

(2017) 03 GUJ CK 0145
In the Gujarat High Court
Case No : 436 of 2003

DINESH @ PAPPU RAMNARESHSING LAUTSING THAKUR & Ors. Vs STATE OF GUJARAT

Date of Decision : 28-03-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 209, Section 374(2) - Power to examine the accused - Commitment of case to Court of Session when offence is triable exclusively by it - Appeals from convictions
Indian Penal Code, 1860, Section 114, Section 397 - Abettor present when offence is committed - Robbery or dacoity, with attempt to cause death or grievous hurt
Evidence Act, 1872, Section 9 - Facts necessary to explain or introduce relevant facts
Arms Act, 1959, Section 25(1)(a) - Punishment for certain offences

Citation : (2017) 03 GUJ CK 0145

Hon'ble Judges : Z.K.Saiyed

Bench : Single Bench

Advocate : DIVYESH SEJPAL, N.J.SHAH

Judgement

1. The present conviction Appeal has been filed by the appellants?original accused Nos.1 to 3, under Section 374(2) of the Cr. P.C., against the Judgment and order dated 21.02.2003 rendered in Sessions Case No.19 of 2002 by the learned Additional Sessions Judge, Fast Track Court, Vyara, whereby the appellants-accused were convicted for the offence punishable under Section 394 of the Indian Penal Code and sentenced to undergo five years rigorous imprisonment with fine of Rs.100/-, in default of payment of fine, further rigorous imprisonment of one month. The appellants-accused were acquitted from the the charges levelled against them for the offence punishable under Sections 397, 114 of the IPC and under Section 25(1)(A) of the Arms Act.

2. It is the case of the prosecution that the complainant Chimanbhai Jumabhai Dhodiya stated in his complaint that he alongwith his wife Rukshmaniben was living at village Vaheval and retired as teacher/. He further stated that he placed

one order of Marbles for the purpose of repairing his house at Shantinath Marbles, which was received by him on 08.03.2001. For the said order, he paid Rs.65,000/- in advance on 06.03.2001 and for the remaining amount, he went to Bank of Baroda, Anaval Branch alongwith his wife on motorcycle on the same day. He withdrew Rs.50,000/- from the account of his wife containing three bundles of Rs.100/-, two bundles of Rs.50/- and ten bundles of Rs.10/- and put the same amount in Dikki of his motorcycle in one bag alongwith vegetables which were purchased from the Anaval market. When they were returning from Anaval, appellants-accused overtake his motorcycle and stood their motorcycle in front of his motorcycle. The appellants-accused gave one pipe blow on the head of the complainant and due to his his wife fallen down. As one of the appellants-accused tried to get the bag of money and when wife of the complainant caught the Dikki with her hand, she was beaten by pipe. The appellants-accused stolen Rs.50,000/- and when the tried to run away towards Mahuva Bardoli, the complainant caught the career the motorcycle of the appellants-accused. At that time, one appellant-accused fired two round in air with Revolver and they ran away. Thereafter, people gathered there and they shifted the complainant and his wife to Government Hospital, Anaval. Then, the compliant was lodged by the complainant before the Mahuva Police Station for the allege offence.

3. Thereafter, the investigation was carried out and statement of the witnesses were recorded. Place of the panchnama was drawn. Injury certificate of the complainant and his wife was also tagged with the investigation paper. Muddamal was also recovered and sent to the FSL and FSL report was also obtained. Thereafter, appellants-accused were arrested.

4. After collecting the evidence by the Investigating Agency, charge-sheet was filed before the learned trial Court. As the said case was exclusively triable by the Court of Sessions, learned trial Court committed the case to learned Sessions Judge, Vyara under Section 209 of the Criminal Procedure Code, which was numbered as Sessions Case No.19 of 2002.

5. On the basis of above allegations, charge was framed vide Exh.3 against the appellants-accused and read-over and explained to the appellants-accused for the alleged offences and plea was recorded at Exh.4 to 7, wherein, appellantsaccused pleaded not guilty to the charge and claimed to be tried.

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

7. Thereafter, after filing closing pursis by the prosecution, further statement of the appellants-accused under Section 313 of the Code of Criminal Procedure, 1973 were recorded, wherein the appellants have denied the case of the prosecution and has pleaded their innocence. The appellants have submitted that a false case is filed against them.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast

Track Court, Vyara,, the present appellants-original accused referred this appeal.

