

(2010) 03 GUJ CK 0033
In the Gujarat High Court
Case No : Criminal Appeal No. 148 of 1997

Bharwad Kuka Khengar and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Gujarat Panchayats Act, 1961 — Section 161, 162
Penal Code, 1860 (IPC) — Section 114, 323, 325, 332, 333

Citation : (2010) 03 GUJ CK 0033

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

Bench : Single Bench

Advocate : Yogesh S. Lakhani, for the Appellant; A.J. Desai, Additional Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The appellants have preferred this appeal u/s 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code for brevity) challenging the order of conviction passed by the learned Additional Sessions Judge, Surendranagar on 21st January, 1997 in Sessions Case No. 59 of 1992 convicting the appellants - original accused of the charges of commission of offence punishable under Sections 447, 333, 325, 323, 114, 504, 506(2) of the Indian Penal Code and under Sections 161 and 162 of the Gujarat Panchayat Act as well as u/s 135 of the Bombay Police Act.

2. The facts in brief leading to filing of the present appeal deserves to be set out as under:

3. It is the case of the prosecution that the complainant was working in Forest Department of State of Gujarat as a Beat Guard. On 1.8.1988 at about 5:00 p.m., he along with other co-employees were on duty in the area, where they found that the accused persons were grazing their cattle and therefore, the complainant told them to attach the cattle. Therefore, the accused persons

assaulted upon the complainant and other persons with sticks and Dhariya. Therefore, the complaint was registered against the accused persons under Sections 447, 333, 325, 323, 114, 504 and 506(2) and under Sections 161 and 162 of the Gujarat Panchayat Act as well as u/s 135 of the Bombay Police Act.

4. The accused pleaded not guilty and claimed to be tried the case. Further statement of the accused recorded under the provisions of Section 313 of the Code of Criminal Procedure. During the course of trial, following witnesses from the prosecution side, have been examined before the learned Sessions Judge.

P.W.1 - Khimjibhai Gelabhai - Complainant at Exhibit 9.

P.W.2 - Jivan Raymal Exhibit 11.

P.W.3 - Kuka Laghabhai Exhibit 12.

P.W.4 - Medical Officer, Anjanaben Narendrabhai Exhibit 14.

P.W.5 - Jivraj Karsanbhai - Exhibit 19

P.W.6 - Dilubhai Gandabhai Exhibit 20

P.W.7 - PSI S.J. Malek Exhibit 22.

P.W.8 - P.S.I., Mahendrasinh M. Rathod Exhibit 26.

The documentary evidence produced before the learned Sessions Judge, are as under:

Exhibit 4: Charge-sheet.

Exhibit 10: Complaint.

Exhibit 16: Medical Certificate of Khimjibhai.

4. Exhibit 18: Medical Certificate of Jivanbhai Raybhan.

5. Exhibit 21: Panchnama.

6. Exhibit 27: Panchnama.

5. After hearing both the parties, the learned Additional Sessions Judge, Surendranagar vide judgment and order dated 21st January, 1997 in Sessions Case No. 59 of 1992, was pleased to held guilty the accused and imposed sentence upon them as under:

6. The appellants - accused are convicted for the offence punishable u/s 161 of Gujarat Panchayat Act and sentenced to undergo R.I. for 7 days and to pay a fine of Rs. 250/- each i/d to further undergo R.I. for 7 days. Also, the appellants - accused are convicted for the offence punishable u/s 162 of the Gujarat Panchayat Act and sentenced to undergo R.I. for 1 month and to pay a fine of Rs. 250/- each, i/d further R.I. of 7 days. The appellants - accused are convicted for the offence punishable u/s 447 of the Indian Penal Code and sentenced to

undergo R.I. for 1 month, and to pay fine of Rs. 100/- each, i/d further R.I. of 7 days. The appellants - accused are also convicted for the offence punishable u/s 332 and sentenced to undergo R.I. for 6 months and to pay a fine of Rs. 100/- each, i/d further R.I. of 7 days. The appellants No. 1 and 2 - accused are convicted for the offence punishable u/s 333 read with Section 114 of the Indian Penal Code and sentenced to undergo R.I. for one year and to pay fine of Rs. 250/- each, i/d further R.I. of 7 days. The appellant No. 3 - accused is convicted for the offence punishable u/s 333 of the Indian Penal Code and sentenced to undergo sentence R.I. for 3 years and to pay fine of Rs. 250/-, i/d further R.I. of 7 days.

7. Being aggrieved and dissatisfied with the said order, the appellants preferred present appeal.

8. Heard Mr. Yogesh Lakhani, learned senior Counsel appearing on of the appellants and learned APP Mr. A.J. Desai appearing on behalf of the respondent - State.

