

(2017) 03 GUJ CK 0138
In the Gujarat High Court
Case No : 655 of 2002

SHAMAL RAMSUR GHADHVI & OTHERS

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 114](#),
[Section 323](#) - Abettor present when offence is committed -
Punishment for voluntarily causing hurt
[Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#),
[Section 3\(1\)\(x\)](#) - Punishments for offences of
atrocities

Citation : (2017) 03 GUJ CK 0138

Hon'ble Judges : Z.K.Saiyed

Bench : Single Bench

Advocate : BY MANKAD, UM SHASTRI, N.J.SHAH

Judgement

1. By way of present appeal, the appellants-original accused challenged the judgment and order dated 17.07.2002 passed in Sessions Case No. 64 of 1999 by the learned Special and Additional Sessions Judge, Panchmahal at Godhra, whereby the appellants-accused were convicted for the offence punishable under Sections 323 read with 114 of the IPC and under Section 3(1)(x) of the Atrocity Act and sentenced to undergo simple imprisonment for three months with fine of Rs.200/- in default, simple imprisonment for further period of ten days.

2. During pendency of the appeal, appellant-original accused No.3-Vashrambhai Hajibhai Gadhvi is expired. Therefore, present appeal qua appellant No.3 stands abated.

3. Heard Mr. B.Y.Mankad, learned advocate for appellant Nos.1, 2 and 4 and Mr. N.J.Shah, learned Additional Public Prosecutor for the respondent-State.

4. Mr. B.Y.Mankad, learned advocate drew attention of the Court to order dated 23.04.2010 passed in Criminal Misc. Application No.13495 of 2009 by the

Division Bench of this Court and contended that present matter is squarely covered by the aforesaid judgment. He therefore, prays that present matter may be disposed of on that count alone.

5. Mr. N.J.Shah, learned Additional Public Prosecutor supported the stand taken by the learned advocate for the appellants and stated that he has no objection, if present appeal may be disposed of as it is squarely covered by the aforesaid judgment of the Division Bench.

6. I have heard the submissions advanced by both the parties and gone through the order passed by the Division Bench of this Court. The Division Bench in para-3 of the said order observed as under: "3.It appears to us that there is animosity between the complainant and accused inasmuch as Civil Suits were pending at the time when the alleged incident had happened. Further, use of word is Bhilada. If the same is read with community of Bhil, as referred to in Bhagvat Gomandal, Part VII, it has been provided that the said community of Bhil is having a special status and is also made relatable to the period of Ramayan with Shabri and also related to Devi Parvati, who is stated to be the daughter of Bhil. Therefore, such use of the word cannot be said to be derogatory in the society. Moreover, there are material contradictions in the evidence of the complainant and panchas have not supported the case of the prosecution."

7. In view of the statements made by learned advocate for the parties and considering the reliance placed by learned advocate for appellant to the dated 23.04.2010 passed in Criminal Misc. Application No.13495 of 2009 by the Division Bench of this Court, which is squarely applicable to the present case, order dated 17.07.2002 passed in Sessions Case No. 64 of 1999 by the learned Special and Additional Sessions Judge, Panchmahal at Godhra is hereby quashed and set aside. Accordingly, present appeal is allowed. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.