

(2020) 01 GUJ CK 0203
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1413 Of 2005

Chanubha Vardhaji Sodha

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 235(2), 313, 357, 374, 388
Indian Penal Code, 1860 — Section 307
Arms Act, 1959 — Section 25(1)(B)(A)
Bombay Police Act, 1951 — Section 135

Citation : (2020) 01 GUJ CK 0203

Hon'ble Judges : V.P. Patel, J

Bench : Single Bench

Advocate : Ashish M Dagli, Malaykumar S Patel, Jirga Jhaveri

Final Decision : Allowed

Judgement

“

V.P. Patel, J",,,

1. The Appellant / Original Accused has filed this Appeal under Section 374 of the Criminal Procedure Code (â??the Codeâ? for short) being,,

aggrieved and dissatisfied with the judgment and order dated 25.5.2005 passed by the learned Presiding Officer and Additional Sessions Judge, Fast",,,

Track Court No.5, Gandhidham Kachchh (â??the learned trial courtâ?? for short) in Sessions Case No.40/2004.",,,

2. Heard learned Advocate Mr. Viral Vyas for learned Advocate Mr. Ashish M. Dagli for the Appellant and learned APP Ms. Jirga Jhaveri for the,,

Respondent â?" State of Gujarat and learned Advocate Mr. Malaykumar S. Patel for the son of Original Complainant and Injured.,,

Order under Challenge:,,

3. The Appellant Accused has challenged the order dated 25.5.2005 passed by the learned trial court in Sessions Case No.40 of 2004. The trial court,,
has convicted the Appellant Accused under Section 235(2) of the Cr.PC. for the offence punishable under Section 307 of the Indian Penal Code and,,
imposed sentence of RI of 3 years and fine of Rs.1000/- in default of payment of fine to undergo SI of 6 months. The learned trial court has also,,
convicted the Appellant Accused under Section 25(1) (B) (A) of the Arms Act and sentenced to suffer RI of 1 years and fine of Rs.500/- in default,,
of payment of fine to undergo RI of 3 months. The trial court has also convicted the Appellant accused for the offence punishable under Section 135,,
of the Bombay Police Act and sentenced him to suffer RI of 3 months and fine of Rs.100/- in default of payment of fine to under RI of 15 days. It is,,
also ordered that the Appellant Accused shall pay Rs.1000/- as compensation under Section 357 of the Cr.P.C. The Appellant has to undergo all the,,
sentences concurrently and he is also entitled to set off the sentence already undergone.,,

Arguments for the Appellant Accused:,,

4. Learned Advocate for the Appellant Accused has argued that the judgment and order of conviction is absolutely illegal and contrary to the law and,,
fact. That the judgment and order is contrary to the facts on record and fundamental principles of criminal jurisprudence which is required to be,,
quashed and set aside. That the learned trial court has not appreciated documentary as well as oral evidence on record in its proper perspective and,,
committed serious error of law in convicting the Appellant Accused.,,
4.1 It is further argued that though PW-1 who is the complainant, is not an eyewitness in spite of that much importance is given. It is further argued",,
that PW-2 Yogesh Nathubhai Chauhan, who is the injured witness has turned hostile. The trial court has wrongly appreciated this evidence. It is",,
further argued that the panchnama of scene of offence as well as the panchname are not proved according to law. That the medical evidence is a,,
corroborative piece of evidence, it cannot be a basis for conviction.",,

Argument of the prosecution:,,

5. Learned APP Ms. Jirga Jhaveri has argued that the trial court has considered the oral as well as documentary evidence in its proper perspective.,,

The trial court has considered the deposition of the injured witness, and eyewitness. That they have supported the case of the prosecution. That the",,, medical evidence is corroborated with the version of the injured witness. Thus the prosecution has established its case beyond reasonable doubt. It is,, further argued that a minor discrepancy cannot be taken into consideration. She submitted that ingredients of the offence are established and,, requested to dismiss the Appeal.,,

