

(2022) 01 GUJ CK 0046
In the Gujarat High Court
Case No : R/Criminal Appeal No. 794 Of 2008

State Of Gujarat APPELLANT
Vs
Harisang Vajesang Rana & 2 Other(S) RESPONDENT

Date of Decision : 06-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 372(1)(8)
Indian Penal Code, 1860 — Section 114, 323, 504, 506(2)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(10), 7, 9

Citation : (2022) 01 GUJ CK 0046

Hon'ble Judges : Rajendra M. Sareen, J

Bench : Single Bench

Advocate : RC Kodekar, Kirtidev R Dave, P B Khambholja, Rahul K Dave

Final Decision : ?Dismissed

Judgement

Rajendra M. Sareen, J

1. This Appeal is filed by the appellant under Section 372(1)(8) of the Criminal Procedure Code, 1973 against the judgment and order dated

30.08.2007 passed by the Special Judge, Bharuch in Special Atrocity Case No.7 of 2006 whereby the Special Judge has acquitted the respondents â?

original accused from the charges levelled against them for the offences under sections 323, 504, 506(2) and 114 of Indian Penal Code and under

sections 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

2. As per the case of the prosecution, the complainant Raghabhai Mathurbhai Vasava is residing at Hirakui (Ranipura), Taluka Amod, District

Bharuch with his family. He was possessing 7 acres of land situated on both sides of Hirakui-Dadapor Road on the canal of village sim.

2.1. As the per the version of the prosecution for last 3 years since there is no water in the Hirakui Minor Canal, which is passing through the village

sim, the complainant and other Agriculturist were getting water from the drainage situated near water canal with the help of Bak-nadi from the main

canal. For getting water from the main canal, they used to dig the pit in the road during the winter and summer season, putting the pipeline in the pit.

They used to get the water as such since last 2 years. However, accused no. 1 used to dig the whole road before rainy season and also damaged the

pipeline set by complainant and other village people on account of which the rainy water gathered in the field of the complainant and other village

people which, in turn, caused damage to the crops standing in their field.

2.2. It is further case of the prosecution that on 06.11.2005 at about 1:00 O'clock when the complainant had gone to his field for observing of cotton

crops, he found all the 3 accused persons viz. Harisang Vajesang Rana Muslim Garasiya, Ilyash Pathubha Rana Muslim Garasiya and Bachubhai

Vajesang Rana Muslim Garasiya. In this case, the complainant initially has disclosed the name of accused no. 2 Imtiaz Pathubha Rana, whose correct

name is being disclosed by the complainant later on as Imtiaz Rana. All the 3 accused persons had come in the jeep with an intention to damage the

pipeline set by the complainant and other village people before ensuing of rainy season. The complainant, therefore, asked all the 3 accused persons

that if (as there were causing damage their pipeline for last 2 years) they went to damage the pipeline as there were causing damage their pipeline for

last 2 years, the complainant would not set the pipeline. Upon hearing so, all the 3 accused persons got excited and started giving foul abuses related to

the mother and sister of the complainant, therefore, the complainant asked them not to give foul abuses. However, accused No.1 again abated him

saying foul words as regards caste of the complainant and slapped on the left ear and again on the left cheek of the complainant. Meanwhile, the

village people Nagjibhai Jinabhai Vasava, Gordhanbhai Mahijibhai Vasava, Ratilal Devjibhai Vasava and Ratilal Vithhalbhai Vasava, who were

present in their respective field, approached the complainant. At that time, accused No.2 Bachubha Vajesang was pulling the hair of the complainant

and thereafter, accused No.3 was giving kick and fist blows to the complainant. However, the village people intervened and rescued the complainant

from further blows. The accused started going away, however, while going, accused No.1 was threatening the complainant abusing him that if again

the complainant will go against them, they would kill him. Thereafter, the complainant filed the complaint with Amod Police Station for the offences

punishable under sections 323, 504, 506(2) and 114 of Indian Penal Code and under sections 3(1)(10) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities Act), 1989 on 6/11/2005.

2.3. The investigating officer, after investigation, filed chargesheet before the competent court and the same was registered as Criminal Case before

the concerned Criminal ? Court. As the case was triable by the Special Court, the case was transferred to the Special Court and the same was

numbered as Special Case No.7 of 2006.

2.4. The Special Court, after appreciating the evidence on record, acquitted the respondents herein â?" original accused.

2.4. Being aggrieved by and dissatisfied with the aforesaid judgement and order of acquittal, present appeal has been filed by the appellant â?" State.

3. Learned APP Mr.R.C. Kodekar for the appellant State has vehemently argued that the Special Court has committed a grave error in not believing

the the witnesses examined by the complainant and in acquitting the respondents â?" accused.

3.1. It is also argued by Mr.Kodekar that the prosecution has proved that the respondent has intentionally insulted the complainant against his caste to

humiliate him in public and also assaulted him and also threatened and gave kick and fist blow which is corroborated by medical evidence.

3.2. It is further argued that the trial court has acquitted the respondents accused merely on some minor contradictions and omissions in the evidence

of the eye witnesses.

3.3. It is further argued that the trial court has erred in not believing the evidence of the investigating officer who had no reason to implicate the

accused falsely in the case and as such, offence punishable under sections 323, 504, 506(2) and 114 of Indian Penal Code and under sections 3(1)(10)

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 is made out, however, the same is not believed by the trial court.

Making above submissions, it is requested to allow the present appeal.

