
(2016) 03 GUJ CK 0071
In the Gujarat High Court
Case No : Criminal Appeal No. 605 of 1998

Anvarkhan Uskankhan Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 141, Section 147, Section 148, Section 149, Section 307

Citation : (2016) 03 GUJ CK 0071

Hon'ble Judges : B.M. Trivedi, J.

Bench : Single Bench

Advocate : Monali H. Bhatt, APP, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Trivedi, J.—1. The present appeal filed by the appellants - accused, is directed against the judgment and order dated 09.07.1998, passed by the learned Additional Sessions Judge, Banaskantha - Palanpur (herein after referred to as "the trial court") in Sessions Case No. 89 of 1991, whereby the appellants - accused Nos. 1 and 5 were convicted for the offences under Sections 307, 147, 148 and 149 of Indian Penal Code and the appellants - accused No. 2, 3, 4 and 6 were convicted for the offences under Sections 307, 147 and 148 read with 149 of Indian Penal Code. The accused Nos. 1 and 5 were directed to undergo rigorous imprisonment for the period of 5 years, and to pay fine of Rs. 2,000/-, in default thereof, to undergo simple imprisonment for two months for the offence under Section 307 of Indian Penal Code, and further directed to undergo rigorous imprisonment for the period of 2 years, and to pay fine of Rs. 1,000/-, in default thereof, to undergo simple imprisonment for 1 month for the offence under Sections 147, 148, 149 of Indian Penal Code. The accused Nos. 2, 3, 4 and 6 were directed to undergo rigorous imprisonment for the period of 2 years, and to pay fine of Rs. 2,000/-, in default thereof, to undergo simple imprisonment for two months for the offence under Sections 307, 147 and 148 read with 149 of

Indian Penal Code.

2. At the outset, it may be stated that out of the present appellants - accused, the appellants Nos. 1, 3, 5 and 6 have already expired, and the appeal had stood abated qua the said appellants as per the order dated 25.02.2016. Hence, the present appeal survives qua the appellants Nos. 2 and 4 only.

3. The case of prosecution in nutshell was that on 05.04.1991, at about 9.30 p.m., the complainant Habibkhan Hasubhai, the injured Bachubhai and one Janmohammad were returning from the Mosque after performing the Namaj. When they were passing on the road near the shop of Sherumiya Radiyowala, all the accused came in a jeep from backside, and started quarrelling with Bachubhai. At that time, the accused No. 1 had spade, accused No. 2 had wooden stick, accused No. 3 had pipe, accused No. 4 had iron rod, accused No. 5 had an axe and accused No. 6 had wooden stick with them. Thereafter, the accused No. 1 Anvarkhan Usmankhan Chauhan gave a spade blow on the head of said Bachubhai, accused No. 5 Akbarkhan Usmankhan Sipai injured Bachubhai with axe, and other accused had beaten the said Bachubhai randomly with their respective weapons. The said accused thereafter, had run away in their jeep. It is further the case of prosecution that thereafter Bachubhai was taken to the hospital at Tharad, and the complaint was lodged by Habibkhan in respect of the said incident. The complaint was registered at the Tharad Police Station. The Investigating Officer had laid the chargesheet in the Court of Judicial Magistrate First Class at Tharad, who had committed the case to the trial court for trial. The trial court after framing the charge against all the accused at Exh. 3, and after appreciating the oral as well as documentary evidences adduced by the prosecution, convicted and sentenced all the accused as stated herein above.

4. The learned counsel Mr. Barot for the appellants taking the Court to the oral evidences, more particularly of the complainant Habibkhan and the victim Bachubhai, submitted that admittedly there was an enmity between the complainant, the injured and the accused, and therefore, the accused were falsely implicated by the complainant. He further submitted that though according to the complainant, PW-10, Laxmanbhai Shivabhai Odd, and PW-11 Hirabhai Babubhai had arrived at the place of incident, they had not supported the case of prosecution, and had turned hostile. Hence, according to Mr. Barot, there was no reliable or unimpeachable evidence adduced by the prosecution to prove the charge levelled against the appellants - accused. As regards the injuries, he submitted that if the accused, more particularly, now the surviving accused Nos. 2 and 4 had randomly beaten the said Bachubhai, there could have been number of injuries found on the body of the said Bachubhai, however, as per the evidence of PW-4 Dr. Vinodbhai Ganeshbhai Bakshi, only the injury No. 4 was possible by blunt weapon. He also submitted that more than 25 minutes have already been lapsed to the incident in question, and the four appellants out of six, have already expired, the surviving two appellants be also acquitted by giving them benefit of doubt.

