

(2016) 01 GUJ CK 0060

In the Gujarat High Court

Case No : Criminal Appeal Nos. 2805, 2806, 2807 and 2808 of 2008

Jagdishbhai Babubhai Thakore

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135 (1), Section 25 (1)
Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 357
Penal Code, 1860 (IPC) — Section 147, Section 149, Section 302, Section 304, Section 324, Section 34

Citation : (2016) 01 GUJ CK 0060

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

Bench : Division Bench

Advocate : Yogesh Lakhani, Senior Advocate, Pravin Gondaliya, Harnish Darji and Jay Thakkar, Advocates, for the Appellant; Hardik A. Dave, Vikram J. Thakor, Advocates and C.M. Shah, APP, for the Respondent

Final Decision : Disposed Off

Judgement

K.S. Jhaveri, J.—1. All these appeals are preferred against the judgment and order dated 24.10.2008 passed by Additional Sessions Judge, Court No. 4, Ahmedabad City in Sessions Case No. 211 of 2000 and allied matters. By the impugned judgment, accused No. 2-Mahipalsinh Ajabsinh Chauhan is held guilty for offence under Section 324 read with Section 34 of the Indian Penal Code (for short, "IPC") and ordered to undergo rigorous imprisonment for three years with fine of Rs. 10,000/- and, in default of payment of fine, he was ordered to undergo further simple imprisonment for one month, he is also held guilty for offence under Section 302 of IPC and ordered to suffer rigorous imprisonment for life and to pay fine of Rs. 25,000/- and, in default of payment of fine, further simple imprisonment of one year was imposed. Being aggrieved by it, this accused has preferred Criminal Appeal No. 2807 of 2008.

1.1 By the impugned judgment, accused No. 10-Mukesh Jagdishbhai Thakore is held guilty for offence under Section 324 read with Section 34 of IPC and ordered

to undergo rigorous imprisonment for three years with fine of Rs. 10,000/- and, in default of payment of fine, he was ordered to undergo further simple imprisonment for one month, he is also held guilty for offence under Section 302 of IPC and ordered to suffer rigorous imprisonment for life and to pay fine of Rs. 25,000/- and, in default of payment of fine, further simple imprisonment of one year was imposed. Being aggrieved by it, this accused has preferred Criminal Appeal No. 2806 of 2008.

1.2 By the impugned judgment, accused No. 11-Rajubhai Ganeshbhai Madrasi is held guilty for offence under Section 324 read with Section 34 of IPC and ordered to undergo rigorous imprisonment for three years with fine of Rs. 10,000/- and, in default of payment of fine, he was ordered to undergo further simple imprisonment for one month, he is also held guilty for offence under Section 302 of IPC and ordered to suffer rigorous imprisonment for life and to pay fine of Rs. 25,000/- and, in default of payment of fine, further simple imprisonment of one year was imposed. Being aggrieved by it, this accused has preferred Criminal Appeal No. 2808 of 2008.

1.3 By the impugned judgment, accused No. 12-Jagdishbhai Babubhai Thakore is held guilty for offence under Section 324 read with Section 34 of IPC and ordered to undergo rigorous imprisonment for three years with fine of Rs. 10,000/- and, in default of payment of fine, he was ordered to undergo further simple imprisonment for one month, he is also held guilty for offence under Section 302 of IPC and ordered to suffer rigorous imprisonment for life and to pay fine of Rs. 25,000/- and, in default of payment of fine, further simple imprisonment of one year was imposed. Being aggrieved by it, this accused has preferred Criminal Appeal No. 2805 of 2008.

2. The facts in brief giving rise to the filing of present appeal are as under:

"2.1 It is the case of the prosecution that Lubi Electrical Co. Ltd. is situated in Naroda area near Memco and AMC workshop. Workers of the unrecognized union, Gujarat Mazdoor Union, were gathering near the main gate of the company for agitation. Everyday 200 to 400 workers, at the time of shift change, at about 4.30 to 4.45 p.m. were doing it. Therefore, police protection was taken by the management. The police protection was withdrawn 4 to 6 days prior to the incident. On the previous day of the incident, leaders of agitating workers were suspended by the labour officer of the company and one of the suspended employee is the complainant in the present case. On 25.7.1998, the agitating workers started pelting stones on the time-keepers office and inside the company. Therefore, urgently police protection was sought but after some time the stone pelting resumed and accused No. 2-Mahipalsinh, who was the security man in the company, got injured. Some other persons, including police men were also injured. It is alleged that therefore gun shot was fired and allegedly 14 workers were injured. In the incident, one Manusinh B. Rathod expired. Therefore, it is alleged that the accused along with the absconding accused, by forming an unlawful assembly with a common intention to commit murder, hurt