9. Heard Mr. Divyesh Sejpai, learned advocate for the appellants-accused and Mr. N.J.Shah, learned Additional Public Prosecutor for the respondent-State.

10. Mr. Divyesh Sejpai, learned advocate for the appellants-accused contended that the judgment and order passed by the learned Sessions Judge is illegal, invalid and improper. He 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 appellant and has wrongly convicted the appellants. He contended that it is the case of the complainant that he had withdrawn Rs.50,000/- from the Band of Baroda, Anaval Branch and was going to Veraval in the afternoon, the prosecution has believed the same story in absence of proving the account number, withdrawal of money, the registration number of the vehicle etc. It was not proved that the complainant had in fact withdraw the amount. He further contended that it was clear that at the time of the alleged incident, a mob of several persons had gathered at the alleged place of incident, but however to the case against the appellants-accused, the prosecution has not produced single witness who can be termed as an independent witness apart from the complainant and his wife. He submitted that panch witnesses of the identification parade made by Executive Magistrate Dahyabhai Babarbai Kataria, subsequently declared hostile and the said identification parade is not carried out as per provisions under Section 9 of the Indian Evidence Act and therefore, such identification parade cannot be believed. As police made identification of the accused persons to complainant and his wife, in that circumstances, the same cannot be considered. He contended that just because there are discrepancies in the procedure followed to hold the T.I. Parade, the same can be considered as reliable piece of evidence against the appellants-accused. Therefore, in absence of any independent witness coupled with the fact that the complainant did not personally know the accused persons, identification parade was the only important aspect of the matter to involve the present appellants-accused and therefore, on that count alone, the impugned judgment and order is bad and illegal. The appellant-accused were acquitted from charge under Section 25(1)(a) of the Act and therefore, it appears that police has filed bogus case against the appellants-accused for the said alleged offence. The appellants-accused were also acquitted in three different cases under the Arms Act from the Bardoli Court. Further, the prosecution failed to produce the alleged weapons used in the incident. At the first instance, the iron rod was not recovered from the present appellants-accused and secondly, another weapon i.e. hand made brass revolver, though produced by the prosecution did not identify by the witnesses including the complainant and his wife and therefore, it can be said that the prosecution has failed to prove its case beyond reasonable doubt. It also not clear that who gave blow to complainant and who caused injury to wife of the complainant and who

stole the money from the dikky of the motorcycle. He further contended that injury shown in Exh.13 and 14 could be possible due to fall down on the earth. Therefore, considering the above aspects, the learned trial Judge committed grave error by convicting the appellant-accused for the alleged offence and therefore, she prayed to allow this appeal by quashing and setting the judgment and order of the learned trial Court.

11. As against this, Mr.N.J.Shah, learned Additional Public Prosecutor, has contended that the judgment and order passed by the learned Sessions Judge is absolutely just and proper. He has contended that the prosecution has proved its case beyond reasonable doubt. It is the case of the prosecution that when the complainant and his wife were returning after withdrawing the money, some unknown persons attacked them and injured them and stole the money. He contended that the complainant and his wife have identified the accused persons and the said identification is supported by Executive Magistrate Dahyabhai Babarbai Katariya. He 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 and therefore, he prayed to dismiss the present appeal.

12. 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.

13. In present case, at the time of admission of appeal, appellants-accused are released on bail. Mr. Sejpai, learned advocate for the appellants has argued that initially charge under the Arms Act was framed against the appellantsaccused, however, they were acquitted from the said charge and therefore, they were wrongly roped in the alleged commission of offence. I have minutely perused the evidence of both the injured witnesses with the evidence of Executive Magistrate. Minor contradiction and doubt does not acquit the appellants-accused more particularly when the allegations made against the appellants-accused are proved beyond reasonable doubt. Even in statement recorded under Section 313 of the Cr.P.C., the appellants-accused could not disclose any probable defence.

14. I am, therefore of the opinion that the learned trial Judge has not committed any error in convicting the appellantaccused. Therefore, no interference is required. The judgment and order of conviction dated 21.02.2003 rendered in Sessions Case No.19 of 2002 by the learned Additional Sessions Judge, Fast Track Court, Vyara is hereby confirmed. The present Appeal deserves to be dismissed and is hereby dismissed. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith. The bail bond of the applicant-accused shall stand cancelled and he is directed to surrender before the jail authority within a period of four weeks from today.