

(2015) 12 GUJ CK 0052
In the Gujarat High Court

Case No : Criminal Appeal Nos. 823 and 965 of 1997

Desai Tejabhai Kengarbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135

Penal Code, 1860 (IPC) — Section 114, 302, 304, 323, 324

Citation : (2015) 12 GUJ CK 0052

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Ashish M. Dagli, Advocate, for the Appellant; C.M. Shah, Additional Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—By way of these two appeals original accused in Sessions Case No. 229 of 1995 and Sessions Case No. 230 of 1995, have approached this Court against judgment and order of the learned Additional Sessions Judge, Camp at Patan, Mehsana, dated 11th August 1997, whereby the Trial Court has convicted the accused as under.

Appellant in Criminal Appeal No. 965 of 1997, viz. accused No. 4 in Sessions Case No. 229 of 1995, namely, Desai Tejabhai Kengarbhai is convicted to suffer rigorous imprisonment for life with fine of Rs. 500/-. In default of payment of fine, to undergo rigorous imprisonment for 6 months.

Appellants in Criminal Appeal No. 823 of 1997 - accused Nos. 1 and 2 in Sessions Case No. 230 of 1995, namely, Desai Taljabhai Danabhai, and Desai Hamirbhai Ranabhai are convicted under section 323 read with section 114 of IPC to suffer simple imprisonment for 3 months with fine of Rs. 100/-. In default of payment of fine to suffer further imprisonment for 15 days. Accused No. 3 in Sessions Case No. 230 of 1995, namely, Desai Danabhai Virambhai is convicted under section 324 of IPC to suffer rigorous imprisonment for 18 months with fine of Rs.

500/- . In default of payment of fine, to suffer further rigorous imprisonment for 7 months.

2. Desai Danabhai Virambhai, appellant No. 3 in Criminal Appeal No. 823 of 1997 has expired and the matter against him was abated by order dated 23.09.2015. Therefore, Criminal Appeal No. 823 of 1997 survives only qua original appellants Nos. 1 and 2.

3. The case of the prosecution is that at 12.00 noon on 18.06.1995, all the accused together had come for some religious ceremony at Village Katra, along with sister of deceased-Ranabhai Jodhabhai. At that time, children of accused side were playing and were trying to turn bullock cart, which belonged to the prosecution side. The children were reprimanded. However, the accused got enraged and had started abusing the complainant. Therefore, they were charged with section 504 read with section 114 of the IPC. On the same day, at the same time and place, accused No. 4 has given dharia blow on the deceased-Ranabhai Jodhabhai. He was charged with offence under section 302 , read with section 114 of IPC. On the same day, at the same time and place, accused Nos. 1, 2 and 3 have caused injuries to other witnesses. Therefore, they were charged with section 323 read section 114 of IPC. They were also charged section 135 of the Bombay Police Act.

4. In order to prove the case against the present respondents-original accused the prosecution has examined the following witnesses:

5. The prosecution had examined the following documents as well to prove its case:

6. Mr. Ashish M. Dagli, learned counsel for the appellant has taken us through medical evidence and contended that neither there was any intention nor was any pre-meditation to commit the offence. It was only in a heat of moment accused No. 4 had reacted to the hostile attitude shown by the complainant's side and in a heat of passion, blow was given. Therefore, this will fall under section 304 , Part-I. He further contended that the persons from the accused side are also injured and the complainant's side is also convicted. Thus, it is a cross case.

7. Looking to the evidence and the injury sustained by deceased-Ranabhai Jodhabhai, presence of both the sides is proved beyond reasonable doubt. We are of the opinion that the contention raised by Mr. Ashish Dagli, learned advocate is required to be accepted. However, this was opposed by Ms. C.M. Shah, learned Additional Public Prosecutor and contended that in view of the injuries the impugned order be confirmed.

8. We have heard the learned advocates for the parties. The incident is of 1995 and now both the parties have almost settled the issues mentally inasmuch the present accused was from Mumbai and has not returned and has settled outside the village. In that view of the matter the following order is passed in the

appeals.

9. So far as Criminal Appeal No. 965 of 1997 is concerned, conviction of accused No. 4 in Sessions Case No. 229 of 1995, namely, Desai Tejabhai Kengarbhai is converted into section 304 , Part-I, to undergo imprisonment for 10 years. Taking into consideration that the accused has undergone sentence of 3 years and 10 months, therefore, 10 years is confirmed. He is required to undergo sentence of remaining 7 years. At the request of Mr. Ashish M. Dagli, learned advocate that reasonable compensation may be fixed in lieu of sentence. In view of the principle rendered by the Hon"ble Apex Court in the matter of Ankush Shivaji Gaikwad Vs. State of Maharashtra, , and considering the evidence on record ends of justice will be served by issuing the following direction.

10. The accused in Criminal Appeal No. 965 of 1997 is directed to pay a sum of Rs. 4,00,000/- (Rupees four lacs only) to Smt. Gebarben, widow of the deceased, as compensation, within the period of ten weeks from today. The above amount will be deposited with the Sessions Court and the Sessions Court will disburse the whole amount to the widow of the deceased, on due verification. If the said amount is paid by accused the accused is not required to surrender. If he does not pay the above amount within the time stipulated above he is required to surrender to custody on expiry of the aforesaid period, failing which the investigating agency shall take necessary steps for sending him to Jail custody.

11. So far as Criminal Appeal No. 823 of 1997 is concerned Desai Danabhai Virambhai, appellant No. 3 has expired and the matter against him was abated by order dated 23.09.2015. Therefore, Criminal Appeal No. 823 of 1997 survives only qua original appellants Nos. 1 and 2.

12. Conviction awarded to appellant No. 1 and 2 in Criminal Appeal No. 823 of 1997 is converted into only fine of Rs. 1000/- (Rupees ten thousand only) each, in default of payment of fine, the accused will undergo simple imprisonment for one month.

13. Remaining part of the impugned judgments rendered in Sessions Case No. 229 of 1995 and Sessions Case No. 230 of 1995, both dated 11.08.1997 by the learned Additional Sessions Judge, Camp at Patan, Mehsana, remain unaltered. Bail bond, if any, of the accused stands cancelled. Record & Proceedings, if lying here, be sent back to the concerned Trial Court forthwith. Both the appeals are allowed to that extent.