and grievous hurt, committed an offence under Section 147 of IPC at Lubi Electric Company Limited in the area of Ahmedabad Shaher Kotda Police Station. On the same day, accused No. 2 along with one Jagdish Dharamsing Thakore opened the fire and injured the deceased and he died due to such injuries, therefore, they have committed offence under Section 302 of IPC, while other accused have committed offence under Section 149 read with Section 302 of IPC. Since the accused persons have used sticks, stone and revolver, they were also charged with offence under Section 25 (1), (B), (a) and (b) and Section 135 (1) of the Bombay Police Act. Accordingly, the complaint was lodged against the accused persons.

2.2 On complaint being filed, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused persons before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, the case was committed to Sessions Court and, ultimately, trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 During the trial, the prosecution had examined following witnesses:--

2.4 The prosecution had also produced and relied upon following documentary evidence:--

2.5 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and, thereafter, passed the impugned judgment and order awarding the sentence, as aforesaid. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals are preferred before this Court."

3. Mr. Y.S. Lakhani, learned Senior Advocate appearing for the appellants-original accused has taken us through the evidence and submitted that the prosecution has miserably failed to prove its case against the appellants. He submitted that the trial Court has seriously erred in appreciating the evidence on record and misdirected its judgment inasmuch as the crucial witnesses, who are referred to in Exh. 147, page 2141, and who have immediately taken to the Civil Hospital have not been examined in the present case. He submitted that the employee, who was suspended on the previous day has filed a complaint by keeping grudge against the accused persons. He submitted that after the incident, the injured was taken to the hospital which is 15 kms. away from the place of the incident, whereas one of the largest hospital of the State is just 2 kms. away from the place of the incident. He also submitted that not only that another hospital of the local authority is just 3 kms. away from the place of the incident and the injured is taken to a hospital which is near to the union office and the complaint is lodged after some delay, though the police inspector was present at the site and a constable was also injured in the incident, whose statement was recorded in the cross-complaint. He submitted that the injured police personnel are also not examined in the present case and the prosecution has failed to bring on record

the true version of the incident. He submitted that material facts are suppressed and the prosecution has tried to twist the case against the present appellants. Mr. Lakhani has taken us through the evidence of PW-3, Ramesh Chana Rathod, Exh. 76 and has tried to point out that the story put forward by the prosecution has been dislodged by the defence in the cross-examination of this witness. This witness has stated that his brother was suspended by the management on the day prior to the incident. This witness has also stated that in the past cases were filed against his brother for attacking other labourers and the labour officers of the company, who are accused in the present case. Therefore, he submitted that with a view to take revenge with such persons, the complainant has filed a false complaint against them. Mr. Lakhani has also taken us through the panchnama of the scene of offence, which was drawn immediately after the incident and it is clear therefrom that there was industrial unrest and members of two rival unions were present when the incident had occurred. He also submitted that since an employee was suspended on the previous day, members of the management have been made accused to take revenge of the action of suspension. He has also taken us through the evidence of PW-20, Bharatkumar S. Shukla-PI, Exh. 190 and contended that this Police Inspector has clearly admitted that the statement of a constable and other witnesses, which were recorded in the cross-complaint were not recorded in the present case. In view of all these, Mr. Lakhani submitted that accused Nos. 10, 11 and 12 have not played any role in the offence and they have been wrongly implicated in the present case. He further submitted that these accused persons being in the management of the company had tried to salvage the situation and they have acted only with a view to save the property of the company and they were wrongly convicted by the complainant in the present case to take revenge. He has also taken us through the evidence of PW-16, Dr. Dhaval Bhavsar, Exh. 154, who has examined the complainant. This doctor has stated in his evidence that the complainant had received simple injury and he was discharged immediately after treatment. He has also taken us through the evidence of PW-10, Dr. Anupsinh Hiraji Thakore, who had examined 15 workers. This witness has stated that these workers had sustained simple injuries. This witness has also stated that there was no consistency in the statements of these workers so far as weapon used in the offence is concerned. These workers have stated different story and one of the worker even could not recognize the security man properly. Therefore, taking into consideration all these aspects and statement of other witnesses, Mr. Lakhani contended that the prosecution has failed to prove its case against any of the appellants and the trial Court has committed an error in convicting them.

