

(2016) 01 GUJ CK 0148
In the Gujarat High Court
Case No : Criminal Appeal No. 2064 of 2006

The State of Gujarat

APPELLANT

Vs

Daxesh Harshadbhai Koli Patel and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 378(1)(3)
Penal Code, 1860 (IPC) — Section 114, Section 307, Section 323, Section 324, Section 506(2)
Scheduled Castes and the Sc

Citation : (2016) 01 GUJ CK 0148

Hon'ble Judges : M.R. Shah and Z.K. Saiyed, JJ.

Bench : Division Bench

Advocate : K.P. Raval, A.P.P., for the Appellant; HCLS Committee and Umang H. Oza, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—1. The appellant - State has preferred present Appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973, against the impugned judgment and order dated 11.8.2006 passed by the learned Additional Sessions Judge, Valsad, in Special Case No. 11 of 2005, by which the learned Sessions Judge acquitted the respondent - original accused for the offences punishable under Sections 307, 324, 323, 506(2), 114 of the Indian Penal Code, 135 of the Bombay Police Act and Sections 3, 2(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. As per the case of the prosecution, the complainant - Zikubhai Babarbhahi Patel is residing at village: Nimkhal and he was Sarpanch of the said village. The complainant as a Sarpanch, while preparing the road in the village, one Jigar Natubhai and other persons have raised objections and therefore, quarrel took place between the complainant and said Jigarbhahi and other persons. Therefore, the complainant had filed Criminal Case against the said Jigarbhahi and one

Jayantibhai etc. under the Atrocities Act in the month of February, 2004. It is further case of the prosecution that on 24.9.2004, there was a festival of "Ganpati Sthapana" in the family of the complainant and "Ganpati Visarjan" was kept on very day at about 2:00 p.m. It is further case of the prosecution that during the procession of "Ganpati Visarjan", said Jigar Natubhai came there with tractor and as there was a mob of people, he did not overtake the mob and therefore, the accused No. 4 - respondent No. 4 herein - Mukeshbhai Haribhai Patel instigated the said Jigarbhai to ply over the tractor over the mob of people. Therefore, said Jigarbhai has plied over the tractor on the mob in which leg of prosecution witness Madhuben has come below the wheel of the tractor. Therefore, the complainant went to the place of incident and took the said witness Madhuben to the hospital for medical treatment. It is further case of the prosecution that while the complainant along with one Ramanbhai Makanbhai and one Deepakbhai Mohanbhai Patel were going to the hospital, the said Jigar Patel, Daxesh Harshadbhai Koli Patel (respondent No. 1 - original accused No. 1), Nimesh Zaverbhai Koli Patel (respondent No. 2 - original accused No. 2) and Ranjit Shantilal Patel (respondent No. 3 - original accused No. 3) met the complainant and gave fist and kick blows. It is further case of the prosecution that said Jigar Patel inflicted blow of hard substance on the complainant during the quarrel and therefore, the complainant received injuries and at the same time, the complainant has seen prosecution witness - Dipak in bleeding condition. I the meantime, the prosecution witnesses namely Jagdishbhai Gulabhai, Manubhai Nagarbhai Patel came there and rescued the complainant. Thereafter, the accused persons had administered threats to the complainant and gone away. Thereafter, the complainant lodged complaint being C.R.I. 179 of 2004 before Pardi Police Station for the offences punishable under Sections 307, 324, 323, 506(2), 114 of the Indian Penal Code, 135 of the Bombay Police Act and Sections 3, 2(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. After registering the complaint, VHF message was sent to Dy. S.P., Surat. At that relevant point of time, said Dy. S.P., ST Cell, Surat, was on leave and therefore, investigation was handed over to Shri C.B. Gandhi, In-charge Dy. S.P., Valsad and he has recorded the statements of witnesses. After thorough investigation, as there was sufficient evidence connecting the respondents - accused with the alleged offence, charge-sheet was filed in the Court of learned Judicial Magistrate First Class, Pardi and as the offence committed by the accused persons was exclusively triable by the learned Sessions Court, same was committed to the Court of learned Additional Sessions Judge, Valsad, for trial and said case was numbered as Special Case No. 11 of 2005. The respondents accused have not pleaded guilty to the charge levelled against them and claimed to be tried. Therefore, the prosecution examined following witness to prove the case against the accused.

3. The prosecution has also produced following documentary evidence:

4. After filing of closing purshis by the prosecution side, the statements recorded under Section 313 of the Code of Criminal Procedure, the accused disclosed

before the learned trial Judge that the complaint has been wrongly filed against them as they have raised objections against the mis-administration on the part of the complainant as a Sarpanch. Thereafter, hearing both the parties, the learned trial Judge has acquitted the accused for the charges levelled against them.

5. Against the impugned judgment and order dated 11.8.2006 passed by the learned Additional Sessions Judge, Valsad, in Special Case No. 11 of 2005, the State has preferred present appeal.

