
(2015) 10 GUJ CK 0045
In the Gujarat High Court
Case No : Criminal Appeal No. 1562 of 2003

State of Gujarat

APPELLANT

Vs

Jilubha Surajsingh Darbar and Others

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307

Citation : (2015) 10 GUJ CK 0045

Hon'ble Judges : M.R. Shah and K.J. Thaker, JJ.

Bench : Division Bench

Advocate : Himanshu Patel, Addl. Public Prosecutor, for the Appellant

Final Decision : Dismissed

Judgement

M.R. Shah, J.—Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 20.09.2003, passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Banaskantha at Deesa (for short, "the trial Court"), in Special Case No. 11 of 2003, whereby, the learned trial Court has acquitted the original accused Nos. 1 and 2-Respondent Nos. 1 and 2, herein, for the offence punishable under Sections 143, 147, 148, 307, 149, 333, 504 and 506(2) of the Indian Penal Code, the appellant-State has preferred the present criminal appeal.

2. The case of the prosecution in nutshell and as narrated by the complainant of I-C.R. No. 13/2002, filed before Bhabhar Police Station is as under;

On 01.03.2002 at about 21:10 p.m., the complainant was at his residence-cum-shop at Village: Bhabhar, at that time, a mob of about 200 to 300 people came there with deadly weapons like stick, dhariya, swords etc. They were shouting that shops belonging to other community be looted and be burned. They were also shouting that the people belonging to other community be burned alive. Said mob consisted one Darbar Pravinsinh Bachubha, Jilubha Surajsinh, Mahendrasinh Kitubha, Jaytubha Kitubha and other 200 to 300 persons, which

had come to attack the persons belonging to Muslim community. It was further the case of the prosecution that on hearing the shouts, the police personnel of the Border Wing, who were on duty at the place of offence, stopped the mob and asked them not to pelt stones and also informed them that the curfew is imposed in the area, and therefore, they asked mob to disperse and go. However, as per the case of the prosecution, people in the mob did not listen to the Border Wing personnels and they failed to disburse. As the people in the mob, made an attempt to attack Ranabhai, who was a Border Wing personnel, he fired one round in air in his self-defence and he then also fired second round. At that time, one Pravinsinh Bachubhai assaulted Dhengabhai, who was also a Border Wing personnel, with knife and caused injury on his leg and due to that Dhengabhai fell down on the ground. At that time Mahendrasinh, Jilubha and others inflicted injuries on Dhengabhai with weapons and kicks and fists blows. Therefore, Dhengabhai fired one round from his service rifle, which injured one Pravinsinh Bachubha. At that time, one police vehicle, which was on patrolling duty came to the place of incident and took Dhengabhai and the injured, Pravinshin Bachubha, to the hospital. Then, the aforesaid FIR came to be registered, which came to be investigated by PW-21, Shri. N.M. Goswami (Exhibit-48), i.e. the concerned Police Officer of Bhabhar Police Station. During the course of investigation, he recorded the statements of the concerned witnesses. He also collected documentary evidences against the accused persons. On conclusion of the investigation, the Investigating Officer filed charge-sheet against the present accused persons for the offence punishable under Sections 143, 147, 148, 307, 149, 333, 504 and 506(2) of the Indian Penal Code. As the case was exclusively triable by the learned Sessions Court, Banaskantha at Deesa, it was transferred to the learned Additional Sessions Judge (Fast Track Court No. 2), Banaskantha at Deesa and same was numbered as Sessions Case No. 11 of 2003.

3. Then, the learned trial Court framed charge against both the accused for the aforesaid offence. The accused pleaded not guilty, and therefore, they came to be tried by the learned trial Court for the aforesaid offence along with the other accused persons in Sessions Case No. 142 of 2002, which also arise out of the same incident.

4. To prove the case against the accused, the prosecution examined as may as 21 witnesses as under;

5. Through the aforesaid witnesses, the prosecution also produced on record the following documentary evidences;

6. After the learned Public Prosecutor submitted the closing pursis vide Exhibit-63, the learned trial Court recorded further statement of the accused under Section 313 of the Code of Criminal Procedure and both the accused denied to have committed any offence, as alleged and it was stated that a false case has been filed against them.

