

(2015) 10 GUJ CK 0046
In the Gujarat High Court

Case No : Criminal Appeal Nos. 636 and 458 of 2011

State of Gujarat

APPELLANT

Vs

Bharatbhai Malubhai Bhojaiya Devipujak

RESPONDENT

Date of Decision : 27-10-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 114, 326, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10), 3(2)(5)

Citation : (2015) 10 GUJ CK 0046

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : C.M. Shah, Additional Public Prosecutor, for the Appellant; E. Shailaja, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Heard learned Additional Public Prosecutor for the appellant - State Ms. C.M. Shah and learned Advocate for the respondent Ms. E. Shailaja.

2. By way of Criminal Appeal No. 636/2011 which is filed for enhancement of sentence, the Appellant - State has felt aggrieved by the judgment and order of conviction and sentence dated 16.03.2011 of the learned Presiding Officer, Fast Track Court No. 2, Bhavnagar, Camp : Botad in Special Atrocity Case No. 30/2005 whereby the respondent herein was convicted and sentenced to undergo rigorous imprisonment for two years and fine of Rs. 1,000/-, in default, rigorous imprisonment for six months under Section 326 read with Section 114 of the Indian Penal Code. The respondent accused was acquitted of all the offences punishable under Section 504 of the Indian Penal Code and under Section 135 of the Bombay Police Act and under Sections 3(1)(10) and 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Criminal Appeal No. 458/2011 has been preferred by the accused against the judgment and order of conviction and sentence as stated hereinabove.

3. The case in brief and the incident which occurred on 31.07.2004 are as under:--

"3.1. At about 8.45 pm it is alleged that the respondent original accused No. 1 alongwith the absconding accused No. 2, armed with dharia, assaulted the complainant, i.e. Vashrambhai Nathubhai Chavda (resident of Paliyad) on different parts of the body allegedly keeping a grudge that the wife of the respondent accused No. 1 and the complainant were having illicit relations and thereby caused him grievous hurt and for the said alleged offence, a complaint came to be registered with Paliyad Police Station being I-C.R. No. 26/2004 for the offences punishable under the above stated Sections.

3.2. On registration of the offence, investigation was carried out. The investigating officer during the course of investigation, visited the scene of offence, prepared the panchnama in the presence of the panchas, recorded the statement of various witnesses as provided under Section 161 of the Code of Criminal Procedure, seized muddamal weapon at the instance of the accused under the panchnama, arrested the accused and obtained injury certificate as well as the FSL Certificate. On conclusion of the investigation, the chargesheet came to be filed before the Court of the learned Judicial Magistrate, First Class, Botad who committed the case to the Court of Sessions.

3.3. On committal, the case was transferred and placed for trial before the learned Special Judge (Presiding Officer, Fast Track Court No. 2, Bhavnagar) Botad Cap, who had initially framed charge against the respondent accused for the alleged offences. The respondent/s pleaded not guilty to the charge and claimed to be tried. After the release of the original accused No. 2 - Jayantibhai Jerambhai Monapariya on bail, he remained absconding and did not attend the Court proceedings. Therefore, the learned Additional Public Prosecutor submitted an application - Exhibit 49 with a request to separate the trial of the respondent - original accused No. 1. Accordingly, the learned Judge separated the trial of the respondent - original accused No. 1 and proceeded further and kept the trial pending of the original accused No. 2.

3.4. At the time of the trial, the prosecution examined the following witnesses:--

The prosecution also relied upon various documentary evidence, some of them are:--

3.5. At the end of the trial, the learned Presiding Officer, Fast Track Court No. 2, Bhavnagar, Camp : Botad in Special Atrocity Case No. 30/2005 passed the judgment and order as stated hereinabove."

4. Learned Additional Public Prosecutor Ms. C.M. Shah has submitted that the learned Judge ought to have taken into consideration the deposition of the complainant, who has categorically stated about the alleged incident, the role

played by each of the accused and the reason behind the alleged incident. The complainant here is the eye witness as well as the injured witness and therefore, evidentiary value is required to be attached to the evidence of this witness. It is further submitted that the medical evidence as well as the deposition of Medical Officers also need to be examined, as they had treated the complainant. The medical certificates issued by the Medical Officer as well as from the deposition of the Medical Officers, it is clear that the accused had caused grievous injuries by using dangerous weapons. Considering the above, it is submitted that this is a fit case which requires interference of this Court in the judgment and order of the learned Presiding Officer, Fast Track Court No. 2, Bhavnagar, Camp : Botad.

5. Learned Advocate for the respondent Ms. E. Shailaja has taken us to the judgment and order of the learned Judge and has submitted that the respondent was on bail during the trial and has not committed any breach of any of the conditions. Further, the explanation given by the appellant - convict in his further statement recorded under Section 313 of the Code of Criminal Procedure has not been considered in its proper perspective while passing the impugned judgment. Even the panch witness was declared hostile and has not supported the case of the prosecution. Considering the above, it is submitted that this is a fit case which requires the intervention of this Court and the judgment and order of the learned Judge requires to be upturned.

6. We have heard learned Advocates for the parties and perused the records of the case including the oral and documentary evidences brought on record. We have also perused the details about the nature of injuries as stated by various Medical Officers. Apart from that, the learned Additional Public Prosecutor Ms. C.M. Shah for the appellant - State is not in a position to show any evidence to take a contrary view in the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record. In that view of the matter, we are in complete agreement with the reasons recorded by the learned trial court and in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court.

7. Both the Appeals are devoid of merits and stand dismissed. The judgment and order dated 16.03.2011 of the learned Special Judge, Presiding Officer, Fast Track Court No. 2, Bhavnagar, Botad Camp in Special Atrocity Case No. 30/2005 stands confirmed. Bail and bail bond stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.

8. The accused shall surrender within a period of ten (10) weeks from today, failing which the concerned Trial Court shall issue non-bailable warrant in the name of the accused to secure his presence to serve the remaining period of sentence.