

(2015) 02 GUJ CK 0050
In the Gujarat High Court
Case No : Criminal Appeal No. 515 of 2003

State of Gujarat	Vs	APPELLANT
Hakubha		RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 334, 504, 506, 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10)

Citation : (2015) 02 GUJ CK 0050

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Monali H. Bhatt, A.P.P., for the Appellant; Mamta R. Vyas, Advocates for the Respondent

Judgement

Kaushal Jayendra Thaker, J.—Heard learned Advocates for the respective parties.

2. By way of this Appeal, the Appellant - State has felt aggrieved by the judgment and order dated 24.12.2002 of the learned Joint District Judge, Fast Track Court, Surendranagar whereby the accused were acquitted of the offences punishable under Section 323, 504 and 506(2) of the Indian Penal Code and under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The brief case of the prosecution and the incident which occurred on 07.09.1997 is as under:-

The complainant had received a specific call that the accused was calling for the complainant. However, as the complainant had to reach the hospital urgently, he sent his father. The complainant's father returned and told the complainant that the accused herein was asking only for the complainant. The complainant had stated that he would meet the accused only after coming from the hospital at Surendranagar. The complainant was destined for Surendranagar and had come

to the water tank. It is alleged that the accused herein was also present near the Water Tank with a stick in her hand and abused the complainant with bad words about his caste and about the complaint filed by the complainant. Thereafter, it is alleged that the accused caught hold of the complainant's neck and is said to have inflicted two-three blows on the chest of the complainant with a stick.

Hearing the shouts of the complainant, his father, his brother and one - Mansukhbhai Dodi rushed and the father tried to free the complainant from the clutches of the accused. However, the father of the complainant also received stick blows.

It is alleged that the genesis of the whole incident was the plot through which the Main Road was passing. In spite of this, it is alleged that the road was encroached upon and a house was constructed and hence, a complaint was given by the complainant in the Office of the Taluka Panchayat.

The chargesheet was led before the learned Magistrate and the case was committed to the Sessions Court, being Sessions triable case. The accused pleaded not guilty to the charges levelled against them. On completion of the evidence of prosecution, further statement of the accused under Section 313 of the Code of Criminal Procedure were recorded.

At the end of trial, the learned Joint District Judge acquitted the accused of the above charges. Hence, this Appeal.

4. The prosecution had examined the following witnesses and had relied on several oral and documentary evidences, some of them are as under:-

5. In the above background of facts, learned Additional Public Prosecutor Ms. Monali H. Bhatt for the appellant - State has submitted that the learned Judge has erred in holding that the prosecution has failed to prove beyond reasonable doubt that the accused and the complainant belonged to the same village, they knew each other very well and in spite of the same, the accused insulted the complainant in a public space. It is further submitted that the learned Judge has erred in not properly appreciating all the evidences and only because the witnesses who have deposed about the scene of incident are the relatives of the complainant, the learned Judge has discarded their evidence and acquitted all the accused on the ground that the prosecution failed to prove the case beyond reasonable doubt. Further, the complainant was examined at Exhibits 12 and 14. The caste certificate of the complainant produced showed that he belonged to the Harijan Community. The letter - Exhibit 14 addressed to the Talati cum Mantri and the Sarpanch of the Village proved that the retired employee of the office of the TDO was also examined. Dr. Bhatt and Dr. Panibhushan were examined at Exhibits 17 and 28 respectively to prove the injury caused on the person of the complainant. These documents prove and support the prosecution version about giving of an application by the complainant to the Panchayat Office and also injury caused to the complainant by the accused. Considering all the above, it is submitted that the judgment and order of the learned Joint District

Judge, Fast Track Court, Surendranagar requires to be upturned by this Court.

6. On the touchstones of the judgments of the Apex Court, a perversity is found in the judgment and order of the learned Judge. The Division Bench had held that if the Appellate Court finds that there is perversity in the finding it should interfere, while going through the entire evidence just because the complainant had not complained and did not give the name of the assailant to the Doctor, it cannot be fatal for the prosecution. Therefore, this finding of fact can be said to perverse and requires interference by this Court.

7. The second aspect about the medical evidence goes to show that the accused had caught hold of the complainant, caused hurt to him and the complainant had to be hospitalized. The medical evidence shows that there were injuries which were within the meaning of Section 323 of the Indian Penal Code and this Section reads as follows:-

"323. Punishment for voluntarily causing hurt - Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both." 8. The physical examination/medical evidence of the complainant revealed the following:-

"10x10cm bruise over medial aspect of Rt. Arm.

10x10cm size bruise over back of the left elbow region.

2x2 cm size bruise over posterior aspect of left upper arm.

3x2cm size bruise over tip of rt. Shoulder.

Approx. 10x5cm size bruise over back of abdomen.

Approx. 20x10cm size bruise over lateral aspect rt. ... region.

Approx. 10x5 cm size bruise over.. rt. Thigh.

Approx. 5x3 cm size bruise over just above right knee.

Approx. 10x10cm size bruise over rt. Coll. Region."

9. I am in complete agreement with the submissions made by the learned Additional Public Prosecutor Ms. Monali H. Bhatt that the wooden stick was found from the place of offence, which has been described by the complainant. Having supported the case, it cannot be said that the entire prosecution story belies the fact of causing hurt just because the panchas have not supported the Panchnama and hence, the judgment and order of the learned Judge requires to be upturned by this Court.

10. As far as Sections 504 and 506 of the Indian Penal Code are concerned, the incident happened in a public area and the evidence of the witness shows that

the accused had called the complainant and conveyed to him as to why he was filing complaints against the accused. This itself shows that he wanted a ruckus to be caused in the public forum. Therefore, in my view, ingredients of Section 504 of the Indian Penal Code are also made out and therefore, on both these counts, the judgment and order requires to be upturned.

Section 504 of the Indian Penal Code reads as follows:-

"504. Intentional insult with intent to provoke breach of the peace. - Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." 11. This takes this Court to the Section 506(2) of the Indian Penal Code. The ingredients of Section 506(2) are not made out against the accused as there is no evidence to show that the accused had threatened to kill the complainant and the injuries are also not such which will attract ingredients of Section 506(2) of the Indian Penal Code.

12. This takes the Court to the main ingredients of 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Relevant section of the Act reads as under:-

"3. Punishments for offences of atrocities. - (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; I am in complete agreement with the submissions made by learned Advocate Ms. Mamta R. Vyas and with the finding of fact that the investigation was not carried out by an independent agency and which has also weighed with the Court. In that light of the matter, without going into the factual scenario, on that count only, this Court holds that this aspect cannot be found fault with as the other ingredients of Section 3(1)(10) of the Act are absent.

13. Hence, the accused is held guilty of the offences punishable under Section 323 read with Section 504 of the Indian Penal Code. He shall remain present before this Court on 10th MARCH, 2015, for being heard on the issue of sentence.