

(2008) 11 GUJ CK 0051

In the Gujarat High Court

Case No : Criminal Appeal No"s. 2185, 2515 and 2516 of 2005

Vikramsinh Sukhsinh Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 120B, 384, 390, 392
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10)

Citation : (2008) 11 GUJ CK 0051

Hon'ble Judges : J.C. Upadhyaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : Rajesh M. Agrawal, 1 in Criminal Appeal Nos. 2515 and 2516 of 2005 and M.M. Tirmizi, 1 in Criminal Appeal No. 2185 of 2005, for the Appellant; U.R. Bhatt, APP for Opponent 1, for the Respondent

Judgement

J.C. Upadhyaya, J.—These three Criminal Appeals arise out of the judgment and order delivered by learned Presiding Officer, Fast Track Court, Sabarkantha at Himatnagar ("learned trial Judge", for short) on dated 21.9.2005 in Atrocity Case No. 13 of 2005. The appellants were original accused in the aforesaid case, they came to be convicted for the offences punishable under Sections 384 392 read with Section 120B and Section 114 of Indian Penal Code ("IPC", for short) and for the offence punishable u/s 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act", for short) and each of them was sentenced to undergo rigorous imprisonment for 3 years and fine of Rs. 1000/-, in default of payment of fine, simple imprisonment for 3 months for the offence punishable u/s 384 of the IPC and rigorous imprisonment for 10 years and fine of Rs. 5000/-, in default of payment of fine, rigorous imprisonment for 1 year for the offence punishable u/s 392 read with Sections 120B and 114 of the IPC and simple imprisonment for 2 years and fine of Rs. 1000/-, in default of payment of fine, simple imprisonment for 3 months for the

offence punishable u/s 3(1)(10) of the Atrocities Act. The appellants - accused persons came to be acquitted for the offence punishable u/s 506(2) of the IPC. The sentence was ordered to run concurrently. Therefore, being aggrieved and dissatisfied with the order of conviction and sentence recorded by the learned trial Judge, the appellants preferred these Criminal Appeals.

2. The prosecution case in nut-shell is as under:

On dated 8.1.2005, at about 2 p.m., near S.T. Depot of Himatnagar, first informant Govindbhai Mafabhai, who was travelling on his motorcycle bearing registration No. GJ-9P-9241 for Idar, halted for tea etc. It is the case of the prosecution that at that time, the appellant - accused No. 1 Ramilaben Amrutgiri came near the first informant Govindbhai and requested for lift and said that she was to go to village Dungri, which was situated on Himatnagar - Idar road, and village Dungri was approximately 4 to 5 kms. away from Himatnagar. First informant Govindbhai consented for the same and the first informant himself and the appellant - accused No. 1 Ramilaben on the motorcycle left Himatnagar. It is alleged that when they reached approximately 4 to 5 kms. away from Himatnagar, appellant accused No. 1 Ramilaben requested first informant to stop the motorcycle. Thereupon, the first informant stopped the motorcycle and it is alleged that at that time, the appellant accused No. 2 Vikramsinh Sukhsinh and appellant accused No. 3 Ashokkumar Gumansinh, who had concealed themselves in a bush near the road, came out from the bush and threatened the first informant Govindbhai that he would be involved in a case of rape and looted two golden rings, one golden chain, the motorcycle and a wrist watch from the first informant Govindbhai together with cash of Rs. 650/-. It is alleged that the accused persons were knowing that the first informant Govindbhai belonged to scheduled tribe and he was insulted by the accused persons in the name of his caste. It is further the case of the prosecution that all the three accused persons stated to the first informant Govindbhai that if Govindbhai wanted to get back all those articles together with his motorcycle etc. he should bring Rs. 10000/- on dated 11.1.2005, at about 10 a.m., near village Gadhoda, where there was a factory of manufacturing cement pipes. Thereafter, all the three accused persons left the place. The first informant, who had inquired names of the accused, attempted to find out the accused persons through his friends and he came to know that modus-operandi of the accused was to cheat innocent persons and to commit robbery of valuable articles from them. On dated 11.1.2005, the first informant Govindbhai went to Himatnagar Town Police Station and informed the concerned Police Officer about the incident. He also informed the concerned Police Officer that on dated 11.1.2005, at about 10 a.m., he was to go to village Gadhoda, near a factory where cement pipes are manufactured for paying Rs. 10000/- to the accused persons and the accused shall return back his valuable golden ornaments and motorcycle etc. to him. Thereupon, the concerned Police Officer deputed 2 to 3 policemen and asked them to accompany the first informant Govindbhai to the place where the accused are to meet the first informant. Thereupon, the first informant along with his brother Khodidas and his

relative Chaganbhai Devabhai along with the policemen went to the place where the accused were to meet him. It is the case of the prosecution that when they all reached near the place, at that time all the three accused persons were available there. It is the case of the prosecution that thereafter the first informant Govindbhai along with the three accused persons and the policemen came to Himatnagar Town Police Station and he lodged the FIR, which was registered. The police commenced investigation, statements of material witnesses were recorded and the golden ornaments and motorcycle were seized by drawing panchnama. After completion of the investigation, the police filed chargesheet against the three accused persons in the Court of learned CJM, Himatnagar, who committed the case to the Court of Sessions, Sabarkantha at Himatnagar, which was registered as Atrocity Case No. 13 of 2005.

