
(2011) 09 GUJ CK 0040
In the Gujarat High Court
Case No : Criminal Appeal No. 820 of 2001

Idravadanbhai Mohanbhai Machhi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 436

Citation : (2011) 09 GUJ CK 0040

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : Roopal R. Patel, through Jail, for the Appellant; L.R. Poojari, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—This appeal is preferred by the Appellant accused " Indravadanbhai Mohanbhai Machhi through Jail challenging the judgment and order dated 28.08.2001 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No. 33 of 2001.

2. Facts of the case are as under: -

Original complainant had lodged complaint against the Appellant accused alleging that on 07.11.2000 at about 8.30 a.m. complainant had gone for some work. At about 12.00 p.m. hours complainant received phone call from her daughter and she informed that her father " accused had set fire the house and also on account of fire house hold materials were destroyed. There was damage to the tune of Rs. 25,000/-. On the basis of complaint, offence was registered against the accused being C.R. No. I-242 of 2000 before Rajpipla Police Station for the offence punishable u/s 436 of the Indian Penal Code.

3. Charge was framed against the accused vide Exh.6 and accused pleaded not guilty to the charge levelled against them. Hence, trial started.

4. To prove case of prosecution, following documentary as well as oral evidence is produced in order to prove involvement of the accused in commission of offence: -

Statement of Chandanben Indravadan Machhi Exh.8 " original complainant.

The complaint given by complainant at Exh.9.

Statement of witness - Kailashben Kanubhai at Exh.10.

Statement of witness - Bhavnaben Indravadan at Exh.11.

Statement of witness - Sunilkumar Indravadan at Exh.12.

Statement of Panchwitness - Natvar Dayabhai at Exh.14.

Statement of Panchwitness " Bhagvan Chitubhai at Exh.

16. Statement of witness - Kanubhai Mohanbhai Machhi at Exh.17.

Statement of witness - Manjuben Ambubhai at Exh.18.

Statement of P.S.O.- Jinagbhai Jaisinghbhai at Exh.19.

Statement of P.S.I. - Dhanjibhai Bhabhor at Exh.20.

The Panchanama of the place of the incident is produced at Exh.15.

5. Thereafter, further statement of the accused was also recorded, in which he has stated that he is falsely involved in the crime. After considering oral and documentary evidence on record, Trial Court has convicted the accused for the offence punishable under Sections 436 of the Indian Penal Code. Hence, this appeal.

6. At the time of admission of present appeal, following order was passed by this Court on 09.05.2002:

Heard Ms. Patel learned Counsel for the Appellant. The Appellant has been held guilty of the offence punishable u/s 436 of Indian Penal Code on the evidence of his wife, daughter and son. The quantum of punishment is of three years. As he was not on bail pending trial, he has not been enlarged on bail by the trial court by placing the substantive sentence under suspension.

As per prosecution, the accused set fire to house of his own ownership. Without entering into the merits of the matter and considering the period already undergone as under-trial and the fact that the appeal has been admitted by this Court on the point of punishment, the substantive sentence imposed by the trial court is placed under suspension pending hearing and final disposal of this appeal. The Appellant is ordered to be enlarged on bail on his furnishing surety of Rs. 5000/ and personal bond of the like amount and on condition that he shall not enter in the radius of 1000mts. of the area where his house is situated i.e. Garden Gali, Rajpipla, Dist. Narmada in view of the fact that the witnesses namely his wife,

daughter and son seems to be residing in the very house at present. Bail before the trial court. DS permitted.

7. This Court has gone through the record and proceedings of the case and it is found that Appellant accused himself set fire to house of his own ownership. All the witnesses are closed relatives of accused. From the evidence of prosecution, nothing has come on record for which purpose and/ or for what motive, accused committed crime.

8. From the evidence of Chandaben wife of accused " PW-1, it appears that accused was in habit of consuming liquor and also in habit of smoking. That the accused was not doing any work since last ten years. As per the complainant, accused was in Jail and after his release, he came there and above referred incident took place. This witness could not say how much damage was caused by the accused.

9. It is pertinent to note that prosecution witness " Bhagwanbhai Chitubhai turned hostile and not supported the contents of the panchnama. So it is not proved how much damage is caused by the accused in the incident.

10. This Court has gone through the evidence on record and found that there is not direct evidence and only hear say evidence is there. Considering the totality of the evidence and the manner in which incident took place and financial position and status of the accused, in opinion of this Court, if sentence is reduced then it will meet the ends of justice. It is submitted by Mr. Poojari, learned APP that Appellant accused has remained in Jail for about 14(fourteen) months.

11. For the reasons stated above, the appeal succeeds in part. The judgment and order dated 28.08.2001 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No. 33 of 2001 convicting the Appellant accused for the offence punishable u/s 436 of the Indian Penal Code and sentence to undergo simple imprisonment for a period of three years is modified to the extent that Appellant accused is sentence to undergo simple imprisonment for the period he has already undergone in jail. Rest of the judgment and order of conviction and sentence including fine etc. passed by the Trial Court is confirmed. As the Appellant accused is on bail, his bail bond shall stand cancelled.