

(2022) 02 GUJ CK 0099
In the Gujarat High Court
Case No : R/Criminal Appeal No. 2162 Of 2009

State Of Gujarat Through Public Prosecutor	APPELLANT
Vs	
Patel Parshottam Ambalal R/O. Block No. 59/1, & 1 Other(S)	RESPONDENT

Date of Decision : 28-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 378(1)(3)
Indian Penal Code, 1860 — Section 114, 323, 504
Bombay Police Act, 1951 — Section 135
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(10)

Citation : (2022) 02 GUJ CK 0099

Hon'ble Judges : Rajendra M. Sareen, J

Bench : Single Bench

Advocate : RC Kodekar, Arif A Shekh

Final Decision : ?Dismissed

Judgement

Rajendra M. Sareen, J

1. This Appeal is filed by the appellant – State of Gujarat under Section 378(1) (3) of the Criminal Procedure Code, 1973 against the judgment and order dated 01.07.2006 passed by the learned Special Judge and Additional Sessions Judge, Gandhinagar in Sessions Case No.20 of 2006 acquitting the respondent nos. 1 and 2 – original accused from the offence punishable under sections 323, 504 and 114 of Indian Penal Code and under section 135 of Bombay Police Act and under section 3(1)(10) of the Scheduled Tribes (Prevention of Atrocities Act), 1989.

2. The case of the prosecution is that the complainant Amratbhai Aashrambhai Shrimali, residing at Gandhinagar Sector-17, Block no.88/2, about 8 Months ago, complainant bought the land at Sector-4/A bearing Plot no.1281/2, from the accused Parshotam Ambalal. The complainant knew from the some persons that the accused sold the same land to the other persons also. Therefore, the

complainant demanded his money back from the accused. The accused gave him a Cheque. A case was pending against the accused at Gandhinagar Court in this regard. Date of hearing of the case was 7/3/2006, and therefore, the complainant and his neighbour Jignesh were standing near the Parking of Court at about 10.45. At about 11.30, the accused persons and two unknown persons came there and asked for settlement but the complainant denied for the same. Because of that, the accused persons got provoked and gave foul abuses and accused Bhavesh Parshotam gave punch blow and slapped on the left side of Chick of the complainant and also tried to hit him with belt but the complainant caught it. At that time other three persons beaten him from the back side. Therefore, he shouted for help. Because of that, some people interfered and saved him. Pursuant thereto, the FIR was lodged at Sector-7 Police Station for the offence punishable under sections 323, 504, 114 of Indian Penal Code & under section 135 of Bombay Police Act & under section 3 (1) (10) of Atrocity Act. The Police registered the offence and initiated the investigation and recorded statements of all the witnesses and prepared necessary Panchnama and arrested the accused persons.

After completion of the investigation, charge sheet was filed against accused persons and thereafter, charge was framed against them for the offences punishable under sections 323, 504, 114 of Indian Penal Code & under section 135 of Bombay Police Act & under section 3 (1) (10) of Atrocity Act. The accused persons pleaded not guilty to the charges and claimed to be tried. The prosecution therefore led evidence. The learned Special Judge, Additional District & Sessions Judge acquitted the accused persons vide judgement and order of acquittal dated order dated 1/7/2006 from the charges of offences charged against them punishable Under Sections 323, 504, 114 of Indian Penal Code & under section 135 of Bombay Police Act & under section 3 (1) (10) of Atrocity Act.

2.1. Being aggrieved by and dissatisfied with the aforesaid judgement and order of acquittal, present appeal has been filed by the appellant – State.

3. Learned APP Mr.R.C. Kodekar for the appellant State has vehemently argued that the Sessions Court has committed a grave error in not believing the deposition of the witnesses examined by the prosecution and evidence adduced by the prosecution. He has further submitted that the Sessions Court has erred in acquitting the respondents – accused from the charges levelled against them. He has further argued that the prosecution has proved that the respondents have committed offence under section 323, 504, 114 of Indian Penal Code & under section 135 of Bombay Police Act & under section 3 (1) (10) of Atrocity Act. He has further argued that Sessions Court has acquitted the respondents accused merely on some minor contradictions and omissions in the evidence of the witnesses. He has 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. He has further argued that the offence punishable under sections 323, 504, 114 of Indian Penal Code & under section 135 of

Bombay Police Act & under section 3 (1) (10) of Atrocity Act, is made out, however, the same is not believed by the Sessions Court. He has further argued that though the prosecution witness has supported the case of the prosecution, the trial court erroneously not believed their evidence and acquitted the accused. He has further argued that the trial court has erroneously held that the prosecution has failed to prove the case beyond reasonable doubt.