3. Learned trial Judge framed charge against all the three accused persons at Exh.2, to which the accused did not plead guilty and claimed to be tried. Therefore, the prosecution adduced its oral and documentary evidence. After the completion of the evidence, the learned trial Judge recorded further statements of the accused persons u/s 313 of the Cr.P.C and in their further statements, the accused denied generally all the charges levelled against them and stated that they were falsely implicated in this case.

4. The learned trial Judge after appreciating the evidence on record and after considering the arguments advanced on behalf of both the sides, delivered the impugned judgment on dated 21.9.2005 and convicted all the three accused persons for the offences punishable under Sections 384 392 read with Sections 120B and 114 of the IPC and for the offence punishable u/s 3(1)(10) of the Atrocities Act and passed order of sentence as hereinabove described.

5. Learned advocates Mr. Agrawal and Mr. Tirmizi for the appellants during the course of their arguments submitted that the impugned judgment and order rendered by the learned trial Judge is contrary to law and evidence on record. It is submitted that the entire case rests upon the deposition of first informant Govindbhai, whose deposition was recorded by the learned trial Judge at Exh.8. That considering his deposition, it is full of improvements and contradictions and deserves to be discarded. It is submitted that as a matter of fact, the appellant - accused No. 1 Ramilaben had filed a complaint against the first informant Govindbhai and as a counter-blast, the accused persons came to be involved by him in this false case. That the prosecution examined witness Chaganbhai Devabhai at Exh.10 with a view to corroborate the testimony of the first informant, but, witness Chaganbhai happened to be the father-in-law of the first informant and considering the deposition of witness Chaganbhai, no reliance can be placed upon his testimony. That the factum of seizure of valuable ornaments and motorcycle from the accused is not established. That no test identification parade ("TIP", for short) was arranged, regarding the identification of all the golden and silver ornaments etc. That the ornaments are such, which are easily available in market and admittedly there were no specific marks on any of the

ornaments so that the first informant Govindbhai can easily identify them. It is submitted that as per the prosecution case, the incident occurred on dated 8.1.2005, but FIR came to be lodged on dated 11.1.2005. That thus, it is a case of delayed FIR and the delay is not explained by the prosecution. It is further submitted that even as per the say of the first informant, on dated 11.1.2005, when he went to the police station and narrated the so-called story about the robbery, police immediately did not record his FIR and the first informant was asked to go to the place where the accused were to meet him along with 2 or 3 policemen, with a view to ascertain the truth in the story of the first informant. That thereafter, after the complainant and the policemen returned back to the police station, the FIR came to be registered. That such approach on the part of the police machinery creates reasonable doubt about the case of the prosecution. That thus, the prosecution case basically can be said to be unnatural and suspicious.

6. It is further submitted on behalf of the appellant that even as per the prosecution case, all the three accused persons were totally strangers to the first informant Govindbhai.

7. Therefore, it is not the case of the prosecution that the accused persons were knowing from the beginning that the first informant Govindbhai belonged to scheduled caste. Despite this, the accused came to be falsely implicated for the offence under the Atrocities Act, alleging that they abused the first informant in the name of his caste. Therefore, it is submitted that the appeals be allowed and the impugned judgment and order recording conviction of the accused persons rendered by the learned trial Judge be set-aside and the appellant - accused persons be acquitted.

8. Learned APP Mr. Bhatt fully supported the impugned judgment and order delivered by the learned trial Judge and submitted that the prosecution successfully established the charge of commission of offences against all the accused persons. It is submitted that considering the overall evidence on record, the prosecution successfully proved the involvement of all the three accused persons in connection with these offences. That therefore, there is no reason whatsoever for this Court to interfere with the impugned judgment and order delivered by the learned trial Judge and all the three appeals deserve dismissal.