5. However, learned APP Ms. Bhatt for the State has submitted that the complainant Habibkhan, the injured Bachubhai, and the eye witness Janmohammad have fully supported the case of prosecution, and there are no material contradictions found in their evidence. She further submitted that though the witness Laxmanbhai was declared hostile, he had also fully supported the case of prosecution. According to her, the accused Nos. 2 and 4 being member of unlawful assembly and having participated in the commission of alleged offence, which was of serious nature, the trial court has rightly convicted them for the offences under Sections 307, 147, 148 read with 149 of Indian Penal Code.

6. In the instant case, the prosecution to prove the charges levelled against all the six accused, had examined as many as 21 witnesses. Out of the said witnesses, PW-1 Savaji Maganji was panch witness, in whose presence the panchnama Exh. 17 in respect of scene of offence was drawn. PW-2 Sureshkumar Bijalji Thakore was panch witness in respect of panchnama Exh. 19, however, he had turned hostile, and stated that muddamal article pipe was not recovered in his presence. PW-3 Manrabhai Khetabhai was the panch witness in respect of panchnama Exh. 22. He has stated that the accused Anvarkhan had produced one spade at the police station in his presence. PW-4, Dr. Vinodbhai Ganeshbhai Bakshi was the Medical Officer at CHC, Tharad, who had examined the injured Bachubhai on 05.04.1991, and issued the injury certificate at Exh. 28. PW-5, Hirabhai Ramjibhai was the panch witness in respect of panchnama Exh. 30 and 31, however, he was also declared hostile, and had not supported the case of prosecution. PW-6 Dr. Kantilal Punamchand Sutariya was the Medical Officer at Civil Hospital, Ahmedabad, who had examined the injured Bachubhai on 06.04.1991, and issued the certificate Exh. 34. PW-7 Pravinbhai Mohanlal was the other panch witness in respect of panchnama Exh. 31, however, he was also declared hostile. PW-8 Pirubhai Lalubhai was the panch witness in respect of panchnama Exh. 37, however, he also did not support the contents of said panchnama, and was declared hostile. PW-9 Habibikhan Hasukhan Sipai was the complainant, who had given the complaint at Exh. 49 in respect of the incident in question at Tharad police station. PW-10 Laxmanbhai Shivabhai Odd, was the eye witness who was declared hostile, however, had subsequently supported the case of prosecution in respect of the incident in question. PW-11, Hirabhai Babubhai was also the eye witness, however, he was declared hostile, and had not supported the case of prosecution. PW-12 Aminaben Shermohammad was the wife of the injured Bachubhai. She had come to the place of incident after the incident, and had not seen the happenings of the incident. PW-13 was Bhikhaji Lavji, Head Constable at Tharad police station, who had recorded the complaint of complainant Habibkhan. PW-14 was Ganeshbhai Parshottambhai, who was working as PSI at Tharad police station, and arrested the accused Akbarkhan Valikhan, and had also drawn the panchnama Exh. 19. The injured Bachubhai Hasubhai was examined as PW-15, who had narrated the incident in question and stated about the involvement of all the accused. PW-16 was Janmohammad

Gulambhai Sipai, who was accompanying the complainant and the injured at the time of incident. He had also narrated about the incident in question. PW-17 Karsan Mashru was the panch witness in respect of panchnama Exh. 30, however, he was declared hostile. Similarly, PW-18 Hemjibhai Virabhai, the panch witness and PW-19 panch witness Vasantbhai Kanji in respect of the panchnama Exh. 62, were also declared hostile. PW-20 panch witness Bachubhai Bababhai in respect of panchnama Exh. 37, was also declared hostile. Lastly, the Investigating Officer Ranabhai Kanabhai Desai was examined as PW-21, who had carried out the investigation and submitted the chargesheet in the court.

