

(2011) 03 GUJ CK 0126
In the Gujarat High Court
Case No : Criminal Appeal No. 50 of 1995

Ibrahim Ahmed Makarani

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 147, 148, 307, 324, 427

Citation : (2011) 03 GUJ CK 0126

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Shilpa D. Shah and Punam G. Gadhvi, for the Appellant; H.L. Jani, APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The present Appellant has preferred this Appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 7.5.1994 passed by the learned Additional Sessions Judge Godhra in Sessions Case No. 230 of 1992, whereby the learned Sessions Judge has convicted the Appellant u/s 324 of the Indian Penal Code and sentenced the Appellant and the Appellant was ordered to undergo R.I. of two years and to pay a fine of Rs. 500/-, in default, to under further S.I. for fifteen days.

The brief facts of the prosecution case is as under:

2. The allegations levelled against the accused are that the complainant is a driver and when he was driving his tempo along with conductor and two or three persons were sitting in the tempo and after crossing at Navaphalia, four to five person gave single to stop the vehicle, therefore, complainant stopped and said persons asked to take seat in the tempo. The complainant told that there was no vacancy in his tempo and if persons wanted to sit in tempo, then they would sit the backside of the cabin of tempo. Therefore, the persons threw the complainant from the tempo and gave knife blow over the head of the

complainant and other persons gave stick blows to the complainant and they damaged the tempo. Therefore, the complaint was registered against the Appellant - accused for the offences punishable under Sections 147, 148, 307, 427 of the Indian Penal Code and Section 135 of the Bombay Police Act.

3. Thereafter, statements of the witnesses were recorded, panchnama was drawn and accused was arrested. Charge-sheet was filed before the learned Judicial Magistrate First Class, Devgadhbariya. Thereafter, as the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class has committed the case to the Court of Sessions, which was numbered as Sessions Case No. 230 of 1992.

4. Thereafter, the charge was framed against the Appellant. The Appellant - accused pleaded not guilty and claimed to be tried.

5. To prove the case against the Appellant, the prosecution has produced documentary evidence and also examined ten witnesses before the trial Court.

6. Thereafter, after examining the witnesses, further statement of the Appellant - accused u/s 313 of the Code of Criminal Procedure was recorded in which the Appellant - accused has denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Additional Sessions Judge, Godhra, Dist. Panchmahals vide judgment and order dated 7.5.1994 held the Appellant - accused guilty to the charge levelled against him as stated above.

8. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, the present Appellant has preferred this appeal.

9. Learned advocate Mr. Punam Gadhvi appearing on behalf of the Appellant submitted that there were several contradiction between the documentary evidence produced by the prosecution to prove the accused. Even though the learned Sessions Judge held guilty the Appellant for the offence alleged and convicted the Appellant. Therefore, the order impugned is required to be quashed and set aside by allowing the appeal. But lastly, he submitted that the Appellant - accused is very poor person and therefore, the sentence may kindly be reduced.

10. The learned APP Mr. Jani for the State strongly opposed the submissions made by the learned advocate for the Appellant. It was contended by learned APP that the judgment and order of the Sessions Court is just and proper and as per the provisions of law; the Sessions Court has properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present Appellant. Learned APP has also taken this Court through the oral as well as the entire documentary evidence.

11. I have perused the judgment and order and reasons given by the learned Judge also. After the considering the evidence, the learned Sessions Judge has held the Appellant guilty of the offences and sentenced the Appellant. The Appellant was ordered to undergo R.I. as stated above. I have considered his submission about the quantum of punishment and looking to the quantum of punishment, the sentence imposed by the learned Sessions Judge for 2 years is required to be modified after considering submission of the learned advocate for the Appellant about the economical situation of the accused.

12. In view of the above, the Appeal is partly allowed. The judgment and order dated 7.5.1994 passed by the learned Additional Sessions Judge, Godhra, Dist. Panchamahals in Sessions Case No. 230 of 1992, is hereby modified to the extent of 1 year instead of 2 years imposed by the learned Sessions Judge. The Appellant is hereby directed to surrender before the Jail Authority within three weeks from the date of this order, failing which, the concerned Court shall issue non-bailable warrant to effect the arrest of the Appellant. Rest of the judgment of the learned Sessions Court shall remain unaltered. Record and proceeding be sent back to the concerned trial Court.