R&P, if any, to the trial Court forthwith.