

(2009) 05 GUJ CK 0026
In the Gujarat High Court
Case No : Criminal Appeal No. 514 of 2006

Anantkumar Shriganesh Tiwari and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Arms Act, 1959 — Section 25(1)
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 212, 397, 414

Citation : (2011) 3 GLR 1864

Hon'ble Judges : Z.K. Saiyed, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : Madansingh obarod, Bhuneshcrupera and Sunita R. Bhardvaj,s 1-4,
for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal, filed by the appellants - original accused, u/s 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction and sentence dated 18.1.2006 passed by the learned Additional Sessions Judge, Fast Track Court No. 4, Ahmedabad (Rural), Navrangpura, in Sessions Case No. 133 of 2003, whereby the present appellants - accused have been convicted u/s 397 I.P. Code and sentenced to suffer 10 years R.I. and to pay fine of Rs. 2000/- each i/d to undergo R.I. for six months and also convicted u/s 25(1)(a)(b) of Arms Act and sentenced to suffer R.I. for 2 years and fine of Rs. 1000/- each i/d to undergo R.I. for 3 months. The learned Judge ordered all the sentence to run concurrently.

2. The brief facts of the prosecution case are as under:

2.1 It is the case of the prosecution that on 25.11.2002 in the night at 20.15 p.m., the original accused (present appellants) with other co-accused formed an unlawful assembly and they stopped mini bus bearing No. GJ - 13 - T - 1546 near Sarkhej Ujala Circle, which was going to Surendranagar from Ahmedabad.

The accused No. 1 showed his revolver to the seated passengers and told that if anybody tried to move, he will shoot him ("koi hila to goli mar dunga) and original accused No. 2 showed his revolver to the said bus driver Karimali Avajali Heerjani Khoja (original complainant) took the control of bus and drove the bus himself. At that point of time accused Nos. 1, 3 and 4 threatened the passengers by showing their knives to handover the currency notes as well as ornaments, mobiles, watch, pockets, etc. and thereby they had looted from the passengers the total cash amount of Rs. 13,275/-, ornaments worth Rs. 17,700/-, watches worth Rs. 1775/-, totalling to Rs. 32,475/-. It is alleged that the accused No. 5, though he knew that said muddamal is looted by accused Nos. 1 to 4, allowed them to conceal the said muddamal and gave shelter to accused Nos. 1 to 4. Thus, the complaint was filed against original accused Nos. 1 to 5 for the offence under Sections 397, 212, 414 I.P. Code and Section 25(1)(a)(b) of Arms Act being CR No. I - 250 of 2002 with Sarkhej Police Station.

2.2 Pursuant to the said complaint the police has investigated into the matter. The police recorded the statement of witnesses, drew the panchnama of place of incident, and after thorough investigation, as there was sufficient evidence connecting the appellants - accused with the alleged offence, charge-sheet was filed against the accused in the Court of learned Judicial Magistrate, First Class, Ahmedabad (Rural) for the offence punishable under Sections 397, 212, 414 I.P. Code and u/s 25(1)(a)(b) of Arms Act. Since the offence alleged against the accused was exclusively triable by a Court of Sessions, the learned Judicial Magistrate, committed the case to the Court of Sessions at Ahmedabad (Rural), which was numbered as Sessions Case No. 133 of 2003.

2.3 Thereafter the charge was framed against the accused - appellants by the learned Additional Sessions Judge, Fast Track Court No. 4, Ahmedabad (Rural). The accused pleaded not guilty to the charge and claimed to be tried. Thereafter, the trial was conducted against the accused - appellant.

2.4 To prove the case against the respondents - accused, the prosecution has examined followings witnesses:

1. Mohmedyunus A. Mansuri, P.W.1, Ex.15
2. Mehmoodbhai Umarbhai Parmar, P.W.2, Exh. 20;
3. Usmangani Ibrahimbhai, P.W.3, Exh. 21,
4. Abdulsamad Abdulkarim Shaikh, P.W.4, Exh. 22
5. Irfanbhai Yasinbhai Thasariya, P.W.5, Exh. 26;
6. Girishbhai Mahipatbhai Valand, P.W.6, Ex.28;
7. Sharafathusein Kadarmiya Malek P.W.7, Exh.29;
8. Salimmiya Alimiya Malek, P.W.8, Exh.31
9. Rameshbhai Gandaji Thakor, P.W.9, Ex.34

