

(2011) 03 GUJ CK 0135
In the Gujarat High Court
Case No : Criminal Appeal No. 895 of 1997

Babubhai Nathiabhai Vahonia

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 323, 436, 504

Citation : (2011) 03 GUJ CK 0135

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Chirag B. Patel, for the Appellant; H.L. Jani, APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellant - original accused has filed this Appeal, u/s 374 of the Code of Criminal Procedure., against the judgment and order of conviction and sentence dated 28.08.1997 passed by the learned Additional Sessions Judge, Panchmahals, Camp at Dahod, in Sessions Case No. 28 of 1989, whereby the learned Additional Sessions Judge has held the Appellant - accused guilty of the offence punishable u/s 436 of I.P. Code and awarded sentence to him to undergo rigorous imprisonment for 5 (five) years and to pay a fine of Rs. 2000/- i/d to further undergo RI for 3 (three) months.

2. The brief facts of the case of prosecution are that on 3.3.1988 at 6.00 O'clock in the evening intentionally the accused has set fired the house of the complainant and caused damage to the tune of Rs. 12,000/-. It is also alleged that accused has also beaten the brother of the complainant and caused injury to him and gave filthy abuses to him. Therefore, on 4.3.1988 the complainant has lodged complaint in Garbada Police Station against the accused for the offences under Sections 436, 323, 504 of I.P. Code and u/s 135 of the Bombay Police Act.

3. Thereafter, the accused was arrested by the Police. Necessary investigation was carried out by the Police. The statements of the complainant and other

witnesses were recorded. Panchnamas were drawn. Thereafter, after completion of investigation the charge-sheet against the accused came to be submitted before the Court. As the offences were triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions. The learned additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

4. To prove the case against the accused, the prosecution has examined the witnesses and also relied upon documentary evidence and at the end of trial, after recording the statement of the accused u/s 313 Code of Criminal Procedure, and after hearing the arguments on behalf of the prosecution and the defence, the learned Sessions Judge held the Appellant (original accused) guilty of the offences under Sections 436 of I.P. Code and awarded the sentence as narrated herein above.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence the Appellants - accused has preferred this Appeal.

6. Heard learned advocate Mr. Chirag Patel, appearing on behalf of the Appellant - accused and learned APP Mr. H.L. Jani on behalf of the Respondent - State. I have gone through the judgment and order passed by the trial Court. I have also considered the documents produced on the record of the case.

7. Learned Advocate, appearing on behalf of the Appellant - accused, has contended that the Appellant - accused has not committed any offence as alleged against him in the charge. He has contended that without properly appreciating the evidence in its true perspective and without considering the defence raised by the accused, the trial Court has booked the accused just for the sake of conviction. He has contended that the prosecution has not produced any documentary evidence to establish the case against the Appellant - accused. He has contended that the story of the prosecution case is absolutely improbable and impossible to believe that the accused would go with kerosene bottle in one hand and stick in other hand and set fired the house of the complainant. He has contended that there is contradiction in the evidence of the prosecution witnesses about the time of incident. He has contended that there is delay in filing the complaint and the prosecution has failed to explain the delay in filing the complaint. He has contended that looking to the evidence produced on record, the prosecution has failed to establish its case beyond reasonable doubt that the accused has committed the offence as alleged against him. He has also contended that looking to the facts of the case, the sentence awarded by the learned Judge is also very harsh.

8. Learned APP has supported the judgment and order passed by the learned Judge and contended that looking to the seriousness of offence no interference of this Court is called for. He has contended that looking to the facts and evidence on records the learned Judge has rightly held the accused guilty for the offence alleged against him and, therefore, no interference is required to be called for.

9. I have gone through the judgment and order passed by the learned Sessions Judge and also gone through the documents produced before me. I have also considered the submissions made by the learned Advocates for the parties. I have gone through the record and proceedings of the case. I have also gone through the evidence of the prosecution witnesses and other material evidence. I have also considered the judgment of the trial Court. From the evidence on record it clearly appears that the learned Judge has not committed any error in holding the Appellant - accused guilty of the offences alleged against him. However, looking to the facts of the case, in my opinion, the sentence awarded by the learned Judge is very harsh. The learned Advocate appearing on behalf of the Appellant has also contended that the Appellant - accused is poor person and is a bread-winner of the family and, therefore, some leniency may be shown towards the Appellant. I am, therefore, of the opinion that if the sentence awarded by the learned Judge is reduced to an extent of three years, the same would serve the ends of justice.

10. In view of above, the Appeal is partly allowed. The judgment and order of conviction and sentence dated 28.08.1997 passed by learned Additional Sessions Judge, Panchmahals, Camp at Dahod, in Sessions Case No. 28 of 1989 is hereby confirmed. However, the sentence awarded by the learned Additional Sessions Judge to the accused for the offence u/s 436 of I.P. Code is reduced and modified to the extent of 3 (three) years, instead of 5 (five) years. Rest of the judgment and order passed by the learned Sessions Judge is confirmed. The Appellant - accused is on bail and, therefore, his bail bonds shall stand discharged and he is directed to surrender before the Jail Authority within a period of 3 (three) weeks to undergo his remaining sentence, failing which the trial Court is directed to issue non-bailable warrant against the accused to effect his arrest. R & P to be sent back to the trial Court immediately.