7. On appreciation of the evidence on record, more particularly, the depositions

of PW Nos. 1, 6, 8, 16, 18, 19, 20, who belonged to the minority community, and the witnesses examined as PW Nos. 5, 9 and 10, the learned trial Court passed the impugned judgment and order, acquitting both the accused of the charge for which they came to be tried, by holding that the prosecution has failed to prove beyond doubt the involvement of both the accused in commission of the alleged offence.

8. Felling aggrieved and dissatisfied with the impugned judgment and order passed by the trial Court, as above, the appellant-State has preferred the present Criminal Appeal.

9. Shri. Jayant M. Panchal, learned Spl. Public Prosecutor along with Mr. Kamal J. Panchal, learned Advocate, have appeared on behalf of the appellant-State.

10. Though served, nobody has appeared on behalf of the original accused, Respondents, herein.

11. We have heard Mr. Panchal, learned Spl. Public Prosecutor, appearing on behalf of the appellant-State at length. He took us through the entire evidence on record, oral as well as documentary.

12. Shri. Panchal has vehemently submitted that the learned trial Court has materially erred in acquitting both the accused. He has further submitted that, as such, in the present case, prosecution has been successful in proving and establishing the case against both the accused and their active participation and involvement in commission of the alleged offence. He has submitted that even the finding recorded by the learned trial Court is based on mis-appreciation of the evidence on record, both oral as well as documentary. He, therefore, has submitted that this is a fit case to exercise appellate jurisdiction by quashing and setting aside the impugned judgment and order of acquittal. He has further submitted that the learned trial Court has mis-read the deposition of PW-9-Dhengabhai Bhikhabhai, who was examined at Exhibit-32. It is submitted that, as such, PW-9 was discharging duties at the place of offence, when the alleged incident took place, and therefore, his presence is natural at the place of incident at the time of its commission. It is, therefore, submitted that he is an injured eye-witness. He submitted that as per the evidence of the said witness one of the accused tried to assault him with knife. He submitted that PW-9 categorically stated, in his deposition, that both the accused persons were also present at the scene of offence, at the time of its commission. He also submitted that both the accused were named in the FIR. He submitted that the deposition of PW-9-Dhengabhai Bhikhabhai has been further corroborated by the depositions of PW-10 and PW-11. He submitted that, therefore, by leading the cogent evidence, the prosecution has been successful in proving that the alleged incident had taken place. It is, therefore, submitted that as per the evidence of the said witness, the presence of the both the accused, who were also named in the FIR, is successfully established at the place of offence, at the time of its commission. He, therefore, has submitted that the learned trial Court has committed grave

error in acquitting both the accused. He has further submitted that the prosecution has also been successful in establishing the motive behind the alleged offence, by leading cogent evidence. He, therefore, submitted that the trial Court has committed a grave error in not properly appreciating the fact that there was no reason with the complainant or the witnesses, more particularly, PW Nos. 10 and 11 to falsely implicate the accused in the alleged offence.

13. Shri. Panchal, learned Spl. P.P. Has further submitted that the oral evidence adduced by the prosecution also stands corroborated by the documentary evidences like PM Note, Panchnama of Place of Offence, Map of Place of Offence, injury certificate of Dhengabhai and other documentary evidences produced on record of the case. It is, therefore, submitted that the learned trial Court has materially erred in not properly appreciating oral as well as documentary evidences produced on the record of the case in light of the contents of the FIR and also the evidence of the Investigating Officer. He has submitted that the findings recorded by the learned trial Court can be said to be perverse and contrary to the evidence on record, and therefore, acquittal of the accused recorded by the trial Court has resulted into miscarriage of justice.

Making the above submissions, it is requested to interfere with the impugned order of acquittal and convict the accused for the offences for which they came to be tried.

14. We have heard Shri. Panchal, learned Spl. Public Prosecutor, at length. He has taken us through the entire evidence, both oral as well as documentary. We have scanned and re-appreciated the entire evidence on record to satisfy ourselves, as to whether the trial Court has committed an error in acquitting both the accused for the offences for which they came to be tried, which has resulted into miscarriage of justice.

15. On appreciation of the entire evidence on record as well as the case put forward by the prosecution, it appears that the prosecution has heavily relied on the deposition of PW-9, Dhengabhai Bhikhabai, a personnel of Border Wing, who at the relevant point of time was discharging duty at the place of offence, who has been examined at Exhibit-32, as well as deposition of PW-10, Ranabhai Devjibhai, who has been examined at Exhibit-33, and PW-11, Viraj Malaji, who has been examined at Exhibit-34 and the fact that both the accused were named in FIR (Exhibit-49) given by the one Barkat Gafurbhai Mansuri, who has been examined as PW-1 at Exhibit-11, have turned hostile.

