

(2009) 11 GUJ CK 0073
In the Gujarat High Court
Case No : Criminal Appeal No. 1474 of 2009

State of Gujarat	Vs	APPELLANT
Jethabhai Dhudhabhai Bharwad		RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 378(1)(3)
Penal Code, 1860 (IPC) — Section 323, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2009) 11 GUJ CK 0073

Hon'ble Judges : J.R. Vora, J;H.B. Antani, J

Bench : Division Bench

Advocate : Krina Calla, app, for the Appellant; None, for the Respondent

Judgement

H.B. Antani, J.—Heard learned APP Ms. Krina Calla representing the appellant State. Admit.

2. This is an appeal preferred u/s 378[1][3] of the Code of Criminal Procedure, 1973 ["Code" for short] against the judgment and order of acquittal dated 24th April, 2009 passed by the Special Judge, Fast Track Court No. 2, Surendranagar, Camp at Limbdi in Special Case No. 10 of 2008. The learned Special Judge, vide above judgment and order acquitted the respondent for the offence punishable u/s 323 and 504 of Indian Penal Code ["IPC" for short] and u/s 3[1][x] of the Scheduled Caste and Scheduled Tribe [Prevention of Atrocities] Act, 1989 ["Atrocities Act" for short].

3. As per the prosecution case, a complaint was given by Dudabhai Ranabhai which was registered as CR 3063 of 2007 with Muli Police Station for the offence punishable u/s 323 and 504 of IPC and Section 3[1][x] of Atrocities Act. On the strength of the complaint given by the complainant, investigation was set in motion. On completion of investigation, respondent was charge-sheeted and produced in the Court of learned Judicial Magistrate First Class at Muli, who, in

turn, committed the case to the Sessions Court as the case was exclusively triable by the Sessions Court. Charge was framed against the respondent who pleaded not guilty to the charge levelled against him and claimed to be tried. The prosecution adduced oral depositions and documentary evidence in order to bring home the guilt against the respondent. Learned Judge, on the basis of the evidence on the record of the case, came to a conclusion that the deposition adduced by complainant Dudabhai vide Exh. 12 is not supported by the oral depositions or documentary evidence adduced by the prosecution. Dr. Kumarasit Ramapatikumar has been examined vide exh. 23. But he has not supported the injuries sustained by the complainant. He has deposed in his testimony that complainant had not sustained external injuries. Even, there was difference of time when the incident took place. Other witnesses have also not supported the prosecution story about involvement of the respondent in the commission of offence. Thus, learned Judge, on the basis of oral depositions and documentary evidence, held that the prosecution has miserably failed to prove involvement of the respondent in the commission of offence and, therefore, acquitted the respondent for the offences punishable u/s 323 and 504 of IPC and Section 3[1][x] of Atrocities Act.

4. Learned APP Ms. Krina Calla representing the appellant State submitted that prosecution has examined in all nine witnesses. Complainant-Dudabhai who gave complaint vide exh. 9 has been examined vide exh.12. The version given by him in his testimony is supported by his own complaint. He sustained injuries, which is also supported by deposition of Dr. Kumarasit Ramapatikumar at exh. 23. Even the medical certificate at exh. 24 supports the prosecution story about the injuries sustained by the complainant. Thus, learned APP submitted that the prosecution, on the basis of oral depositions as well as documentary evidence has established involvement of the respondent in the commission of offence. However, the learned Judge committed error in acquitting the respondent even though cogent and convincing evidence was adduced by the prosecution. Thus, learned APP submitted that the judgment passed by the trial court suffers from infirmity and requires to be quashed and set aside.

5. We have heard the learned APP at length and in great detail. We have also considered the record and proceedings called for by this Court. We have perused detailed reasoning given by the learned Judge while acquitting the respondent for the offence punishable u/s 323 and 504 of IPC and Section 3[1][x] of Atrocities Act. Prosecution has examined as many as nine witnesses in order to bring home the guilt against the respondent. Complainant Dudabhai-PW 3 has been examined vide exh. 12. On perusal of deposition adduced by him, the same suffers from inconsistency and is not supported by deposition of witness Maniben Dudabhai at exh. 14. Panch witnesses have turned hostile and not supported the prosecution story about involvement of the respondent in the commission of offence. We have also perused deposition adduced by Dr. Kumarasit Ramapatikumar vide exh. 23 and certificate issued by him vide exh. 24. He, in his testimony has deposed that injury sustained by the complainant was of minor

nature and there were no external injuries sustained by him. Even the complaint and deposition adduced by the complainant are not in consonance with each other. Motive of the offence is also not established and therefore, the learned Judge has rightly acquitted the respondent for the offences punishable u/s 323 and 504 of IPC and Section 3[1][x] of Atrocities Act. We do not see any reason to interfere with the order passed by the learned Special Judge as there is no infirmity in the judgment rendered by the learned Judge.

6. This Court is also aware of the fact that this is an acquittal appeal preferred u/s 378 of the Code in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired necessary confidence of the learned Special Judge who had the opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Special Judge, the Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Special Judge and this Court is of the opinion that expression of general agreement with the view taken by the learned Special Judge would be sufficient in the facts of the case.

7. For the foregoing reasons, as the appeal is meritless, the same is hereby dismissed. Judgment and order of acquittal dated 24th April, 2009 passed by the learned Special Judge, Fast Track Court No. 2, Surendranagar, Camp at Limbdi in Special Case No. 10 of 2008 is hereby confirmed.