

(2017) 01 GUJ CK 0136
In the Gujarat High Court
Case No : 1152 of 2000

CHHANIABHAI BATHABHAI CHAUDHARI & ORS

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374\(2\)](#) - Power to examine the accused - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 144](#), [Section 34](#), [Section 147](#), [Section 307](#), [Section 326](#), [Section 149](#), [Section 143](#) - Joining unlawful assembly armed with deadly weapon - Acts done by several persons in furtherance of common intention - Punishment for rioting - Attempt to murder - Voluntarily causing grievous hurt by dangerous weapons or means - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Punishment

Citation : (2017) 01 GUJ CK 0136

Hon'ble Judges : Z K Saiyed

Bench : Single Bench

Advocate : D R Dhimar, Maheshb Bariya, Monali Bhatt

Final Decision : Dismissed

Judgement

1. The present conviction Appeal has been filed by the appellants-original accused Nos.1,2,3,5,6 and 7 under Section 374(2) of the Cr. P.C., against the Judgment and order dated 15.12.2000 rendered by the learned Additional Sessions Judge, Vyara, in Sessions Case No.116 of 1995, whereby the appellants-accused were convicted for the offence punishable under Section 307 read with Section 149 of the Indian Penal Code and sentenced to undergo three years rigorous imprisonment with fine of Rs.1000/-, in default of payment of fine, further simple imprisonment of three months.

2. It is the case of the prosecution that at on 01.11.1994 4:30 p.m., present

appellants alongwith one Chaganbhai Bathabhai Chaudhari formed unlawful assembly near Dungar Gam Patiya with a view to injure and kill witness Thakorebhai Sumjibhai Chaudhari. The common purpose of the unlawful assembly was to commit murder of the Thakorebhai by causing injury. It is also the case of the prosecution that at that time, appellant Nos.1 to 3 were having sticks, appellant No.5 was having iron rod and appellant Nos.6 and 7 were having Axe. It is also the case of the prosecution that for achieving common object, the appellants-accused used force and violence and committed riot. The appellants-accused caused injuries on both the hands, legs and head of the injured witness-Thakorebhai and caused six fractures and committed grievous hurt and thereby, the appellants-accused committed offence under Sections 143, 144, 147, 326, 307 read with Sections 149 or 34 and 114 of the Indian Penal Code.

3. The complaint was given by the complainant before the Bardoli Police Station and injured was shifted to the hospital. The investigation was carried out and statements of witnesses and victim were recorded. Panchanama of scene of offence was drawn. Medical papers were tagged with the investigation papers. Thereafter, accused were arrested and after collecting sufficient evidence by the Investigating Agency, charge-sheet was filed before the learned Judicial Magistrate First Class, Vyara. As the said case was exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Vuara, committed the case to learned Additional Sessions Judge, Vyara, which was thereafter, numbered as Sessions Case No.116 of 1995.

4. On the basis of above allegations, charge was framed against the appellants-accused vide Exh.7 and read-over and explained to the appellants-accused for the alleged offences and plea was recorded, wherein, appellants-accused pleaded not guilty to the charge and claimed to be tried.

5. In order to bring home the charges against the accused person, prosecution has examined several witnesses and also produced documentary evidences.

6. After considering the oral as well as documentary evidence and after hearing the parties, learned Additional Sessions Judge, Vyara vide impugned judgment and order held the appellants-accused guilty to the charges levelled against them, and convicted and sentenced the appellant-accused, as stated above.

7. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Vyara, the present appellants-accused has preferred this appeal.

8. Heard Mr.Mahesh Bariya, learned advocate for the appellants-accused, and Ms. Monali Bhatt, learned Additional Public Prosecutor for the respondent-State.

