

(2019) 06 GUJ CK 0030
In the Gujarat High Court
Case No : R/Criminal Appeal No. 144 Of 2008

State Of Gujarat		APPELLANT
	Vs	
Jashubha Tapubha Jadeja & 5 Other(s)		RESPONDENT

Date of Decision : 17-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 378(1)(3)
Indian Penal Code, 1860 — Section 143, 147, 149, 323, 325, 506(2)
Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3(1)(x)
Gujarat Police Act, 1951 — Section 135

Citation : (2019) 06 GUJ CK 0030

Hon'ble Judges : R.P. Dholaria, J

Bench : Single Bench

Advocate : Hansa Punani

Final Decision : Dismissed

Judgement

R.P.Dholaria, J

1. The appellant " State of Gujarat has preferred the present appeal under Section 378(1)(3) of the Code of Criminal Procedure against judgment

and order dated 28.02.2007 passed by learned Special Judge, Fast Track Court No.3, Gandhidham, Kachchh in Special Case No. 301 of 2001,

acquitting the respondents accused for the offence punishable Sections 143, 147, 149, 323, 325, 506(2) of the Indian Penal Code, Section 3(1)(x) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [hereinafter referred as to as "Atrocities Act" for short] and Section 135

of the Gujarat Police Act.

2. As per the prosecution version, on 20.03.2000, while the complainant was proceeding in his jeep, the accused intercepted and sprinkled mud, due to

which, his jeep turned turtle. Thereafter, on 26.03.2000, the accused assaulted and beat the complainant holding fire-arm. Thereby, the accused

committed an offence punishable under Sections 143, 147, 149, 323, 325, 506(2) of the Indian Penal Code, Section 3(1)(x) of the Atrocities Act and

Section 135 of the Gujarat Police Act.

3. After registration of complaint, investigation was carried out and charge-sheet came to be filed against the accused in the Court of learned

Magistrate. As the case was triable by learned Sessions Court, the same was committed to the Court of learned Sessions Judge. Thereafter, the

charge came to be framed and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

3.1 In order to bring home the charges against the accused, the prosecution examined the witnesses and produced the documentary evidence.

3.2 Thereafter, after filing of closing purshis by the prosecution, further statement of the accused under Section 313 of the Code of Criminal

Procedure, 1973 was recorded. The accused denied the case of the prosecution and submitted that a false case is filed against them.

3.3 At the conclusion of trial and after appreciating evidence on record, the learned trial court delivered the impugned judgment. Being aggrieved by

said judgment and order dated 28.02.2007 passed by learned Special Judge, Fast Track Court No.3, Gandhidham, Kachchh in Special Case No. 301 of

2001, acquitting the respondents accused, the appellant â?" State of Gujarat has preferred the present appeal before this Court.

4. By way of preferring the present appeal, the appellant has mainly contended that the learned trial court has failed to appreciate the evidence on

record and wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its

proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be

reversed, as such.

4.1 Learned Additional Public Prosecutor Ms. Hansa Punani has taken this Court through the entire record & proceedings and read over the evidence

of material witnesses. Learned APP has argued that though the complainant has clearly deposed and his testimony is in accordance with his statement

before the police and he also received the injuries, the learned trial court has

overlooked the same and wrongly acquitted the accused. Ultimately, she has urged to convert the judgment of acquittal into conviction.

5. Though served with Rule, none appeared for the respondents accused.

6. This Court has minutely gone through the entire record & proceedings, impugned judgment and order as well as evidence of material witnesses.

7. Prosecution witness No.4 â?" Jaga Suja â?" the complainant in the examination-in-chief deposed in conformity with the complaint and he narrated the incident as above. However, in the cross-examination, he clearly admitted that he had not made any complaint as regards the incident dated

20.03.2000. He also admitted that as regards his jeep turning turtle, the complaint was already lodged against his own son Amrut. He admitted that he

had lodged 3-4 complaints against various persons involving the offence under the Atrocities Act and against him also, criminal cases were lodged and

in the complaints lodged by him, all the accused came to be acquitted. He admitted that he was also booked under the PASA. He admitted that he had

not named any assailant before the Doctor. He admitted that the police had not put the accused for test identification parade and did not hold any test

identification parade. He admitted that he had not named two accused.

8. Prosecution witness No.8 â?" Gela Ramji deposed that he reached at the place of incident due to shouting, where he noticed the complainant. He

deposed that he saw the accused Jasu and others and there was quarrel between them. In the cross-examination, he admitted that there was a mob of

more than 15 persons. He admitted that he is also facing criminal cases. He admitted that no test identification parade was undertaken.

9. Prosecution witness No. 9 â?" Karamshi Bhura Muchhadiya deposed that upon hearing shouting, he reached at the place of incident on 26.03.2000

and at that time, the accused Jasu was present and there was a quarrel between them as regards the jeep. In the cross-examination, he admitted that

no test identification parade was undertaken and there was a mob of several persons.

10. The prosecution also examined various other persons and panchas, however none of them supported the case of the prosecution.

11. The learned trial court while answering the points of determination, elaborately dealt with the evidence of aforesaid main three crucial witnesses

and did not notice uniformity in their evidence. The learned trial court has also

recorded that since there was no test identification parade, the prosecution miserably failed to establish the identity of each accused. Similarly, the evidence of the complainant victim is also not satisfactory as he is also facing several cases including the case of murder and he was also booked under the PASA. He also lodged 5-6 such cases including the case for the offence under the Atrocities Act against the accused and in such cases, the accused came to be acquitted. In view of such criminal history, the learned trial court has rightly not believed the evidence of the complainant.

12. So far as other two eye-witnesses are concerned, as per their own depositions, they arrived subsequently at the scene of occurrence and had also not identified the accused. On that count also, the learned trial court, rightly extended the benefit of doubt to the accused, which calls for no interference.

13. For the reasons recorded above, the appeal being devoid of merits deserves dismissal and is dismissed.

14. The record & proceedings be sent back to the concerned trial court forthwith.