9. We have given our thoughtful considerations to the submissions made on behalf of both the sides. We have considered the evidence recorded by the learned trial Judge in this case. The prosecution case more or less rests upon the testimony of first informant Govindbhai, Exh.8. In his examination-in-chief, he narrated the incident about the request made by the appellant - accused No. 1 Ramilaben to give lift to her upto village Dungri from Himatnagar on the motorcycle of the first informant. He stated that he has agreed to give lift and when they reached approximately 4 to 5 kms. away from Himatnagar, the appellant - accused No. 1 Ramilaben requested the first informant to stop the bike. He stated that he stopped the bike and thereupon the appellants - accused

No. 2 and 3 came out from a bush and all the three accused persons threatened him that he would be involved in a rape case, stating that he had kidnapped the appellant - accused No. 1 Ramilaben and had raped her. He stated that he was beaten by the accused persons and the accused persons robbed two golden rings, one golden chain, wrist watch, cash of Rs. 1750/- and his motorcycle. He stated that he was told by the accused persons that if he wanted to get back all these articles, then on Tuesday i.e. on 11.1.2005, he should bring Rs. 10000/- near village Gadhoda where there was a factory of manufacturing cement pipes and upon payment of Rs. 10000/- to them, they would return back all these articles to him. He stated that thereafter the accused persons left the place and he came to his house. However, he made inquiry about the accused persons and came to know that they were cheaters and were cheating innocent persons and used to extort valuable articles from such innocent persons. He stated that on dated 11.1.2005 he went to the police station and informed the concerned Police Officer about the incident. That initially, he was asked to accompany the policemen and they should go to the place where the accused persons were to meet him and thereupon they went to the outskirts of village Gadhoda, near the factory and all the three accused persons were available there and they were arrested by the police. That he himself, accompanied by the policemen and the accused persons, returned to the police station, where he lodged the FIR. That from the custody of appellant, accused No. 2 Vikramsinh, the golden ornaments were seized. Considering his cross-examination on behalf of the defence, nothing comes out on record, which would make his testimony doubtful one. On the contrary, considering his cross-examination, it further transpires that when he first went to police station and narrated the incident, the concerned Police Officer sent 2 to 3 policemen with him and they were instructed to go to the place where accused persons had decided to meet the first informant and that when they reached at the pre-decided place, the accused persons were available there. He further admitted that at the time of the incident, he alone was present, and therefore, there was no question of presence of any independent witness at the time when the offence of robbery took place.

10. The second part of the deposition of the first informant Govindbhai gets support by the testimony of witness Chaganbhai Devabhai recorded at Exh.10. Chaganbhai stated that the first informant happens to be the son-in-law and he told him about the incident of robbery and along with the first informant, he went to the police station and narrated the incident to police, whereupon the concerned Police Officer asked them to go to the place where the accused persons have decided to meet the first informant along with 2 to 3 policemen and he had accompanied the complainant and the policemen to the place and there they saw all the three accused persons and they were arrested. Thus, the incident occurred on dated 11.1.2005 is supported by the witness Chaganbhai in his testimony.

11. Considering the deposition of Police Head Constable Sankabhai Khengarbhai, Exh.20, he stated that on dated 11.1.2005, at about 9 a.m. in the morning,

when he was in Himatnagar town police station, the first informant Govindbhai had come to his police station and narrated the incident of robbery to his Police Sub-Inspector. That upon listening the incident of robbery and the fact that all the three accused persons were to meet the first informant, near village Gadhoda, his superior Police Officer directed him and one another policeman to accompany the first informant Govindbhai and to go to place near village Gadhoda, where accused persons were to meet the first informant. They all reached near village Gadhoda and there all the three accused persons were present. That he took all the three accused persons to the police station where the first informant Govindbhai lodged the police complaint. There is no reason to discard the testimony of independent witness Sankabhai Khengarbai, who is a policeman and at the relevant time, was serving in Himatnagar town police station. Considering the deposition of Police Constable Sankabhai, the deposition of first informant Govindbhai is duly corroborated.

12. Thus, re-appreciating the evidence on record, it becomes clear that the prosecution successfully proved the involvement of all the three accused persons in this crime. In the impugned judgment, the learned trial Judge convicted the accused persons for the offence of extortion punishable u/s 384 of the IPC as well as the accused simultaneously came to be convicted for the offence of robbery punishable u/s 392 of the IPC. The robbery is defined u/s 390 of the IPC and the relevant part of the definition runs as under:

390. - Robbery. In all robbery there is either theft of extortion.

When theft is robbery. - Theft is robbery? if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any death or hurt or wrongful restraint, or fear of instant hurt or of instant hurt, or of instant wrongful restraint.

