
(2016) 06 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 517 of 2000

Shakrabhai Maganbhai Patel	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Rule 7, 3(1)(x)

Citation : (2016) 06 GUJ CK 0030

Hon'ble Judges : Mr. G.B. Shah, J.

Bench : Single Bench

Advocate : Mr. J.M. Buddhbhatti, Advocate, for the Appellant; Ms. Reeta Chandarana, APP, for the Respondent

Final Decision : Allowed

Judgement

Mr. G.B. Shah, J.(Oral)—Present appeal, filed by the appellant - original accused, assails the judgment and order dated 15.05.2000, passed by the learned Special Judge (Atrocity Act), Mahesana, in Special (Atrocity) Case No. 132 of 1998, whereby, the appellant - accused was convicted for the offence punishable under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity, "the Atrocity Act") and sentenced to undergo rigorous imprisonment for six months and a fine of Rs. 500/- and in default of payment of fine, to undergo, further rigorous imprisonment for one month.

2. Facts in nutshell of the prosecution case are that complainant Manojkumar Shivabhai Patel (Chamar) was serving as a peon in Golden High School at Kalol, where, the appellant - accused was serving as a Principal. On 04.02.1998 at about 1:00 p.m. when the complainant was on duty, the appellant - accused, allegedly gave filthy abuses to the complainant related to his caste in open and for the said alleged offence, a complaint came to be lodged against the appellant - accused.

3. On complaint being lodged, investigation was carried out and the appellant - accused was chargesheeted. The case being triable by a Special Court, the same was committed. The trial Court framed the Charge, which was denied by the accused on being read over to him and hence, the trial commenced. After leading of evidence and after hearing the arguments of both the sides, the learned trial Judge concluded as aforesaid.

4. Heard Mr. J.M. Buddhbhatti, learned advocate for the appellant - accused Ms. Reeta Chandaran, learned Additional Public Prosecutor, for the respondent - State.

5. At the threshold, Mr. Buddhbhatti, the learned advocate for the appellant - accused, drew attention of the Court upon the deposition of PW7 - Dattatrey Radho Vanzari, recorded at exh. 28, who was the Investigating Officer (IO) in the case on hand and submitted that the designation of this witness, at the relevant point of time, was "Police Sub Inspector", Limbai Police Station, Surat. He further drew attention of the Court to para 25 of the impugned judgment and order, translated version of the same, reads as under:

"Dattatrey Radho Vanzari is examined at exh. 28. He has investigated the offence and has admitted the place of offence and since the offence of visitation was made out, Dy.S.P. Shri Patel also did visitation. Having found the sufficient evidence, he submitted the charge sheet."

5.1 The learned advocate for the appellant - accused then invited attention of the Court to Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for brevity, "the Atrocity Rules"), which reads as under:

"7. Investigating Officer.

(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) xxxx"

5.2 Referring the aforesaid Rule 7 of the Rules which has come into force on 31.03.1995 and the same was published in the Gazette of India, the learned advocate for the appellant - accused submitted that it is clear that an offence committed under the Atrocity Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. Moreover, the said officer is required to be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time and so far as the case on hand is concerned, the impugned judgment and order is not tenable at all only on the count that the investigation was carried out by a Police Sub Inspector, which, on

bare perusal of the aforesaid Rule 7, is not permissible and the said important aspect has not been considered by the learned trial Judge and accordingly, only on that ground, the present appeal requires to be allowed. In support of his submission, he relied upon a decision of the Madras High Court in the case of A. Sasikumar v. The Superintendent of Police, Villupuram, 1998 (1) CTC 276 and submitted that similar issue was in question before the Madras High Court where the Court has concluded that the Inspector of Police has no power to investigate the case under Sections 3(i) (x) of the Atrocity Act.

6. Ms. Chandarana, the learned Additional Public Prosecutor, for the respondent - State, has fairly conceded the aforesaid position and is not in a position to controvert the same.

7. Considering the fact that the offence was registered in the year 1998 and the above Rules had come into effect on 31.03.1995 and the present case is governed by the said Rules and also the fact that investigation in the case on hand had been carried out by the Police Sub Inspector (PW7), which is not permissible under the extant law, only on that ground present appeal deserves to be allowed by setting aside the impugned judgment and order.

8. In view of the aforesaid discussion, present appeal succeeds. The impugned judgment and order dated 15.05.2000, passed by the learned Special Judge (Atrocity Act), Mahesana, in Special (Atrocity) Case No. 132 of 1998, is hereby set aside. The appellant - accused is reported to be on bail. Accordingly, his bail bond shall stand cancelled and he is not required to surrender to custody, except requires so in any other case. The amount of fine paid by him, is ordered to be refunded to the appellant - accused. Registry to return the R&P to the trial Court forthwith.