10. Dilipbhai Sankabhai Vanspura, P.W.10, Ex.38
 11. Mukeshbai Prabhatbhai Desai, P.W.11, Ex.41
 12. Salimbhai Sirajbhai, P.W. 12, Ex. 42;
 13. Jigarbhai Bakulbhai Solanki, P.W.13, Ex.43
 14. Chandrakant Naranbhai Lakum, P.W.14, Ex.45;
 15. Devendrasinh Mahipatsinh Rana, P.W.15, Ex.46;
 16. Dilipkumar Gordhanbhai Baraiya, P.W.16, Ex.47;
 17. Karimbhai Savajali Hirjani, P.W.17, Ex.48
 18. Mangubha Jambha Zala, P.W.18, Ex.53;
 19. Babubhai Chhotalal Joshi, P.W.19, Ex.54;
 20. Salimbhai Shabjaalibhai Narsingani, P.W.20, Ex.55
 21. Umesh @ Chhanalal Jagjivandas Sheth,PW.21,Ex.56
 22. Nilesh Bhupatrai Modi, P.W. 22, Exh.57
 23. Kantaben Sandarlal Girgilani, P.W.23, Exh.59
 24. Sundarbhai Shobhrajmal Girgilani,P.W.24, Ex. 60
 25. PSI Mitharam Punaram Kuhadiya, P.W.25, Exh.60
 26. Ashwinkumar Rupaji - P.S.O., P.W.26, Ex. 63
 27. Suredranath Umapati Pandey - IO , PW 27, Ex 65
 28. Kailashben Narandas, P.W.28, Exh. 66
- 2.5 The prosecution has also relied upon following documents -
1. Original complaint, Ex.49;
 2. Report for registering offence, Ex.61;
 3. Report of PSO, Vadhvan for sending FIR Ex.67;
 4. FIR No. 0/02 of Vadhvan Police Station, Ex.68;
 5. Panchnama of scene of offence Ex.30;
 6. Panchnama of body of accused Ex.----;
 7. Recovery Panchnama of weapons, Ex.35;
 8. Recovery panchnama of weapons, Ex.32;
 9. Panchnama of weapons from Hiteshbhai, Ex.27;
 10. Panchnama of identification Parade Ex.17,

11. Panchnama of identification, Ex.45;

2.6 Thereafter, the statement of the accused u/s 313 Cr. P. C. was recorded in which also the accused denied the charges leveled against them. After considering the oral as well as documentary evidence and after hearing arguments on behalf of prosecution and the defence, the learned Additional Sessions Judge, Fast Track Court No. 4, Ahmedabad (Rural), has convicted the accused, as narrated herein above.

2.7 Being aggrieved and dissatisfied with the Judgment and Order dated 18.1.2006 passed by the learned Additional Sessions Judge, Fast Track Court No. 4, Ahmedabad (Rural), in Sessions Case No. 133 of 2003, the appellant - accused have filed this Appeal.

3. Heard learned Counsel Mr. Barod for the appellants - accused and Mr. H.L. Jani, learned APP on behalf of respondent - State. We have also gone through the papers produced before us.

4. Learned Counsel for the appellant has taken us through the evidence of the complainant and the passengers who have deposed and has also taken us through the evidence of Executive Magistrate, who has conducted identification parade and identified the accused. On the basis of that evidence, the learned Counsel for the appellants has raised following contentions:

4.1 That the prosecution has not proved its case against the appellants - accused beyond reasonable doubt. There are serious contradictions in the version of the passengers regarding the conduct or overt-act by the present appellants and none of the witnesses have consistently stated the facts. There are certain minor contradictions, even qua the role played by each of the accused, and arrest was made in another Police case which was registered in Adalaj Police Station and these people are wrongly involved by the appellants - accused and as their arrest was made in other case.

4.2 That the identification parade was not conducted properly and, therefore, identification of the accused is nullity and the conviction based on the identification is required to be quashed and set aside and since the appellants - accused are innocent they are required to be exonerated and should not be required to under-go conviction and sentence imposed by the trial Court.

4.3 That panchnama was not legally drawn and the looted articles were not recovered from the possession of present appellants. In that view of the matter the appellants - accused are required to be exonerated from the charges levelled against them.

