
(2009) 07 GUJ CK 0074
In the Gujarat High Court
Case No : Criminal Appeal No. 807 of 2006

Babubhai Bijalbhai Koni

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Arms Act, 1959 — Section 25(1A)
Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 209, 313
Penal Code, 1860 (IPC) — Section 34, 394, 397, 504

Citation : (2009) 07 GUJ CK 0074

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

Bench : Division Bench

Advocate : Bharti H. Rana, for the Appellant; Manisha Lavkumar Shah, APP, for the Respondent

Judgement

K.S. Jhaveri, J.—The appellant - convict has preferred the present appeal against the judgment and order of sentence dated 04.01.2006 passed by the learned Sessions Judge, Bhavnagar in Sessions Case No. 187 of 1997 whereby the appellant-original accused was convicted for the offences under Sections 394 read with Section 397 of the Indian Penal Code [for short "the IPC"] and sentenced to undergo rigorous imprisonment for eight years with fine of Rs. 5000/- and in default of payment of fine, simple imprisonment for a further period of one year.

2. The facts of the case as emerging from the record are as under:

2.1 On 15.09.1996 at about 8.10 hrs when the complainant Patel Nareshbhai Jivrajbhai was closing his diamond factory which is situated at Gariyadhar Vav Plot, and he had put the readymade diamond in the box and at that time four persons were coming and closed the doors outside the factory and entered in their office. Out of four person one person showed the revolver and said that "Whatever you have, give us" and other three persons had knife who pointed the

knife. The complainant was told to give box of diamond to the accused. At that time other three persons uttered some abusing word and told to give whatever the complainant and witnesses had. Thereafter they have taken two diamond boxes and snatched the golden lucky and two golden rings which were worn by the complainant on his finger. At that time one of the accused had inflicted blow on the wrist of the complainant and other accused had given injury on right side of the stomach by knife. They have also injured Arvindbhai Parshottambhai by knife and snatched his golden ring and wrist watch. Thereafter, they have tied their hands by handkerchief and gone away. Thus the accused have looted total worth Rs. 1,82,900/-. Therefore, a complaint was lodged for the offence punishable under Sections 397, 504 read with Section 34 of the Indian Penal Code and Section 25(1)(A) of Arms Act and Section 135 of the Bombay Police Act.

2.2 Necessary investigation was carried out and statements of witnesses were recorded. Ultimately, chargesheet was filed against the respondent before the court of learned JMFC, Palitana.

2.3 Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Court of learned Sessions Judge, Bhavnagar u/s 209 of Cr.P.C. The case was numbered as Sessions Case No. 187 of 1997. The trial was initiated against the respondent.

2.4 To prove the guilt against the accused the prosecution has examined following witnesses:

P.W. 1 Bhupatbhai Shamjibhai-Exh. 24

P.W. 2 Manishbhai Batukbhai Patel-Exh. 26

P.W.3 Rameshbhai Mohanbhai Vaja-Exh. 28

P.W.4 Mohanbhai Bhagvanbhai-Exh. 29

P.W.5 Vinubhai Najabhai-Exh. 30

P.W.6 Nareshbhai Jivrajbhai-Exh. 32

P.W.7 Dilipbhai Babubhai Vaghani-Exh. 33

P.W.8 Gemjibhai Dhanjibhai Patel-Exh. 35

P.W.9 Babubhai Arjanbhai-Exh. 37

P.W.10 Vajubhai Chhaganbhai-Exh.38

P.W. 11 Amrabhai Jinabhai Solanki-Exh. 42

P.W.12 Arvindbhai Parshottambhai-Exh. 43

P.W.13 Shashikant Vinubhai-Exh. 44

P.W.14 Jaswantlal Revabhai Nayak-Exh. 50

P.W.15 Narendrasinh Bahadursinh Jadeja-Exh. 54

P.W.16 Babubhai Ghusabhai-Exh. 61

P.W. 17 Mahadevbhai Govabhai Rabari-Exh. 62

2.5 In order to support the case, the prosecution has produced following documents:

[1] Note of Station Diary-Exh. 42

[2] Complaint-Exh.63

[3] Yadi of investigation-Exh. 64

[4] Message form of Crime-Exh. 65

[5] Crime Report-Exh. 66, 67

[6] order of investigation-Exh. 68

[7] Letter for arranging identification parade-Exh. 51

[8] Receipt of weighing muddamal-Exh. 57

[9] Note of register of diamond-Exh. 59, 60

2.6 At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge convicted the accused for the offence punishable u/s 397 read with Section 394 of the Indian Penal Code by judgement and order dated 04.01.2006.

