
(2016) 03 GUJ CK 0013

In the Gujarat High Court

Case No : Criminal Appeal Nos. 53 and 205 of 2009

Hamabhai Gilabhai Bhadarka and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135

Criminal Procedure Code, 1973 (CrPC) — Section 357

Penal Code, 1860 (IPC) — Section 114, Section 143, Section 147, Section 148, Section 149, Section 302, Section 307, Section 504

Citation : (2016) 03 GUJ CK 0013

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : J.M. Panchal, Advocate for Abhiraj R. Trivedi, Advocate, for the Appellant; C.M. Shah, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—1. Criminal Appeal No. 53 of 2009 by the appellants-original accused arises out of judgment and order dated 23-12-2008 passed by the learned Sessions Judge, Bhavnagar, in Sessions Case Nos. 190 of 2006 and 240 of 2006 whereby original accused were convicted and sentenced to suffer RI for six months and to pay fine of Rs. 500/-, in default, to suffer further imprisonment for fifteen days for the offence punishable under section 143 read with section 149 of IPC, RI for one year and to pay fine of Rs. 500/-, in default, to suffer further imprisonment for 30 days for the offence punishable under section 147 read with section 149 of IPC, RI for one year and to pay fine of Rs. 1000/-, in default, to suffer further imprisonment for 30 days for the offence punishable under section 148 read with section 149 of IPC, imprisonment for life and to pay fine of Rs. 2,000/-, in default, to suffer further imprisonment for one year for the offence punishable under section 302 read with sections 149 and 114 of IPC and RI for seven years and to pay fine of Rs. 1,500/-, in default, to suffer further imprisonment for six months for the offence punishable under

section 307 read with sections 149 and 114 of IPC. Criminal Appeal No. 205 of 2009 filed by the appellants-original accused arises out of the judgment and order dated 22-1-2009 passed by the learned Sessions Judge, Bhavnagar, in Sessions Case No. 189 of 2006 whereby original accused were convicted and sentenced to suffer RI for six months and to pay fine of Rs. 500/-, in default, to suffer further imprisonment for fifteen days for the offence punishable under section 143 read with section 149 of IPC, RI for one year and to pay fine of Rs. 500/-, in default, to suffer further imprisonment for 30 days for the offence punishable under section 147 read with section 149 of IPC, RI for one year and to pay fine of Rs. 1000/-, in default, to suffer further imprisonment for 30 days for the offence punishable under section 148 read with section 149 of IPC and RI for seven years and to pay fine of Rs. 1,500/-, in default, to suffer further imprisonment for six months for the offence punishable under section 307 read with sections 149 and 114 of IPC. All the sentences were ordered to run concurrently. Accused were given benefit of set off for the period undergone in jail.

2. As both these appeals arise out of the same incident involving cross cases, with the consent of learned advocates appearing for the respective parties, they were heard together and are being decided by this common judgment.

3. Short facts of the cases of the prosecution (Sessions Case No. 189 of 2006) are that on 27-5-2006 at about 1930 hours in Village Zalia (Manaji) near the house of the complainant, the accused persons namely, accused No. 1 inflicted injuries with axe on the complainant on skull, Gigabhai Jalabhai on head, Jalabhai Hamirbhai on head and Lomabhai Gilabhai on leg, accused No. 6 inflicted axe injuries on Hajibhai Kadubhai on head, accused No. 8 inflicted injuries on Devuben Hamirbhai on left hand, accused No. 11 inflicted injuries on Gigabhai Jalabhai on head and Devuben on her body, accused No. 12 inflicted injuries with wooden stick on Lomabhai Gilabhai on head, complainant Hamabhai on left leg, Gigabhai Jalabhai and Jala Hamir on head and accused No. 15 inflicted injuries with wooden stick on Kadubhai Lakhmanbhai on head and Parmanandbhai Kumvarjibhai. A complaint was, therefore, filed by the complainant against the accused with Palitana Rural Police Station registered as C.R. No. I-33 of 2006 for the offences punishable under sections 307, 143, 147, 148, 149, 504 and 114 of IPC. Facts of the cross complaint filed by the complainant (Sessions Case Nos. 190 of 2006 and 240 of 2006) inter alia are that on 27-5-2006 at about 1930 hours in Village Zalia (Manaji) near the house of Gilabhai, when complainant Hama Arjan, his elder brother Jabrabhai Arjanbhai and his father Arjanbhai were leaving on their motor cycle, the accused persons inflicted serious injuries on Jabrabhai Arjanbhai and fatal injuries on Arjanbhai with deadly weapons like wooden stick pipe, sword, etc. and Arjanbhai died due to injuries suffered by him. A complaint was, therefore, filed by the complainant against the accused with Palitana Rural Police Station registered as C.R. No. 32 of 2006 for the offences punishable under sections 302, 307, 143, 147, 148, 149, 504 and 114 of IPC and 135 of B.P. Act. In pursuance of aforesaid

complaints, investigation started and as there appeared prima facie case against the accused, charge sheets were filed against respective accused persons.