3.1 Mr. Lakhani has further submitted that so far as accused No. 2, Mahipalsinh Ajabsinh Chauhan, is concerned, he is a security person in the company and he has tried to save the property of the company. He submitted that this accused was employed for the security of the property of the company and in the circumstances prevailing on that day, he had no option but to fire. He further submitted that the prosecution has alleged that the deceased had received two

bullet injuries, however, looking to the evidence on record, it is clear that the injured was at a distance of 140 ft. from this accused and looking to the muddamal revolver it is clear that it does not have the capacity to kill the person standing at the distance of 140 ft. He also submitted that, for the sake of argument, even if the case of the prosecution is taken as it is, the accused acted in self-defence and with a view to save the property of the company and there was no intention on his part to kill anyone. Therefore, he cannot be held guilty for the offence under Section 302 of IPC as it cannot be said that he has killed the deceased. He further submitted that in this view the fact that there was industrial unrest and the workers were agitating and they started pelting stones at the company premises, and the accused No. 2 has acted to safeguard the property of the company as well as in his self-defence, it cannot be said that the offence in question will fall under Section 302 of IPC and it may fall under Section 304, Part-II of IPC so far accused No. 2, Mahipalsinh Ajabsinh Chauhan is concerned. He submitted that the for the incident in question cross-complaint was also filed. He submitted that considering all these circumstances, offence alleged against accused No. 2 may be converted to Section 304, Part-II from that of Section 302 of IPC.

3.2 Mr. Lakhani further submitted that the incident is of 1998 and an amount of Rs. 3 Lacs is already deposited as per the direction of the trial Court, which is invested in fixed deposit. He also submitted that in view of the fact that incident is 1998 and more than 17 years have elapsed from the date of the incident, in view of the decision of the Hon"ble Apex Court in "Ankush Shivaji Gaikwad v. State of Maharashtra", , 2013 (6) SCALE 778, which is followed by this Court in a number of decisions, this Court may invoke the provisions of Section 357 of the Criminal Procedure Code and allow the appeal by enhancing the amount of fine and the employer of accused No. 2, Mahipalsinh Ajabsinh Chauhan, may be directed to pay additional compensation to the family of the deceased as this accused was employed by the company and he had acted to protect the property of the company. In support of his submission, he also stated that an amount of Rs. 3 Lacs, which was deposited as per the direction of the trial Court, is yet not withdrawn by the widow of the deceased as she has been supported by the company in fulfilling her obligations through all these years. He, therefore, submitted that even by awarding reasonable amount of compensation accused No. 2, Mahipalsinh, may be released by allowing present appeal.

4. On the other hand, Ms. C.M. Shah, learned APP appearing for the State has submitted that the order of conviction recorded against the appellants-accused persons is just and proper and she has supported the conviction recorded by impugned judgment. Learned APP has contended that taking into consideration the medical evidence, evidence of the complainant, and other witnesses, the view taken by the trial Court is just and proper and no interference is called for. She submitted that even if it was a case of industrial unrest, the way in which the weapons were used, this Court may not take any sympathetic view in this matter. She, therefore, submitted that the learned trial Judge has not committed

any error while imposing the sentence on the accused persons and, therefore, no interference is called for in the present appeals.