9. Learned senior Counsel Mr. Yogesh Lakhani has submitted that the impugned order of conviction being erroneous and contrary to the record of the case, deserves to be quashed and set aside. He has submitted that the learned Sessions Judge has not considered the defence of the present appellants, while passing the judgment and order. He has also contended that as per the complainant's case, the complainant has been assaulted by the appellants but the medical evidence does not support the case of prosecution. The complainant tried to drive out the cattle of the accused and at that time, the complainant jumped the wall of Vidi to save himself from cattle and fell down and sustained injuries. He has also contended that there is material contradiction in the deposition of the witnesses. There is no any independent witness and learned Sessions Judge relied upon the deposition of the interested witness though there is no corroborative evidence on record to hold the conviction. Lastly, he has also submitted that he is arguing this matter only on the point of quantum of punishment and has prayed for lesser punishment. He has contended that the present appellants may be imposed lesser punishment by reducing the sentence, which is imposed by the learned Sessions Judge.

10. Shri A.J. Desai, learned APP appearing for the respondent-State has supported the judgment and order passed by the learned Sessions Judge. But he submitted that the State has no objection, if the submission of the learned senior Counsel Mr. Lakhani appearing on behalf of the appellants - accused for lesser punishment is considered.

11. This Court has perused the records and proceedings of the Trial Court and heard the learned Counsel of the respective parties at length. On perusal of the record and the submission made by both the learned Counsel, I am of the opinion that the decision of the Trial Court does not suffer from any infirmity whatsoever. The appellants have failed in establishing that the decision of the

Trial Court suffers from any perversity. On the contrary the decision of the Trial Court is just and proper and it is based upon the evidence and it is after proper appreciation. The Trial Court has rightly come to the conclusion that the appellants has failed in establishing its case beyond reasonable doubt and, therefore, the order of acquittal dated 21.1.1997 passed by learned Additional Sessions Judge, Surendranagar in Sessions Case No. 59 of 1992 deserves to be confirmed. But considering the submissions made by the learned senior Counsel Mr. Lakhani appearing on behalf of the appellants - accused that the Sessions Judge convicted the accused and he has also admitted that there is no reason to say regarding the reasons assigned in the judgment and order passed by the learned Sessions Judge, but he has prayed to reduce the sentence. So in that circumstances, I am of the opinion that the submissions made by the learned senior Counsel appearing on behalf of the appellants - accused is required to be considered and the submissions are supported by the learned APP Mr. Desai and I am inclined to modify the order of the learned Sessions Judge by partly allowing this appeal.

12. This Appeal is partly allowed. The judgment and order dated 21.1.1997 passed by the learned Additional Sessions Judge, Surendranagar in Sessions Case No. 59 of 1992, is hereby confirmed. However, the sentence awarded by the learned Judge is modified to the following extent:

The appellants - accused are convicted for the offence punishable u/s 161 of Gujarat Panchayat Act and sentenced to undergo R.I. for 7 days and to pay a fine of Rs. 250/- each i/d to further undergo R.I. for 7 days. Also, the appellants - accused are convicted for the offence punishable u/s 162 of the Gujarat Panchayat Act and sentenced to undergo R.I. for 1 month and to pay a fine of Rs. 250/- each, i/d further R.I. of 7 days.

The appellants - accused are convicted for the offence punishable u/s 447 of the Indian Penal Code and sentenced to undergo R.I. for 1 month, and to pay fine of Rs. 100/- each, i/d further R.I. of 7 days.

The appellants No. 1 and 2 - accused are also convicted for the offence punishable u/s 332 and sentenced to undergo R.I. for 4 months and to pay a fine of Rs. 100/- each, i/d further R.I. of 7 days.

The appellants No. 1 and 2 - accused are convicted for the offence punishable u/s 333 read with Section 114 of the Indian Penal Code and sentenced to undergo R.I. for 4 months and to pay fine of Rs. 250/- each, i/d further R.I. of 7 days.

The appellant No. 3 - accused is convicted for the offence punishable u/s 333 of the Indian Penal Code and sentenced to undergo sentence R.I. for 1 year and to pay fine of Rs. 250/-, i/d further R.I. of 7 days.

The substantive sentence shall run concurrently.

Rest of the judgment and order of the trial Court is hereby confirmed.

The appellants - original accused are directed to surrender themselves before the Jail Authority within a period of six weeks from the date of this order, failing which the concerned Sessions Court shall issue non-bailable warrant to effect the arrest of the appellants - original accused.

Bail bonds, if any, shall stand cancelled. R & P to be sent back to the trial Court, forthwith.