7. Now, out of the said witnesses examined by the prosecution, the evidence of the complainant Habibkhan, of the injured Bachubhai, and of the eye witness, would be material, and therefore, are required to be dealt with in detail. PW-9 Habibkhan had stated in his evidence inter alia that his cousin sister Jenuben had married the accused No. 1 Anvarkhan, who was working in the police department. The accused No. 2 and 5 happened to be the brothers of accused No. 1. Accused No. 6 happened to be uncle of the accused No. 1. Accused No. 4 was a barber, and was not related to any of the accused. As regards the incident in question, he had stated that at about 9.30 p.m., when he, his elder brother Bachubhai, and Janmohammad were returning from Mosque after performing the Namaj, and were passing on the route near the shop of Sherumiya Radiowala, all the accused came in jeep from the backside. At that time, accused No. 1 Anwarbhai had spade, accused No. 2 Rahimbhai had wooden stick, accused No. 3 Akbarbhai Valibhai had pipe, accused No. 4 Jakirbhai Dadamiya had iron rod, accused No. 5 Akbarkhan Usmankhan had an axe, and accused No. 6 Mirkhan Adamkhan had wooden stick with them. They all had got down from the jeep, and thereafter the accused No. 1 Anvarkhan gave a blow with a spade on the head of Bachubhai. Thereafter, accused No. 5 Akbarkhan Usmankhan gave one blow with axe on the frontal part of head of Bachubhai, and thereafter, all the other accused had started beating Bachubhai randomly with the stick, pipe and iron rod. Thereafter, all the accused had run away in the jeep, and the said Bachubhai had become unconscious due to the injuries. According to him, many persons had gathered there, and Bachubhai was taken to Tharad Referral Hospital, and he had gone to Tharad police station for giving the complaint. On showing the complaint Exh. 49, he had identified his signature, and confirmed the contents thereof. He had further stated that one Usmankhan, father of accused No. 1 and 2, was threatening them to withdraw the complaint filed against him, and therefore, the said incident had taken place. In the cross-examination, he had admitted that on hearing the screams, Hirabhai and Laxmanbhai had arrived at the place of incident. However, he denied that Janmohammad was not present at the time of incident. He had also admitted that both the parties had filed cross complaints against each other after the incident in question. He also admitted that one complaint was filed against him for allegedly abducting Usmankhan, father of accused No. 1. He had denied that he had falsely implicated the accused because of enmity with them.

8. PW-15 Bachubhai Hasubhai had also corroborated the version of complainant Habibkhan, and stated as to how the accused had arrived at the place of incident, and how he was beaten by each of the accused and with which weapon. He had identified all the accused present in the Court, and also the muddamal articles shown to him in the Court. In the cross-examination, he had also admitted about the complaint having been filed against him for allegedly abducting Usmankhan, father of accused No. 1. However, he had denied that because of enmity with the accused, they were falsely implicated in the case. Similarly, PW-16 Janmohammad Gulambhai Sipai had also fully supported the case of prosecution, and stated about the role played by each of the accused while beating the injured Bachubhai. It is also pertinent to note that as per the version of the complainant, the witness Laxmanbhai Shivabhai Odd and Hirabhai Babubhai, who were sitting at the shop of Sherubhai, had immediately come to the place of incident on hearing the shouts. The said Laxmanbhai has been examined as PW-10. In his evidence, he supported the case of prosecution by stating inter alia that he along with Hirabhai was sitting at the shop of Sherubhai, at that time one jeep had come, and he had seen that 6-7 persons, who had come in the said jeep, had beaten Bachubhai. According to him, one had spade, and other had an axe, however he did not remember as to who were the said persons. The said witness thereafter having been shown his statement recorded by the Investigating Officer, he had admitted that at the relevant time, he had given the names of all the accused, who had beaten the said Bachubhai and had also stated about the weapons which they had. Thus, though the said witness was declared hostile, in the cross-examination, he had fully supported the case of prosecution as regards the role played by each of the accused. Of course the PW-11 Hirabhai Babubhai had not supported the case of prosecution, so far as the role of each accused was concerned, however, he had stated about the incident having taken place, and Bachubhai having been injured, and taken to the hospital. Thus, the prosecution had examined the relevant witnesses, who were present at the time of alleged incident, and all of them except PW-11 Hirabhai had consistently stated about the manner in which the incident had taken place, and the role played by each of the accused while beating the injured Bachubhai with their respective weapons. There are no material contradictions in their respective evidence. The learned advocate for the appellant has also not been able to point out as to how their evidence was not reliable, except that according to him, the accused were involved due to past enmity. The Court does not find any substance in the said submission of learned advocate Mr. Barot.