4.4 Learned Counsel for the appellants relied upon the following decisions:

AIR 1998 SC 1922;

1996 (1) GLH 919

1991 (1) GLH 15;

Unreported decision in Criminal Appeal No. 1602/04

Ganpat Singh and Anr v. State of Rajasthan, (1997) 11 SCC 565

4.5 Learned Counsel for the appellants - accused has also contended that all the panch witnesses have not supported the case of prosecution and they have turned hostile. In that view of the matter conviction based on the evidence of witnesses is not reliable and the prosecution has not proved its case against the present appellants - accused beyond reasonable doubt.

5. Learned APP Mr. Jani for the respondent - State has supported the Judgment and order of the trial Court and contended that this is a very serious offence and if such offences are allowed to be taken lightly, the life of citizens would be in danger and no citizen would be safe if such type of crimes should not be prevented & penalized.

5.1 Learned APP has pointed out that the complainant has clearly pointed out and established the role of each accused and the identification parade was conducted and one of the passengers has identified four accused. Other passengers have also identified one or two accused and, therefore, the prosecution has successfully proved the identification parade before the trial Court. In that view of the matter the accused were identified by the passengers before the Executive Magistrate and even in the Court room.

5.2 Learned APP has also contended that the panch of recovery panchnama of muddamal mobile, which was recovered, has identified and the same is proved by the Investigating Officer. Even if the panchas have turned hostile in view of the signature admitted by the panchas in the evidence, the Investigating Officer has proved all the panchnamas. In that view of the matter, the reasons assigned by the Sessions Court is just and proper and no interference is required to be called for and the Judgment and order of the Sessions Court is required to be confirmed.

5.3 Learned APP has also contended that this is the second offence wherein the accused Nos. 1 to 4 are involved. In the earlier proceeding the accused Nos. 1 and 4 were exonerated by the trial Court and accused Nos. 2 & 3 were exonerated by this High Court. In that view of the matter the Court should consider the previous conduct of the accused and should not disturb the findings, reasons and the conclusion reached by the trial Court.

6. Complainant Karimbhai Savajali Hirjani, P.W.17, (Exh. 48) was examined, where he has stated that he was serving in Patel Transport since last 6 months. Before that he was working in Luxury Bus of Shaktikrupa Travels at Surendranagar for 5 years and was driving mini-luxury bus from Surendranagar to Ahmedabad. At the time of incident he was driving the luxury bus bearing No. GJ 13 T 1546. The owner of the said transport company is one Shri Mangubha Jambha Jhala and the cleaner of the said bus was Dilipbhai. While narrating the

facts he has clearly stated that near Sarkhej Ujala cross roads four passengers have boarded in the bus between 8.00 and 8.30 p.m. and after boarding the bus, they have threatened with revolver to the cleaner Dilip and ordered him to tell the driver, namely, Karimbhai (complainant) to maintain the speed of the bus at 40 k. m. per hour and other accused have threatened with revolver to all the passengers and asked them to hand-over all the cash amount, ornaments, etc. and one of the accused has directed the complainant to sit on the bonnet and that accused has taken over command of the bus. During that period other two accused have started collecting the valuables from the passengers and after collecting the valuable, they stopped the bus near G.I.D.C., Changodar and have directed the cleaner to tell the driver that after starting the bus they should not stop the bus and should not go to Police. However, the complainant has stated that with a view to lodge the complaint he has diverted the bus towards Bavla and the passengers were so afraid and under threat, they have told him not to stop the vehicle and, therefore, he was not allowed to lodge complaint at Bavla and the bus was directed to proceed towards Surendranagar. However, at Bagodara, from the mobile of one passenger, he has informed his owner about the incident. The owner of the bus informed him that he is coming to receive them and at Vadhvan the owner of the travel company met them and along with him the brother of owner of the bus was also there. Thereafter, they straightway drove the bus to Vadhvan Police Station and at that time Police Jeep also arrived and they went to the Police Station and lodged complaint (Ex.49). He has stated that out of passengers travelling in the bus at relevant point of time, he knew two passengers, viz. one was Nilesh and another was Panwala Ramanbhai, whose name was not remembered at that time and then he has identified his signature. He has stated that he was also called for identification parade by the Executive Magistrate. He has identified the accused. He has also identified the accused in the Court room. He has also identified the weapons and stated that the weapons which are shown to him in the Court by way of muddamal articles were the same which were used by the accused at the time of incident. He has also stated that the amount of Rs. 1800/- collected by the cleaner from the passengers towards fare was also looted. Thus, the complainant has narrated all the facts which he has narrated in the complaint.