6. Shri K.P. Raval, learned APP appearing on behalf of the appellant - State, has submitted that the learned trial Judge has not properly appreciated the evidence oral as well as documentary and therefore, the impugned judgment and order is required to be quashed and set aside. Shri Raval, learned APP has further submitted that from the evidence of P.W. 1 - Dr. Virendra Pradhuman Garai, examined at Exhibit 12 and P.W. 2 - Dr. Mahendra Harikrishna Vyas, examined at Exhibit 17, the prosecution has proved the case against the accused beyond reasonable doubt and the said witness has admitted that the injuries are possible by some hard substance. In support of their evidence, the medical certificates of P.W. 6 Madhuben Subhashbhai Patel at Exhibit 14 and 18, P.W. 7 - Dipakbhai Mohanbhai Patel at Exhibit 15, P.W. 8 - Ramanbhai Makanbhai Patel at Exhibit 16 were produced. Learned APP has further submitted that said injured witnesses i.e. P.W. 6 Madhuben Subhashbhai Patel examined at Exhibit 34, P.W. 7 - Dipakbhai Mohanbhai Patel examined at Exhibit 35, P.W. 8 - Ramanbhai Makanbhai Patel examined at Exhibit 36 have also supported the case of the prosecution by disclosing the role of the accused persons in the commission of offences. Learned APP has further submitted that even the evidence of P.W. 5 - Zikubhai Babarbhahi Patel examined at Exhibit 26 corroborates with the complaint at Exhibit 20. This witness has further stated in his evidence that he was Sarpanch of village and when the road work in the village was going on, one Jigarbhai, Natubhai, Pravinbhai etc. raised objection for the road work and at that time, quarrel took place between them. Therefore, this witness filed complaint against the aforesaid persons. This witness has further stated in his deposition that therefore, said Jigarbhai, who was instigated by the accused No. 4, plied over the tractor on the mob of people during the procession of "Ganpati Visarjan". This witness also stated in his deposition that when the complainant and other witnesses were going to the hospital, the accused persons met them and the accused persons gave fist and kick blows to him and other persons. Learned APP further submitted that the complaint at Exhibit 20 gets corroboration from the evidence of injured witnesses. Learned APP has further submitted that looking to overall evidence on record, the prosecution has proved the case against the accused persons, but the learned trial Judge has not properly appreciated the evidence. It is, therefore, submitted that the impugned judgment and order passed by the learned trial Court is required to be quashed and set aside by allowing present Appeal and the accused persons are required to be convicted.

7. Shri Oza, learned advocate appearing on behalf of the respondents - original accused, has supported the impugned judgment and order passed by the learned trial Court and has submitted that after appreciating the documents produced on record, the learned trial Judge has acquitted the accused for the offences as alleged and therefore, same is not required to be interfered with by this Court. Shri Oza, learned advocate appearing on behalf of the respondents has further submitted that the prosecution has not proved the case against the accused for the alleged offence and therefore, learned trial Judge has rightly acquitted the accused. Learned advocate for the accused has further submitted that there are so many contradictions between the evidence of witnesses examined by the prosecution and even the exact place of the incident is not proved by the witnesses examined by the prosecution. Learned advocate for the accused has therefore, prayed to dismiss the appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. We have heard both the parties and also perused the judgment and order passed by the learned trial Court. It is true that it is the duty of the Appellate Court to enter into whole evidence and re-write judgment. We have minutely perused oral evidence of 12 witnesses examined by the prosecution and 10 documentary evidence. We have also perused observations made by the learned trial Judge. It appears from the evidence of P.W. 12 - Pravinkumar Kantibhai Chaudhary examined at Exhibit 41, there was notification of the District Magistrate from 18.9.2004 to 1.10.2004 in force, but from the evidence of the witnesses examined by the prosecution, it is not established by the prosecution that there was breach of such Notification and from the evidence of Investigating Officer P.W. 11 Chandrakant Bachulal Gandhi examined at Exhibit 40, it appears that no evidence is recorded for breach of said Notification. It appears that there are so many contradictions between the evidence of the witnesses examined by the prosecution. On the contrary, it appears that due to enmity with one Jigarbhai (Juvenile accused), the complaint was registered by the complainant against the accused persons. Looking to overall evidence - oral as well as documentary produced on record, it appears that the learned trial Judge has rightly observed that the prosecution could not prove its case beyond reasonable doubt. Even from the oral evidence of both the Doctors and also medical evidence, the prosecution has not proved the case against the accused.

9. In view of the above, we are in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same.

10. In the result, this appeal is dismissed. The impugned judgment and order of acquittal dated 11.8.2006 passed by the learned Additional Sessions Judge, Valsad, in Special Case No. 11 of 2005 is hereby confirmed. Bail bonds stand cancelled. R & P to be sent back to the concerned trial court forthwith.