9. Having regard to the evidence on record and totality of circumstances, the Court does not find any reason to disbelieve the case as put forth by the complainant, injured, and the eye witnesses, corroborated by other documentary evidence of the complaint, panchnama and medical certificates.

10. From the said evidence adduced by the prosecution, it was duly proved that all the six accused had come in the jeep with the deadly weapons like spade, axe, iron pipe, wooden sticks, and had beaten the said Bachubhai, and caused

serious injuries to him. The said accused being six in numbers, having common object to overawe by criminal force, armed with deadly weapons, had caused serious injuries to the injured Bachubhai, and therefore, the ingredients of unlawful assembly contained in Section 141, and the ingredients of Section 148 of Indian Penal Code for committing rioting armed with deadly weapons were duly established by the prosecution. It was also duly established that all the accused, who were members of unlawful assembly in prosecution of their common object, caused injuries, which were of serious nature, and thereby, they were guilty of the offence under Section 149 of Indian Penal Code.

11. So far as the injuries caused to the injured Bachubhai were concerned, the prosecution had examined PW-4 Vinodbhai Ganeshbhai Bakshi, who had treated Bachubhai on 05.04.1991 at CHC Tharad. As per the injury certificate issued by him (Exh. 28), the said Bachubhai had three incised wounds, one at right eyebrow region, second near the right ear, and third at right parietal region, and had one contusion on right parietal region. He had stated that the first three injuries were possible with the sharp edged weapon, and fourth injury was possible with blunt weapon like pipe, stick, tommy etc. The PW-6 Dr. Kantilal Punamchand Sutariya, who had treated the said Bachubhai at Ahmedabad Civil Hospital on 06.04.1991, had also issued the certificate Exh. 34. He had stated that the said patient was discharged on 16.04.1991. Having regard to the said evidence of the Doctors, and the injury certificates, the Court has no shadow of doubt that the said injuries were at the vital part of the body of the injured, and the same were caused by the accused with the intention and knowledge that if the death of Bachubhai was caused due to the such injuries, they would have been guilty of murder. The trial court, therefore, rightly appreciated the evidence to conclude that the accused were guilty of the offence under Section 307 read with 149 of Indian Penal Code. The trial court while imposing punishment to the accused, has rightly exercised its discretion considering the role of each of the accused, and considering the weapons with which they had caused injuries. Accordingly, the surviving appellants - accused No. 2 and 4 have been directed to undergo rigorous imprisonment for the period of 2 years and to pay fine of Rs. 2,000/- for the offence under Sections 307, 147 and 148 read with 149 of Indian Penal Code. The Court does not find any illegality or perversity in the said impugned judgment and order of conviction and sentence passed by the trial court. The present appeal, therefore, being devoid of merits, deserves to be dismissed.

12. In that view of the matter, the impugned judgment and order of conviction and sentence dated 09.07.1998, passed by the learned Additional Sessions Judge, Banaskantha - Palanpur in Sessions Case No. 89 of 1991, is confirmed. The appeal being devoid of merits, is dismissed.

13. The appellants Nos. 2 and 4 are directed to surrender before the trial court on or before 11.04.2016, failing which, the trial Court shall issue non-bailable warrant against them.

14. Record and proceedings be sent back to the concerned trial Court forthwith.