
(2010) 10 GUJ CK 0034
In the Gujarat High Court
Case No : Criminal Appeal No. 1418 of 2006

Bharat Vashrambhai Rabari and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 114, 304(2)

Citation : (2010) 10 GUJ CK 0034

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

Bench : Single Bench

Advocate : Kashyap R. Joshi, for the Appellant; H.H. Parikh, Ld. APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The present Appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 20.7.2006 passed by the learned Addl. Sessions Judge, Fast Track Court No. 2, Bharuch in Sessions Case No. 21/2006, whereby, the learned Judge has convicted the Appellant No. 1 u/s 304-II of IPC and sentenced to undergo R/I for five years and to pay a fine of Rs. 1000/-, in default, to undergo further S/I for three months. The Appellant No. 2 is also convicted u/s 304-II of IPC and sentenced to undergo R/I for a period of three years and to pay a fine of Rs. 1000/-, in default, to undergo further S/I for three months, which is impugned in this appeal.

Mr. Kashyap R. Joshi learned advocate appearing for the Appellants has made a statement at the bar that the Appellant No. 1 has been released on his completion of sentence by the Jail Authority and, therefore, he is arguing this appeal qua Appellant No. 2.

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

3. That on 21.10.2005, when the nephew of complainant named Dhaval was

cracking fire crackers in front of the house of complainant. The accused No. 1 Bharat Vashrambhai, who is residing near the house of deceased, came and asked Dhaval that why he is cracking the fire crackers and abused him. At that time, the elder brother of the complainant namely Ashwinbhai told that accused No. 1 that due to Diwali festival and therefore, he is cracking the fire crackers, so why are you abusing? Being aggrieved by the said utterance, the accused No. 1 had been provoked and went in his house and called his father, that is, accused No. 2. He came with knife and assaulted on the deceased Ashwinbhai and stabbed the same on the left side of his chest. At that time, accused No. 1 was armed with stick and had given stick blow on the back side of Ashwinbhai, due to which, he fell down and there was a bleeding. The other family members including the complainant and his sister, brother-in-law and father-mother of Ashwinbhai tried to free the deceased from the accused persons. They had also been beaten by the accused persons. Thereafter, Ashwinbhai became unconscious and both the accused persons went away from the place of offence and then, Ashwinbhai was taken to Government Referral Hospital in a Tempo of one Rafiqbhai, where, he had been declared dead after examined by the Doctor.

4. Therefore a complaint came to be filed by the complainant. The panchnama of the scene of offence place was prepared in the presence of panch witness, inquest panchnama was also prepared and statements of witnesses were recorded and on completion of the investigation, charge-sheet was filed in the Court of learned JMFC, Zaghadia. 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 given number as Sessions Case No. 21/2006.

5. Thereafter, the charge was framed at Ex. 1 against the Appellants. The Appellants - accused have pleaded not guilty and claimed to be tried.

6. In order to bring the home the charge levelled against the Appellants-accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

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

8. After considering the oral as well as documentary evidence and after hearing the parties, learned vide impugned judgment and order dated 20.7.2006 held the Appellants - accused guilty to the charge levelled against them u/s 304-II of IPC and convicted and sentenced the Appellants accused, as stated above.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, Fast Track Court No. 2, Bharuch, the present Appellants have preferred this appeal.

10. Heard Mr. Kashyap Joshi learned advocate for the Appellants and Mr. H.H. Parikh learned APP for the respondent-State.

11. Mr. Joshi learned advocate for the Appellants has fairly admitted that he is only arguing the matter on the point of quantum of punishment and not arguing the matter on merits. Mr. Joshi has further submitted that the present Appellant No. 2 is a father of original accused No. 1 and it was a case of free fight and self defence, but the learned Judge has not considered the said issue and due to the fatal injury caused by original accused No. 1, the present Appellant No. 2 is also convicted for the offence u/s 304-II of IPC. He has also contended that looking to the age of the present Appellant No. 2, a very harsh conviction has been imposed upon him by the learned Judge, which is required to be reduced. In that view of the matter, the period of sentence is very harsh and looking to the age of the Appellant No. 2, the sentence may be reduced. He has further contended that the Appellant No. 2 is a very poor person and he is the only bread earner member in the family, and therefore, the sentence imposed upon the present Appellant No. 2 by the learned Judge may be reduced in the interest of justice.

12. On the otherside, learned APP Mr. H.H. Parikh has read the impugned judgment and order of conviction and sentence passed by the learned Judge and contended that the impugned judgment and order is required to be confirmed. He has also contended that the stick is concerned, it is a ring coated stick and present Appellant No. 2 is by caste Rabari and ring coated stick is a deadly weapon and, therefore, looking to the conduct of the present Appellant and the role, which is proved beyond reasonable doubt before the learned Judge, the same is just and proper and requires to be confirmed.

13. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness-complainant and also perused the charge framed against the Appellant. Looking to the allegations levelled against the present Appellant, they are very serious in nature, but looking to the conduct of the present Appellant No. 2 is concerned, it is covered within the meaning of Section 114 of IPC and the ring coated stick blow was given by the Appellant No. 2 after the injured has received knife injury. No doubt, it is a request of the learned advocate for the Appellant No. 2 that is a bread winner for the family and he was on bail during the trial and he also submitted that he is an old man and the sentence imposed upon him by the learned Judge is very harsh in nature and therefore, only on the ground of mercy the sentence may be reduced. In that view of the matter, when the learned advocate Mr. Joshi appearing for the Appellant No. 2 is not arguing the matter on merits but arguing the matter on the point of quantum of sentence, I am of the opinion that this is a fit case to reduce the sentence.

14. In the result, this appeal is partly allowed. The impugned judgment and order of conviction dated 20.7.2006 passed in Sessions Case No. 21/2006 by the learned Addl. Sessions Judge, Fast Track Court No. 2, Bharuch convicting the Appellant No. 2 - ori. Accused No. 2 u/s 304-II of IPC is hereby confirmed. However, the order of sentence sentencing the Appellant No. 2 to undergo R/I for 3 years for the aforesaid offence u/s 304-II of IPC, is hereby reduced to the

extent that instead the Appellant No. 2 is hereby sentenced to undergo the sentence for a period of 2 years. Rest of the impugned judgment and order is confirmed.

15. The present Appellant No. 2 - Vashrambhai Mashrubhai Rabari is directed to surrender before the Jail Authority within a period of four weeks from the date of this order, failing which, the concerned Sessions Court shall issue non-bailable warrant to effect the arrest of the Appellant-ori. Accused.