16. So far as the evidence on record and the depositions of the witnesses from minority community are concerned, i.e. PW-1, Barkatbhai Gafurbhai Mansuri (Exhibit-11), PW-6, Naushadbhai Gafurbhai Mansuri (Exhibit-28), PW-8, Hamidaben W/o. Naushadbhai (Exhibit-31), PW-16, Firozaben W/o. Barkatbhai (Exhibit-42), PW-18, Jamilaben Naushadbhai (Exhibit-45), PW-19, Madinaben Naushadbhai (Exhibit-46), PW-21, Shahilbhai Navsadbhai (Exhibit-47), they have also not supported the case of the prosecution at all and they have been declared

hostile. It is also required to be noted that panch witnesses of panchnama of place of offence, i.e. Kanubha Prahladsinh (PW-5) and Lakhmanbhai Shakrabhai (PW-15) have also not supported the case of the prosecution.

17. Now, so far as the two witnesses including the injured eye-witness, PW-9, Dhengabhai Bhikhabhai (Exhibit-32), and the eye-witness-PW-10, Ranabhai Devjibhai (Exhibit-33) are concerned, they failed to identify any of the accused persons. It is required to be noted that as per the prosecution, Dhengabhai and Ranabhai both are the eye-witnesses and they were present at the time of incident and despite that both of them have failed to identify any of the accused. Even according to PW-9, Dhengabhai, who has been examined at Exhibit-32, he was assaulted by a mob by pelting stones. According to the case of the prosecution, incident took place at Bhabhar at about 21:10 p.m. However, according to the medical evidence and the history given by PW-9 before the Medical Officer, the incident took place at about 07:00 p.m.

18. Further, the prosecution has also examined PW-11, Viraji Malaji, a local police constable, at Exhibit-34. According to the prosecution, said Viraji Malaji, police witness was present at the time of incident. However, looking to his evidence, he could only identify Respondent No. 2, herein,-the original accused No. 2, Mahendrasinh Kitubha Darbar, whereas, he could not identify Respondent No. 1, herein, the original accused No. 1, Jilubha Surajsinh Darbar, correctly and in fact he identified a wrong person before the Court.

19. Therefore, considering the evidence on record, the prosecution has failed to prove the involvement of the Respondent Nos. 1 and 2, herein, the original accused Nos. 1 and 2 by leading cogent, unimpeachable and reliable evidence. After having held, on appreciation of the material on record, that the prosecution has failed to prove the involvement of any of the accused Nos. 1 and 2, herein, and that on appreciation of such evidences on record, the learned trial Court has acquitted both the accused, herein, for the offence for which they came to be tried, it cannot be said that learned trial Court has committed any error in acquitting the accused.

20. Here, it is required to be noted that as such, this is an appeal against the order of acquittal passed by the learned trial Court. The powers of the appellate Court, while considering an appeal against the order of acquittal are now not res integra. Applying the ratio laid down by the Apex Court in a catena of decisions and the findings recorded by the learned trial Court while acquitting both the accused and on appreciation of the material on record, we are of the opinion that the view taken by the learned trial Court is plausible. On-appreciation of the entire evidence on record, even if, there are two possible views and if the learned trial Court has accepted one possible view and has acquitted the accused, in that case also, the appellate Court is not justified in interfering with the order of acquittal. In the present case, as observed herein above, on appreciation of the evidence, the learned trial Court has specifically observed and held that the prosecution has failed to prove its case by leading cogent and reliable evidence

to establish the involvement of both the accused in commission of the alleged offence, and therefore, we see no reason to interfere with the judgment and order passed by the trial Court.

21. In view of the discussion, as above, present appeal fails and is DISMISSED. The judgment and order of the trial Court, Dated. 20.09.2003, ACQUITTING Respondent Nos. 1 and 2, herein, the original accused Nos. 1 and 2 for the offence for which they were tried, stands CONFIRMED. The bail bonds of the accused, if any on bail, stands discharged. R&P be sent back to the concerned trial Court, forthwith.