6.1 The defence has cross examined the complainant and has tried to come out with the defence that it was not possible to board any additional passengers, but nothing has come out from the cross examination of this witness and the attempt made by the defence regarding certain omission in the complaint. However, witness has stated that the amount of Rs. 1800/- was of which currency note was not known to him. The defence has tried to establish the defence which is not established from the cross examination.

6.2 We have also gone through the evidence of P.W.13 Jigarbhai Bakulbhai Solanki (Exh. 43). This witness has also supported the version of the complainant and stated that the accused has looted his golden chain and mobile. He has also identified his mobile from the muddamal articles, which were

recovered from the accused.

6.3 We have also gone through the evidence of P.W. 14 - Chandrakant Naranbhai Lakum (exh. 45). This witness has identified accused Nos. 1, 2 & 3 and has supported the version of the complainant as well as the version of cleaner and other witnesses.

6.4 We have also gone through the evidence of P.W. 15 - Devendrasinh Mahipatsinh Rana, Exh. 46. This witness has identified all the accused Nos. 1 to 4 and has completely supported the version of the complainant.

6.5 We have also gone through the panchnama which has been proved by the Investigating Officer and the prosecution has successfully proved the role of all the four accused Nos. 1 to 4, who have boarded the bus from Ujala Cross Road near Sarkhej and dropped at Changodar G.I.D.C. Thus, from the evidence of the complainant and other witnesses, it is proved satisfactorily the boarding of the accused, role of each of the accused collectively, threatening to the cleaner and the driver and other passengers who were also threatened by the accused. The valuable muddamal articles were also recovered from the accused. Therefore, all the ingredients of Section 397 I.P. Code along with Section 25(1)(a)(b) of the Arms Act have been clearly proved by the prosecution. The panchnama of recovery of muddamal articles is also proved.

7. Apart from that the prosecution has proved its case beyond reasonable doubt.

7.1 The trial Court has rightly held the accused guilty for the offences charged against them and we see no reason to interfere with the Judgment and order of the trial Court.

7.2 Looking to the above evidence, the trial Court has rightly believed that the prosecution has proved the act done by the present appellant - accused. The view taken by the trial Court is just and proper. The above reasons given by us are over and above the reasoning assigned by the trial Court and, therefore, no interference is required to be called for and the sentence awarded by the trial Court is just and proper. Therefore, the decisions which have been relied upon by the learned Counsel for the appellant - accused will not be helpful to the accused.

8. In that view of the matter, we are of the opinion that the basic requirement of presence of accused, overt-act of the accused, their common intention and the role played by them between 8.30 and 10.00 in the night and threats to the passengers by the accused, are clearly established and, therefore, the prosecution has proved its case beyond reasonable doubt.

8.1 The contention which has been raised by the learned Counsel for the appellant that none of the passengers were known to driver, but inspite of that the prosecution has failed to prove how the police came to know about these witnesses. In our opinion, no such cross examination was made to any of the witnesses and it has come for the first time. In our opinion, the police has conducted thorough investigation and the prosecution has proved its case

beyond reasonable doubt.

9.1 Apart from that earlier conduct and the history of the accused is also required to be viewed very seriously.

9.2 The Judgments which have been relied upon by the learned Counsel for the appellants - accused are not helpful to the case of appellants inasmuch as the prosecution has successfully established the act of each of the accused.

9.3 Thus, from the evidence itself it is established that the prosecution has proved its case beyond reasonable doubt. The learned Counsel for the appellant - accused is not in a position to show any evidence to take a contrary view of the matter or that the findings of the trial Court suffers from any manifest illegality or that the decision is perverse or that the trial Court has ignored the material evidence on record. In that view of the matter, the view taken by the trial Court is just and proper.

10. In above view of the matter, we are of the considered opinion that the trial court was completely justified in awarding conviction and sentencing the appellant - accused of the charges leveled against them. We find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

10.1 We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal requires to be dismissed.

11. In view of above the Appeal is dismissed. The judgment and order of conviction and sentence dated 18.1.2006 passed by the learned Addl. Sessions Judge, Fast Track Court No. 4, Ahmedabad (Rural), in Sessions Case No. 133 of 2003, is hereby confirmed.

R & P to be sent back forthwith.