4. It is pertinent to note at this juncture that the respondent Nos.1 and 3 have

expired during the pendency of this appeal and they are not served on that account. Their Death Certificates are also placed on record along with the service report. The rest of the respondents â?" accused namely respondent No.2 is represented by Mr.Rahul K. Dave, learned advocate.

4.1. Learned Advocate Mr.Rahul Dave for the respondent No.2 has vehemently submitted that there is hardly any substance in the submissions of learned APP. Here in this case, though it is the case of the prosecution that there are four witnesses, but in fact two witnesses are examined out of which, one witness has not supported the case of the prosecution and turned hostile and another witness had no personal knowledge regarding the incident and he got the knowledge of the incident through the mouth of the complainant himself. As such there was no independent witnesses in support of the say of the complainant. The only evidence on record is the evidence of the complainant, and whose evidence is also suffering from material contradictions and omissions and the same is not corroborated by medical evidence. The trial judge, after appreciating the entire evidence on record, has rightly acquitted the accused by the impugned judgement and order of acquittal and there is no infirmity or illegality committed by the trial judge and no interference is required.

Making above submissions, he has requested to dismiss the present appeal.

5. Heard Mr.R.C. Kodekar, learned APP for the appellant - State and Mr.Rahul K. Dave, learned advocate for the respondent No.2 â?" original accused at length. Perused the evidence on record so also the impugned judgement and order of acquittal.

5.1. On perusal of the record, it appears that the complainant is examined at Ex.17 and as per his say, Gordhanbhai PW No.3, who is examined at Ex.19 and Ratilal PW No.5, who is examined at Ex.24, are eye witnesses. If the evidence of the complainant is appreciated thoroughly, it reveals that it is suffering from material contradictions between the complainant and the evidence adduced on record. The entire evidence of the complainant is not supporting his version in the complaint and is not consistent with his say in the complaint. From the evidence of the complainant it appears that he has tried to falsely implicate the respondents â?" accused. As such, the evidence of the complainant is not natural, consistent and trustworthy.

5.2. As per the case of the complainant, 4 persons had gathered, out of which

Gordhabhai and Ratilal have been examined. The Gordhanbhai has tried to support the case of the complainant in chief, however in the Cross-examination he has clearly admitted the fact that he has met the complainant and the complainant had asked him regarding the incident in question. He has also admitted that he was not present when the incident occurred. The evidence of this witness has clearly brush aside the false theory of the complainant.

5.3. So far as evidence of Ratilal is concerned, he has not supported the case of the prosecution in toto and is turned hostile. He has clearly submitted that he has not heard any word of altercation between the parties.

5.4. Thus, there is only oral evidence of the complainant himself, which is also suffering from infirmities, as stated hereinabove. No other evidence has been brought on record to bring home the case of the prosecution. Considering the overall evidence on record, the possibility of false implication of the respondents â?" original accused cannot be ruled out.

5.5. The Special Court, while interpreting the provisions contained in sections 504 and 506(2) of Indian Penal Code, has come to the conclusion that the prosecution has failed to prove the ingredients of the said provisions of the Indian Penal Code.

5.6. So far as the offence under section 323 of the Indian penal Code is concerned, the Special Court has come to the conclusion that the say of the complainant regarding kick and fist blow given to him and slapping him on the ear and cheek, is not supported by medical evidence nor supported by any independent witnesses. The medical evidence shows that there was no external injury mark seen on the body of the complainant. Thus, the prosecution has failed to prove the ingredients of the provisions of 323 of the Indian Penal Code.

5.7. So far as the offence under sections 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 is concerned, it has been specifically observed by the Special Court that there are number of material contradictions and omissions in the deposition of the complainant. Moreover, nobody has heard the words alleged to have been stated by the accused against the caste of the complainant to humiliate him in public.

5.8. Moreover, the investigating officer, who was entrusted to investigate the

offence, was the Dy.S.P., who was In-charge Dy.S.P. having additional charge, for which he was not having any written order of the District Superintendent of Police or Inspector General of Police. He was not appointed as an investigating officer to investigate the offence, as per Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) and as per section 9 of the said Act. Thus, the investigating officer was not having power to investigate the offence as per Rule 7 and Section 9 of the Atrocity Act.

5.9. After appreciating the entire evidence on record and considering the law laid down by this Court, the Special Court has held that the prosecution has failed to prove the offence under section 3(1)(10) of the Atrocity Act. reasons. A beneficial reference of the decision of the Supreme Court in the case of State of Rajasthan versus Ram Niwas reported in (2010) 15 SCC 463 be made in this regard. In the said case, it has been observed as under:-

“6. This Court has held in Kalyan v. State of U.P., (2001) 9 SCC 632 :

“8. The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that

though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that

the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further

reinforced by his acquittal by the trial court. Normally the views of the trial court, as to the credibility of the witnesses, must be given

proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witness and is

in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial

court. In Kali Ram V. State of Himachal Pradesh, (1973) 2 SCC 808, this Court observed that the golden thread which runs through the

web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to

the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court

further observed:

27. It is no doubt true that wrongful acquittals are undesirable and shake the

confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:

I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos.

28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahebrao, (1973) 2 SCC 793, as is clear from the following observations:

Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the

mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations.

9. The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid

down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact;

(ii) the noninterference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the

High Court.

8. In *Arulvelu and another versus State* reported in (2009) 10 Supreme Court Cases 206, the Supreme Court after discussing the earlier

judgments, observed in para No. 36 as under:

36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting

aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because

the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it

arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly

unsustainable in law.

9. In that view of the matter, the Criminal Appeal being devoid of merits is dismissed in limine.