2.7 Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court above-mentioned appeal was preferred by the appellant-convict.

3. Ms. Bharti R. Rana, learned advocate for the appellant submitted that panch witnesses, via., Mohanbhai Bhagvanbhai at Exh. 29, Babubhai Arjanbhai at Exh. 37, Rameshbhai Mohanbhai Vaja at Exh. 28, P.W.2 Manishbhai Batukbhai Patel at Exh. 26 who had turned hostile did not support the case of the prosecution and panchnama. She also submitted that there is no recovery and discovery from the accused. Prosecution Witness Shashikant Vinubhai who is eye witness could not identify the accused at the time of identification parade.

3.1 Learned advocate for the appellant has taken us to the evidence of complainant and panchnama of T.I. Parade. She submitted that in view of the fact that looking to the medical evidence no injury was sustained to any of the victim especially the complainant who was present at the time of incident. Shashikantbhai Vinubhai had not identified the accused in the identification parade. She further submitted that Valjibhai Jhaverbhai and Arvindbhai Laljibhai who were important witnesses were not examined by the prosecution. In the

deposition of Arvindbhai at Exh. 43 he deposed that complaint was lodged by Laljibhai. Thus there is doubt as to who has filed the complaint. In that view of the matter the sentence imposed upon the accused deserves to be reduced.

4. Mrs. Manisha Lavkumar Shah, learned APP for the State submitted that eyewitnesses had supported the case of the complainant as narrated by him in the complaint. P.W. 3 Rameshbhai Mohanbhai who was examined at Exh. 28, P.W. 4 Mohanbhai Bhagvanbhai at Exh. 29, P.W. 5 Vinubhai Najabhai at Exh. 30, P.W. 9 Babubhai Arjanbhai at Exh. 37 are the witnesses of identification parade. These witnesses turned hostile but their evidence supported the case of the complainant to some extent.

5. The trial Court after appreciation of the evidence Prosecution Witness No. 11 Amrabhai Jinabhai Solanki was examined at Exh. 42 and Prosecution Witness No. 15 Narendrasinh Bahadursinh Jadeja was examined at Exh. 54. Prosecution Witness No. 17 Mahadevbhai Govabhai Rabari who was examined at Exh. 62 are the investigation officers. These two witnesses have after registering the offence have given their deposition and documentary evidence is also proved. On perusal of the oral as well as documentary evidence it is established that complainant, injured persons and eye witnesses had deposed in their deposition as to how the incident of loot of muddamal diamond occurred and injury sustained by the witnesses. Identification parade, identification parade before the Magistrate, recovery of muddamal are the satisfactory evidence to prove the case against the accused. The accused persons on 15.09.1996 at about 8.10 hrs when the complainant Patel Nareshbhai Jivrajbhai was closing his diamond factory which was situated at Gariyadhar Vav Plot was preparing to put the readymade diamond in the box , the accused came there and closed the doors outside the factory and entered in their office. By showing the revolver by one of the accused and knife by the other accused administered threat to kill them and caused injury and taken two diamond boxes and snatched the golden lucky and two golden rings which were worn by the complainant on his finger by inflicting blow on the wrist of the complainant and causing injury on right side of the stomach by knife. Thus the accused have committed offence punishable u/s 394 read with Section 397 of the Indian Penal Code.

6. Having heard the learned advocate for the appellant and learned APP for the respondent-State we are of the clear opinion that the prosecution has successfully established the offence of the appellants in conviction appeal for having committed offence as alleged against him. However, looking to the medical evidence it is found that no serious injury was sustained by any of the victims. In view of the overall facts and circumstances of the case, we are of the opinion that interest of justice would be met if the appeal is partly allowed and sentence is reduced to 7 years from 8 years.

7. The judgment and order of conviction and sentence whereby the appellant was convicted for the offence u/s 394 read with 397 of the Indian Penal Code and sentenced to suffer 8 years rigorous imprisonment with fine of Rs. 5000/-, in

default to undergo simple imprisonment for further period of 1 year is modified and reduced to 7 years from 8 years with fine of Rs. 5000/-and in default of payment of fine, the appellant-convict to undergo simple imprisonment for further period of three months.