When extortion is robbery. - Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation: The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

13. Therefore, the offence of extortion can be said to be lesser offence than robbery as the robbery is aggravated form of the offence of extortion. In the instant case, it becomes clear that as per the prosecution case established on record, all the three accused persons restrained the first informant Govindbhai and Govindbhai was assaulted and was beaten by the accused and his valuable ornaments etc. were robbed. Under such circumstances, the prosecution

successfully proved the offence of robbery as made punishable u/s 392 of the IPC. Therefore, when the prosecution proved the offence against the three accused persons of robbery, punishable u/s 392 of the IPC, there was no question whatsoever for the learned trial Judge to again convict all the three accused persons for the lesser offence of extortion punishable u/s 384 of the IPC. Under such circumstances, we are of the considered opinion that when the learned trial Judge rightly recorded the conviction of the accused persons for the commission of offence punishable u/s 392 of the IPC, the conviction recorded u/s 384 of the IPC for the offence of extortion deserves to be set-aside. Furthermore, from the evidence on record, it becomes clear that prior to the incident, all the three accused persons were strangers to the first informant Govindbhai. There is no evidence whatsoever to come to the conclusion that prior to the incident, the accused persons were knowing the first informant by his caste. When such is the situation, the case of the prosecution that the accused have committed offence punishable u/s 3(1)(10) of the Atrocities Act, cannot be said to have been proved.

14. In light of the entire above discussions, we are of the considered view that the conviction recorded by the learned trial Judge for the offence punishable u/s 384 of the IPC and u/s 3(1)(10) of the Atrocities Act deserves to be set-aside. However, the conviction of the appellant - accused persons for the offence punishable u/s 392 read with Sections 120B and 114 of the IPC deserves to be maintained. However, considering the punishment prescribed u/s 392 of the IPC, the offence is punishable with rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine. However, if the robbery is committed on the highway between sunset and sunrise, the imprisonment may extend to 14 years. In the instant case, it is not the case of the prosecution that the robbery took place between sunset and sunrise i.e. during night hours. Under such circumstances, maximum punishment of imprisonment prescribed is rigorous imprisonment for a term, which may extend to 10 years. The learned trial Judge awarded maximum sentence of imprisonment of 10 years to each of the appellant - accused persons. On behalf of the appellants, it was submitted that all the three appellants came to be arrested on dated 11.1.2005 and during the trial, they were not released on bail and on dated 21.9.2005, the learned trial Judge recorded the conviction and sentence of the appellant - accused persons by virtue of the impugned judgment. It is submitted that thus from dated 11.1.2005 they are in jail. It was submitted that there was no justifiable reason for the learned trial Judge to award the maximum sentence prescribed u/s 392 of the IPC. That no minimum sentence is prescribed. That the appellant accused No. 1 happened to be a lady - accused. It is further submitted that there was no allegation whatsoever of the prosecution that all or any of the accused persons were ever convicted in past for any offence, much less an offence of robbery prior to their conviction in question. Therefore, alternatively on behalf of the appellants, it was requested that the period undergone in jail by the appellant - accused persons would be the appropriate sentence of imprisonment, which comes to more than 3 years.

15. Considering the submissions made on behalf of the appellant - accused persons, it becomes clear that the learned trial Judge awarded maximum sentence of imprisonment prescribed u/s 392 of the IPC. There is no evidence whatsoever to show that the accused persons are habitual offenders. In the impugned judgment, no cogent and convincing reasons are assigned by the learned trial Judge as to why the accused persons deserve the maximum sentence of imprisonment provided u/s 392 of the IPC. Under such circumstances, considering the facts and circumstances of the case and the submissions made on behalf of the appellant - accused persons and in light of the above discussions, we are of the opinion that it would be in the interest of justice, if the sentence of imprisonment for 10 years awarded by the learned trial Judge to each of the appellant accused persons for the commission of offence punishable u/s 392 read with Sections 120B and 114 of the IPC is altered to the sentence of imprisonment already undergone by them. So far as fine is concerned, the learned trial Judge awarded fine of Rs. 5000/- to each of the accused persons and in default of payment of fine rigorous imprisonment for one year. We do not deem it expedient to disturb the sentence of fine awarded by the learned trial Judge in connection with the offence punishable u/s 392 read with Sections 120B and 114 of the IPC.

16. For the foregoing reasons, the appeals are partly allowed and the conviction and sentence of the appellants for the offences punishable u/s 384 of the Indian Penal Code and u/s 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as recorded in Atrocity Case No. 13 of 2005 by Presiding Officer, 10th Fast Track Court, Sabarkantha at Himatnagar is set-aside, and fine, if paid, be refunded to the appellants. The conviction of the appellants recorded by the learned trial Judge for the offence punishable u/s 392 read with Section 120B and Section 114 of the Indian Penal Code is maintained, but, the order of sentence of imprisonment is altered to that of the sentence already undergone by the appellants in the jail, without disturbing the order of fine recorded by the learned trial Judge.