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

4. Mr.Arif Shekh, learned advocate for the respondent Nos.1 and 2 - original accused has submitted that there is hardly any substance in the submissions of learned APP. There is no admissible evidence on record connecting the accused with the commission of the offence. There are material contradictions and omissions in the evidence of the prosecution witnesses. The prosecution has not proved the case beyond reasonable doubt. No error or illegality has been committed by the trial court in acquitting the respondents accused.

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

5. Heard the learned advocates for the respective parties and perused the impugned judgement and order of acquittal and re-appreciated the entire evidence on record.

6. Before adverting to the facts of the case, it would be worthwhile to refer to the scope in Acquittal Appeals. It is well settled by a catena of decisions that an appellate Court has full Power to review, re-appreciate and consider the Evidence upon which the Order of Acquittal is founded. However, the Appellate Court must bear in mind that in case of Acquittal, there is prejudice in favour of the Accused, firstly, the presumption of innocence is available to him under the Fundamental Principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of Law. Secondly, the Accused having secured his Acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

7. On re-appreciation of evidence on record, it is clear that in this case, there are mainly two witnesses, i.e. complainant and his friend. Besides the two witnesses, Doctor is examined and panch witnesses as well police witness are also examined.

8. So far as the evidence of the panch witnesses is concerned, PW No.1 Shailesh Hirabhai Suthar Ex.7 has been examined who is panch witness to the recovery of Belt and panchnama of the person of the accused. As per the evidence of the panch witness, he has identified the Belt which was recovered. There were no marks on the Belt.

Except the Belt, the panch has not supported the panchnama of the person of the accused No.2. The panchnama is produced at Ex.8.

9. PW No.3 Mohammed Kamal Kureshi panch of place of offence Ex.12 has stated

in his cross examination that he has put his signature on ready panchnama which was already written. Second Panch Shrimali PW No.4 Ex.14 has supported panchnama Ex.30. However, he has stated in his cross examination that he was witness to the quarrel which had taken place and though he had witnessed the incident, he is not examined as witness nor his statement has been recorded to that effect. The only thing which comes from his deposition is place of offence only. There was quarrel taken place between the party and besides that nothing has come on record. He has not mentioned any kind of assault of any of the persons on each other. Except altercation nothing can be believed from the evidence of the said panch witness.

10. PW No.5 complainant has been examined at Ex.15. He has stated the fact regarding the dispute between him and the accused pertaining to the Plot No.1281/2 for which transaction was done with the complainant by the accused and thereafter again transaction was done with some other persons and as the accused had paid the amount of the said plot by cheque and the said cheque dishonoured and that was the dispute going on in the court of Negotiable Instrument Act and on the date of hearing i.e. on 7/2/2006, the incident occurred in the court. He has mentioned as to how he was assaulted by the accused No.2 on high right cheek by slapping and also with Belt by the accused No.2. It is also stated that both the accused and other accused had come to beat the complainant and three persons were beating with kick and fist blows on the backside and his friend Jignesh had saved him, for which complaint was filed in Sector 7 Police Station, which is produced at Ex.17. As regards filthy abuses or cast related words, are concerned, in the cross examination, the complainant has stated that both the accused had abused cast related words. It is denied in the cross examination that the accused has filed a complaint against him. It is also denied that he has been served with the process. As such, though it is admitted fact on record that the complaint is filed by the accused on 9/3/2006 in the court of Judicial Magistrate, Gandhinagar wherein inquiry under section 202 of the Code of Criminal Procedure was ordered and after the police report, process was issued against the complainant and one Jagdishbhai Parmar. As such though apparently the complaint is filed against the complainant for which process is also issued against the complainant, he has denied and concealed the said material fact from the court. As the complainant has made false statements on oath, he is not reliable witness and the deposition of the complainant does not inspire any confidence. In the cross examination, he has uttered the words which were said by the accused persons but it is also denied to have mentioned in the complaint by the complainant, however, investigating officer has admitted that fact that the cast related words which has been narrated by the complainant in the cross examination, are not mentioned in the complaint. The complainant, in order to increase the severity of the offence has made such statement. As such such words are not mentioned in the complaint by the complainant. He has tendency to add more things to the factual aspects of the case, which also decreasing the truthfulness of the version of the complainant.'

