

(2009) 11 GUJ CK 0075
In the Gujarat High Court
Case No : Criminal Appeal No. 1598 of 2009

State of Gujarat

APPELLANT

Vs

Bharat Arjan Gadhvi and Others

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 114, 323, 325, 504, 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10)

Citation : (2009) 11 GUJ CK 0075

Hon'ble Judges : J.R. Vora, J; Harsha Devani, J

Bench : Division Bench

Advocate : A.J. Desai, app, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

J.R.Vora, J.—Appeal is admitted. We do not consider it necessary to call upon the respondents at this stage.

2. The instant Appeal is preferred by the State u/s 378 of the Code of Criminal Procedure, 1973 against the judgement and order delivered by the learned Special Judge, Gandhidham-Kutchh in Special Case No. 6 of 2009, whereby the present three respondents came to be acquitted by the Trial Court for the offences punishable under Sections 323, 325, 504, 506(2) and 114 of the Indian Penal Code, u/s 3(1)(10) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as u/s 135 of the Bombay Police Act.

3. It is the prosecution case that, on 28th April 2008, at about 09.30 p.m., the incident in question occurred near Green Palace Hotel at Gandhidham. It is the case of the prosecution that the complainant had given a memorandum against the accused for irregularities in plying rickshaws. The accused kept grudge about this and after holding deadly weapons, had beaten the complainant with hockey

etc. and caused grievous hurt. The accused insulted the complainant by his caste and the complaint came to be lodged before the Gandhidham Police Station being Crime Register No. I-211/2008 for the offences punishable under Sections 323, 325, 504, 506(2) and 114 of the Indian Penal Code as well as for the charges under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under the Bombay Police Act. On completion of investigation, chargesheet came to be filed in the Court of the learned Judicial Magistrate First Class, and case was committed to the Special Court. The Trial Court framed charges vide exh.5 and each of the accused respondents pleaded not guilty. The prosecution examined seven witnesses and also produced on record documentary evidence as under:

01 Sajan Devabhai Katecha Exh. 13

02 Meghji Ramji Exh. 15

03 Nazir Hussein Asharafali Pathan Exh. 19

04 Velji Ramji Exh. 20

05 Santosh Babulal Chauhan Exh. 21

06 Pratapsinh Laxmansinh Chaudhary Exh. 25

07 Dr. Harish Purushottam Nathan Exh. 31

4. After recording the statements of the accused u/s 313 of the Code of Criminal Procedure, the learned trial Judge heard both the sides and came to the conclusion to acquit the accused and hence, the appeal. The defence of the accused was of total denial.

5. While going through the reasoning of the learned trial Court in judgement and order impugned in the appeal, it appears that the evidence of PW-2, Meghaji Ramji, exh.15, injured witness and complainant has been appreciated by the trial Court, wherein the witness stated before the Court that he received injuries on the head, but he did not make it clear that who caused injuries on his body. The learned trial Court also noticed grave contradiction in the evidence of the complainant and the complaint given by him. The trial Court has also taken into consideration the evidence of the PW-3, Nazir Hussein Asharafali Pathan, exh.19 who deposed his ignorance about the incident. PW-4, Velji Ramji, exh.20 also stated that though the complainant, his elder brother, received injuries, but who in fact inflicted injuries was not known to him. PW-5, Santosh Babulal Chauhan, exh.21 was also not an eye-witness, but witness to the fact that after the incident, injured was taken to the hospital. PW-6, Dr. Harish Purshottam Nathani, exh.31 has been examined by the prosecution and according to him, on 28th April 2008, the complainant was brought before him for the treatment and the complainant had injuries on the head; he was unconscious at that time and the injuries were serious in nature and he issued injury certificate at exh.29. The learned trial Court observed about the appreciation of evidence of above

witnesses that it could not be proved beyond reasonable doubt by the prosecution as to who caused injuries to the accused and none of the eye witnesses fully supported the prosecution case and thereby, grave contradictions have arisen in the evidence of prosecution. Even independent witnesses who have been examined by the prosecution stated before the Court that accused at the time when the incident occurred was not seen by them at the scene of offence. Therefore, the injuries though proved through the evidence of PW-6, Dr. Harish Purshottam Nathani, is of no help to the prosecution and ultimately on the above grounds, the accused came to be acquitted by the trial Court.

6. We have called for the Record & Proceedings from the trial Court and we have gone through the entire evidence recorded during the trial. We have examined carefully the reasoning of the trial Court. After appreciation of evidence recorded during the trial, we also reach to the same conclusion, as has been reached by the trial Court. On examining the overall circumstances of the case, it appears that the trial Court has properly appreciated the evidence and has reached the possible conclusion from the evidence recorded during the trial which is not required to be interfered with.

7. It must be noted that in an appeal against the acquittal, the order of acquittal cannot be lightly interfered with even if other view is possible than the view taken by the trial Court. The Appellate Court cannot substitute its own view by reversing the acquittal into conviction unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. Though we have gone through the record and proceedings thoroughly, but the learned Additional Public Prosecutor could not point out that the order impugned in the appeal is perverse, contrary to material on record or palpably wrong as to call for the interference by this Court.

8. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the trial Court for acquitting the accused and the judgement and order impugned requires no interference in this appeal.

9. In the result, this appeal stands dismissed.