3.1 As the offences were triable exclusively by Court of Sessions, the learned Magistrate committed the cases to the Court of Sessions wherein case filed by the complainant Hamabhai Gilabhai was numbered as Sessions Case No. 189 of 2006 while cases filed by Hamabhai Arjanbhai were registered as Sessions Case Nos. 190 of 2006 and 240 of 2006. Thereafter charges were framed against the accused which were read over and explained to the accused. The accused pleaded not guilty to the charges and claimed to be tried. Hence, the prosecution was asked to prove the guilt against the accused.

3.2 To prove the guilt against the accused, prosecution examined following witnesses in Sessions Case No. 189 of 2006:

3.3 The prosecution also relied on following documentary evidence:

3.4 To prove the guilt against the accused, prosecution examined following witnesses in Sessions Case Nos. 190 of 2006 and 240 of 2006:

3.5 The prosecution also relied on following documentary evidence:

3.6 After filing of closing pursis by the prosecution, further statements of accused under Sec. 313 of Cr.P.C. were recorded. On conclusion of trial and upon hearing the learned advocates appearing for the respective parties, the impugned judgments and orders were delivered by the trial court giving rise to the present appeals.

4. Heard Mr. J.M. Panchal, learned Advocate for Mr. Abhiraj Trivedi for original accused Nos. 1, 11 and 12 and Mr. Radhesh Vyas for Mr. Yatin Soni, learned advocate for the original accused Nos. 2 to 10 (Sessions Case No. 189 of 2006) in Criminal Appeal No. 53 of 2009 as well as for the original complainant (Sessions Case Nos. 190 of 2006 and 240 of 2006) in Criminal Appeal No. 205 of 2009, Mr. Zubin F. Bharda, learned advocate for the original accused Nos. 1 to 16 (Sessions Case Nos. 190 of 2006 and 240 of 2006) in Criminal Appeal No. 205 of 2009 as well as for the complainant (Sessions Case No. 189 of 2006) in Criminal Appeal No. 53 of 2009 and Ms. C.M. Shah, learned Additional Public Prosecutor, for the State in all the matters.

5. It is reported that original accused Nos. 2 and 7 in Criminal Appeal No. 53 of 2009 and original accused No. 16 in Criminal Appeal No. 205 of 2009 have expired. Copies of their death certificates are placed on record. In view of the same, Criminal Appeal No. 53 of 2009 qua original accused Nos. 2 and 7 and Criminal Appeal No. 205 of 2009 qua original accused No. 16 are abated.

6. Before making effective hearing, learned advocates appearing on behalf of the respective accused in both the appeals jointly stated that in view of the cross cases and in view of the affidavits filed by the parties except accused Nos. 2 and 7 in Criminal Appeal No. 53 of 2009 and original accused No. 16 in Criminal

Appeal No. 205 of 2009, who have expired, instead of ordering the accused to undergo the remaining period of sentence to be undergone by them, some reasonable amount be ordered to be paid to the Gram Panchayat for better sanitation of the Village. They, therefore, requested that considering the peculiar facts and circumstances of the case, remaining sentence to be undergone by the accused may be substituted by payment of appropriate amount which may be fixed by this Court in view of a decision of the Hon"ble Supreme Court in the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra reported in , (2013)6 SCC page 770.

7. Learned APP, Ms. C.M. Shah, did not dispute the facts narrated by the learned advocates for the accused. She, however, voluntarily told the Court that if legally entitled, the accused may be given the benefit.

8. We have gone through oral as well as documentary evidence on record together with the impugned judgments as well as the suggestion made by learned advocates for the respective accused for substituting remaining period of sentence to be undergone by the accused by payment of appropriate amount to the Gram Panchayat for better sanitation of the Village.

9. We have also considered the affidavits filed in the matters. We have also inquired from the concerned Police Station and it is known that now the families of both the sides have settled in their lives. It is also known that no untoward incident took place since the year 2009 and peace is completely prevailing there since then. Therefore, in the interest of justice, it would be appropriate to invoke the principle rendered in Ankush Gaikwad's case (supra) in favour of the accused in the larger public interest by ordering the accused to pay an amount of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) by each party in lieu of the remaining period of sentence to be undergone by the accused, which has been accepted by the parties. Hence, both the appeals require to be allowed in part.

10. Criminal Appeal No. 53 of 2009 qua original accused Nos. 2 and 7 and Criminal Appeal No. 205 of 2009 qua original accused No. 16 are abated. While confirming the conviction, the remaining period of sentence to be undergone by the original accused in both the appeals shall be substituted by giving benefit of provisions of section 357 of Cr.P.C. in view of the principle laid down by the Hon"ble Apex Court in Ankush Shivaji Gaikwad v. State of Maharashtra, , (2013) 6 SCC 770, by payment of an amount of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only) by each party to be deposited within a period of six months before the Registry of the concerned Sessions Court, which, in turn, shall be paid to the concerned Gram Panchayat on proper verification and identification by account payee cheque to be used only for the public purpose of sanitation. Bail bond, if any, stands cancelled. The impugned judgment and order dated 23-12-2008 passed by the learned Sessions Judge, Bhavnagar, in Sessions Case Nos. 190 of 2006 and 240 of 2006 and also judgment and order dated 22-1-2009 passed by the learned Sessions Judge, Bhavnagar, in Sessions Case No. 189 of 2006 are accordingly modified to the aforesaid extent. Remaining part

of the impugned judgments is unaltered. Accordingly, both the appeals stand partly allowed. Record and proceedings shall be sent back forthwith to the trial court.