-Facts of the case:,,

6. The complainant - PW-1 - Motibhai Bhurabhai Chauhan has filed a complaint on 24.10.2003 at Rapar Police Station for the incident which took,, place on 23.10.2003. The said complaint was registered as I-CR No. 101/2003 for the offence punishable under Section 307 of the Indian Penal Code,, and for the offence punishable under Section 25(1) (B) (A) of the Arms Act as well as for the offence punishable under Section 135 of the Bombay,, Police Act.,,

6.1 After conducting the investigation, the chargesheet has been filed before the court of learned Judicial Magistrate First Class, Rapar, District",,, Kheda. The same is registered as Criminal Case No. 297/2004. As the offence is triable by the court of Sessions, the learned JMFC, Rapar",,, committed the case to the court of Sessions under Section 209 of Cr.P.C. The case is registered as Sessions Case No. 40/2004.,,

6.2 The trial court has framed the charge at Exh.5 against the present Appellant Accused. Thereafter the prosecution has examined 19 witnesses and,, produced 29 documentary evidence in support of its case. After completing the recording of the evidence of prosecution, the trial court has recorded",,, the further statement under under Section 313 of Cr.P.C.. After giving an opportunity to the prosecution and defence for hearing, the trial court has",,, delivered the impugned judgment and order on 25.5.2005. The Appellant Accused was convicted under Section 235 (2) of the Code.,,

Merits of the Case:,,

7. As per the complaint, the case of the prosecution is that the complainant was present at his residence on 23.10.2003 at about 6:30. At that time he",,, has heard the firing voice. Thereafter his wife informed him that his nephew Yogesh is injured by the firing from the gun. Thereafter he has gone to,, the place of incident i.e. near the house of Nattu Maharaj where the injured

Yogesh was lying down. It is stated that he has seen that Yogesh was,,
injured on the right hand shoulder and on the abdomen part. Thereafter the
injured Yogesh was removed to the government hospital, Rapar. That he",,,
had asked Yogesh how the injury is caused and in reply Yogesh stated that one
person who has put on white shirt has fired against him and injury is,,
caused. That he has seen the person who has fired was Anandji Valaji Soda (the
Appellant) with gun in his hand. Thereafter the complaint was filed.,,,

8. During the course of argument, he has confined his argument so far as
sentence is concerned. He further argued that the Appellant Accused and",,,
the original injured person have made a compromise. They are of the same
village, they have good relationship after the incident took place. It is",,,
further submitted that the original injured person PW-2 Yogesh Nathubhai
Chauhan filed an Affidavit to that effect. It is requested that considering the,,
case, arguments confined only to the sentence the Appellant Accused may be
given sympathy and sentence may be modified to the already",,,
undergone. It is further submitted that he has undergone 7 months and 3 days
of imprisonment. It is also argued that the Appellant Accused is ready,,
and willing to give compensation to the injured witness as this court may deem
fit.,,,

9. Learned Advocate Mr. Malaykumar S. Patel appeared on behalf of the son of
the original complainant and the injured person â?" Yogesh,,
Nattubhai Valand who has been examined as PW-2 at Exh.13. He has filed
affidavit on 24.12.2019. Learned Advocate Mr. Patel has submitted that,,
on 24.12.2019 the injured witness and the son of the complainant were present.
The affidavit was taken on record vide order dated 24.12.2019. This,,
Court (Coram: A.G.Uraizee,J) has recorded the satisfaction as regards to the
volition of the deponent as under:",,,

Sr.,Description,Remarks

- 1., "Number, Name and present age of
the Accused", 3242/2004 â?" Chanubha Vardhaji Sodha
- 2., Court, "Additional Sessions Court, Gandhidham
- 3., Sections of IPC, "IPC 307, 114
- 4., Date of arrest, 1/4/2004
- 5., Police Station and I-CR No., Rapar Police Station I-CR No. 101/2003

6., "Total days spent in jail (As on
4.11.2004)", Years â?" Month â?" Days 00 07 03
15, Remarks, The Accused has not availed any temporary bail.