
(2010) 09 GUJ CK 0048
In the Gujarat High Court
Case No : Criminal Appeal No. 1961 of 2006

Barot Dineshkumar Kantilal	Vs	APPELLANT
The State of Gujarat		RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 389(1)
Penal Code, 1860 (IPC) — Section 306, 506, 506(2), 517

Citation : (2010) 09 GUJ CK 0048

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

Bench : Single Bench

Advocate : Devang D. Dave, for the Appellant; H.H. Parikh, Additional Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The present appellant has preferred this Appeal through jail u/s 389(1) of the Code of Criminal Procedure against the judgment and order of conviction and sentence dated 10.4.2006 passed by the learned District Sessions Judge, Mehsana in Sessions Case No. 203 of 2005, whereby the learned Sessions Judge has convicted and sentenced the appellant to undergo R.I. for seven years with a fine of Rs. 5,000/ -, in default, six months more R.I. for the offence punishable u/s 306 of the Indian Penal Code. For the offence punishable u/s 506(2) of the Indian Penal Code, learned Sessions Judge was pleased to sentence the appellant to undergo R.I. for one year and to pay a fine of Rs. 500/ -, in default, to undergo further R.I. for one month.

The brief facts of the prosecution case is as under:

2. As per the case of the prosecution, one Madhuben, wife of Natubhai Chandubhai Oza, resident of Becharaji lodged a complaint before Becharaji Police Station alleging that the complainant lady on telephone message was told by the appellant accused to keep illicit relationship with him, and if having not done so, the appellant accused threatened the lady to murder her husband. The appellant caused mental torture to the complainant lady and therefore, complainant lady

committed suicide by setting ablaze her by stove of kerosene. Therefore, the complaint being C.R.I. NO. 27 of 2001 was lodged before Becharaji Police Station for the offences punishable under Sections 306, 517 and 506 of the Indian Penal Code against the appellant.

3. Thereafter, statements of the witnesses were recorded, panchnama was drawn and accused was arrested. There was sufficient evidence against the appellant, charge-sheet was filed before the learned Chief Judicial Magistrate First Class, Becharaji. Thereafter, as the case was exclusively triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions, which was numbered as Sessions Case No. 203 of 2005.

4. Thereafter, the charge was framed against the appellant. The appellant accused has pleaded not guilty and claimed to be tried.

5. To prove the case against the appellant, the prosecution has produced documentary evidence and also examined the witnesses before the Sessions Court.

6. Thereafter, after examining the witnesses, further statement of the appellant accused u/s 313 of the Code of Criminal Procedure was recorded in which the appellant accused has denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Principal Sessions Judge, Mehsana vide judgment and order dated 10.4.2006 held the appellant accused guilty to the charge levelled against him as stated above.

8. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Sessions Judge, the present appellant has preferred this appeal.

9. Learned advocate Mr. Devang Dave, the Amicus curiae appearing on behalf of the appellant submitted that there were several contradiction between the documentary evidence produced by the prosecution and they were never proved as per the Evidence Act, even though the learned Sessions Judge held guilty the appellant for the offence alleged and convicted the appellant. Therefore, the order impugned is required to be quashed and set aside by allowing the appeal.

10. Learned advocate Mr. Dave for the appellant argued that he is not arguing this matter on merits, but arguing only on the quantum of punishment so far it relates to the sentence imposed by the learned trial Judge and the appellant accused has already undergone the period of more than 4 years out of total imprisonment. Therefore, he argued that considering the period which undergone by the appellant accused in jail may be considered as sentence, as he has undergone more than half period of total sentence.

11. The learned APP Mr. H.H. Parikh for the State strongly opposed the submissions made by the learned advocate for the appellant. It was contended

by learned APP that the judgment and order of the Sessions Court is just and proper and as per the provisions of law; the Sessions Court has properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present appellant. Learned APP has also taken this Court through the oral as well as the entire documentary evidence. He lastly submitted that the appellant has undergone more than half period in jail and therefore, if the undergone period may be treated as sentence, the State has no objection.

12. I have perused the records and considered the submissions made by both the sides. I have also perused the judgment and order passed by the learned Sessions Judge. From the perusal of the judgment and order, I am of the view that learned trial Judge has rightly observed the evidence and also rightly sentenced the appellant. I am in total agreement with the findings assigned by the learned Sessions Judge. But so far as the quantum of punishment is concerned, I have considered the submission made by the learned advocate for the appellant. The appellant is in jail from 1.4.2006 and therefore, looking to the quantum of punishment, the sentence imposed by the learned Sessions Judge is required to be modified and the period, which has already been undergone by the appellant is required to be treated as sentence.

13. In view of the above observation, the Appeal is partly allowed. the Appeal is partly allowed. The judgment and order dated 10.4.2006 passed by the learned Principal Sessions Judge, Mehsana in Sessions Case No. 203 of 2005, is hereby modified and it is hereby ordered that the appellant's undergone sentence, shall be treated as sentence. The appellant is ordered to be set at liberty forthwith, if not required in any other case. Rest of the judgment of the learned Sessions Court shall remain unaltered. R and P to be sent back to the trial Court, forthwith.