11. Medical officer, Dr. Kamlesh has been examined at Ex.9 as PW No.2. Considering his evidence on record, it is clear that no injury has been found on the back of the complainant, as alleged. He was assaulted by kick and fist blow on the back side by three persons, as alleged, but no injury has been seen on the body of the complainant except one swelling on the thumb and one abrasion on the nose. No marks of slapping or fist blow is found by the Doctor. Moreover, from the evidence of the Doctor, it clearly reveals that there can be no injury which were found on the complainant by the muddamal Belt. One more aspect which is to be seen from the evidence of the Doctor is that in the history the complainant has stated that the incident occurred in Sector 17, Gandhinagar, whereas as per the complaint, the incident occurred in Section 11, Court premises. As such, there is material contradictions with respect to the place of incident. Sector 17 is the place where the complainant is residing. It is not the case of the complainant that the incident occurred at his residence. Though the complainant knows the accused since long, no names of the assailants were mentioned in the history before the Doctor. Moreover, though the incident occurred at 11.15 a.m. in the court premises, the complaint is filed at

12. 20. No life of the injury has been mentioned in the injury certificate by the Doctor. It cannot be believed cogently and convincingly that even the injury mentioned by the Doctor are the result of the incident.

12. Another important witness examined by the prosecution is friend of the complainant namely Jignesh Parmar PW No.6 Ex.6. He has tried to support the case of the complainant. Considering his evidence, he is village neighbour of the complainant and known to the complainant and he is also known to the transaction between the complainant and the accused regarding Plot. He has tried to adopt the entire version of the complainant in his evidence. He has also stated the words used by the accused against caste of the complainant, however, the same is not mentioned by the complainant in the complaint. Just to make to offence grave, he has stated such things in his deposition, which cannot be believed. Even otherwise, he is best friend of the complainant and can be termed as interested witnesses. This witness has also submitted that free quarrel had taken place between both the parties. He has stated that the complainant was injured but he is silent on the point whether the accused side was injured or not. The entire evidence of this witness does not inspire any confidence and it is far from the truth and it appears that he being friend of the complainant, has given deposition in favour of the complainant.

13. Other witness PW Nos.7 and 8 are police witness,. PW No.9 is the investigating officer of the case, who is Dy.S.P. examined at Ex.24. In his cross examination, he has admitted that the complainant has not mentioned anything regarding words uttered by the accused against his caste. There is material contradiction in the evidence of the complainant and Jigneshbhai.

14. On-reappreciation of the entire evidence on record, it appears that some incident had occurred between the parties pertaining to the transaction of Plot

and the amount which was due from the accused persons to the complainant but the complainant has tried to give colour of a grave offence. There are material contradictions in the evidence of the prosecution witnesses. Though the place of incident is of court premises, no statement of independent witness has been recorded. The material contradictions in the evidence creates doubt about occurring of the incident. Nothing has been brought on record by the complainant regarding abusive words alleged by the complainant. The complainant has not stated the abusive words in his complaint and the same is admitted by the investigating officer. On overall consideration of the evidence on record, it appears that there was some quarrel on the aspect of plot and amount to be paid by the accused, however, the prosecution evidence does not inspire any confidence. However, considering the entire evidence on record, it cannot be said that the prosecution has proved the case against the accused beyond reasonable doubt.

15. It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special 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."

16. In that view of the matter, the Criminal Appeal being devoid of merits is dismissed.