9. Mr.Mahesh Bariya, learned counsel appearing for the appellants, has contended that the judgment and order passed by the learned Sessions Judge is illegal, invalid and improper. He has also contended that the learned Sessions

Judge has not considered the case of the defence and material evidence produced on record and has passed absolutely wrong order. He has contended that the prosecution has miserably failed to prove its case beyond reasonable doubt, yet the learned Sessions Judge has not considered the probable defence of the appellants and has wrongly convicted the appellants. Learned advocate for the appellant-appellant argued at length and contended that the judgment and order of the learned trial Judge is against the provisions of law and learned trial Judge has wrongly considered the evidence of the prosecution and wrongly convicted them for the alleged offences. Mr. Bariya has argued that as far as charge framed against the appellants-accused is concerned, role, overt act and presence of the accused at scene of offence are required to be proved beyond reasonable doubt. In present case, individual role of each of the appellants is not proved and established. He then submitted that injury shown by the Medical Officer is not possible through the weapon alleged to have been used by the appellants-accused, which creates shadow of doubt. Further, if the evidence of the Medical Officer is perused minutely, it is difficult as to which specific kind of weapons were used by the accused. He contended that the prosecution has failed to establish the main object of the unlawful assembly. He argued that panch witnesses subsequently turned hostile and prosecution could not prove the contents of the panchnama. He lastly prayed before the Court to bestow some mercy upon appellants-accused by reducing the sentence to some extent as the offence in question took place in the year 1994.

10. As against this, Ms. Monali Bhatt, learned Additional Public Prosecutor, has contended that the judgment and order passed by the learned Sessions Judge is absolutely just and proper. She has contended that the prosecution has proved its case beyond reasonable doubt. She has contended that looking to the overall facts and circumstances of the case, and evidence produced on record, the order passed by the learned Sessions Judge is absolutely just and legal and is not required to be interfered with. Ms. Monali Bhatt, learned APP has read the provisions of Sections 143, 144, 147 of the IPC and argued that charge is framed against eight accused persons and ingredient of unlawful assembly and common object can be established through the presence of appellants-accused at the scene of offence. She then argued that injured witness Mr. Thakorebhai Sumjibhai Chaudhari, in his deposition at Exh.28, has disclosed the role of the appellants-accused. She then argued that contents of the injury certificate gets substantiated through oral version of the Medical Officer Doctor Nirmal Babubhai at Exh.59, wherein he stated that injuries are very serious in nature and are on vital parts of the body of the injured person. In cross-examination of Medical Officer, the appellants could not establish their defence properly. She read the further statement of the appellants-accused recorded under Section 313 of the Code of Criminal Procedure and contended that the appellants are failed to prove their proper defence and therefore the learned trial Judge has rightly considered the case of the prosecution in absence of any cogent evidence. Lastly, she contended that learned trial Judge has rightly convicted the present appellants-

accused and therefore, she prayed to dismiss this appeal.

11. I have gone through the impugned judgment and order passed by the learned Sessions Judge and oral as well as documentary evidence produced on record of the case. I have read the oral evidence of prosecution witness and also perused the charge framed against the appellants. 11. Firstly, evidence of star witness (Complainant) PW-1 Mr. Bipinbhai Thakore Chaudhari, who was examined at Exh.23 is perused. As per his evidence, all the appellants-accused are known to him and he narrated the injuries caused by the appellants-accused. Another witness examined by the prosecution is Mr. Thakore Sumjibhai Chaudhari (Injured), who was examined at Exh. 28. According to the prosecution case, he is most important and star witness of the case. He has disclosed the role of each of the appellant-accused that which appellant-accused used which weapon. It is true that in the present case, all the panchas are subsequently declared hostile, but the contents of the panchnama is proved beyond reasonable doubt through oral version of the Investigating Officer.

12. Mr. Bariya, learned advocate has prayed to reduce the sentence to some extent, but looking to the nature of injuries which are on vital parts of the body of the injured, the said request cannot be acceded to.

13. Mr. Bariya, learned advocate contended that the complainant is ready for settlement. The complainant is not present before the Court and even on earlier occasions, the complainant did not make any attempt in this regard and therefore, request made by learned advocate cannot be accepted at this stage.

14. I am, therefore, of the opinion that the learned trial Judge has not committed any error in holding the appellantsPage accused guilty for the offences alleged against them and sentence awarded to them. Therefore, no interference is required. The judgment and order of conviction and sentence dated 15.12.2000 rendered by the learned Additional Sessions Judge, Vyara, in Sessions Case No.116 of 1995, is hereby confirmed. The present Criminal Appeal deserves to be dismissed and is hereby dismissed. Appellants-accused are directed to surrender before the jail authority within a period of four weeks. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.