5. We have heard Mr. Y.S. Lakhani, learned Senior Advocate for the appellants-original accused and Ms. C.M. Shah, learned APP for the State. We have also gone through the evidence on record. We have also perused the medical evidence. Before proceeding further, it will not be out of place to mention that the incident is of the year 1998 and there was industrial unrest at that time and at present no such situation is prevailing, therefore, if any adverse order is passed it will affect the situation and it may lead to industrial unrest. On going through the evidence of the witnesses and the medical evidence, it is clear that all the workers, who were examined by PW-10, were having simple injuries and they were not hospitalized beyond one day. It is also clear that some of the workers were discharged on the same day. It has further come in evidence that these witnesses were not in a position to say as to with which weapon they were injured. Therefore, it might be possible that they have received such injuries in the stone pelting by people of other union or their co-workers. Taking into consideration the fact that police protection was given pursuant to application dated 15/4/1998 and 20/4/1998, on 2/5/1998 and the police protection was lifted only few days prior to the incident and the workers have taken advantage of this situation and the incident had happened. It is also clear that some of the leaders of the agitating workers were suspended by the management on previous day. It has also come in the evidence of brother of the complainant that the complainant was involved in such incidents earlier also and cases were filed against him for attacking other labourers and labour officers of the company. Therefore, it seems that with a view to take revenge against the management people, they have been wrongly implicated in the present case. Hence, we find that accused Nos. 10, 11 and 12 are required to be acquitted and the appeals filed by them are required to be allowed.

6. So far as case against accused No. 2 is concerned, it is clear from the medical evidence on record that the bullet injury is the reason for death of the deceased and this is unnatural death. Now coming to the point whether it falls within 302, or 304, part-II or 302, taking into consideration the injury and the way in which it is caused by the accused No. 2, Mahipalsinh Ajabsinh Chauhan, it is clear that he acted in furtherance of his duty and with a view to safeguard the property of the company. It can also be said that he has exercised his right of self-defence and there was no intention on his part to commit the offence. It has also come in evidence that there was industrial unrest and the workers were agitating against the company and they started pelting stones at the company premises, therefore, accused No. 2 has acted to safeguard the property of the company. Hence, it cannot be said that accused No. 2 is guilty for the offence punishable under Section 302 of IPC and it may fall under Section 304, Part-II of IPC. We are of the opinion that the trial Court has not committed any error in convicting accused No. 2, however, looking to the aforesaid circumstances, it can be said that accused No. 2 is guilty of offence under Section 304, Part II of IPC and not

for the offence under Section 302 of IPC. Therefore, Criminal Appeal No. 2807 of 2008 is also required to be partly allowed by holding accused No. 2 guilty for offence under Section 304, Part II of IPC and not for offence under Section 302 of IPC and sentence imposed upon him is required to be reduced to five years imprisonment.

7. From the submissions made by Mr. Lakhani, it is also clear that the widow of the deceased is helped through all these years by the accused persons. Considering this fact and in view of the decision of the Hon'ble Apex Court in "Ankush Shivaji Gaikwad v. State of Maharashtra", , 2013 (6) SCALE 778, we deem it proper to award additional compensation to the victim, over and above the amount of Rs. 3 Lacs already deposited as per the direction of the trial Court.

8. We direct the employer of accused No. 2-Mahipalsinh Ajabsinh Chauhan to deposit an additional amount of Rs. 12,00,000/- (Rupees Twelve Lacs only) towards compensation before the trial Court. If such amount is deposited before the trial Court within a period of ten weeks from today, the accused is not required to undergo the period of sentence imposed by this Court.

9. Accordingly, the amount of compensation will come to Rs. 15 Lacs (Rs. 3 Lacs as directed by the trial Court + Rs. 12 Lacs additional compensation awarded by this Court). So far as interest accrued till today on the amount of Rs. 3 Lacs already deposited as per the direction of the trial Court is concerned, such interest shall be paid to Dahiben Manusinh Rathod, the widow of the deceased by way of account payee cheque.

10. Upon deposit of additional amount of compensation by the employer of the accused, the trial Court will disburse total amount of Rs. 15 Lacs in the following manner.

"(I) Rs. 2,50,000/- each shall be invested in the names of two daughters of the deceased in cumulative fixed deposit receipts for a period of three years. After a period of three years, both the daughters of the deceased will be entitled to withdraw such amount. Names of the daughters of the deceased are Ushaben Bhavanisinh Rathod and Naynaben Rajendrasinh Vaghela.

(II) Remaining amount of Rs. 10,00,000/- (Rupees Ten Lacs only) shall be invested in four different cumulative fixed deposit receipts of Rs. 2,50,000/- (Rupees Two Lacs Fifty Thousand only) each. Such fixed deposits of Rs. 2,50,000/- each shall be in the joint names of the widow and her son (First name of the widow + second name will be of one son). Accordingly, four fixed deposits receipts shall be in the following names:--

(i) Dahiben Mausinh Rathod + Sureshsinh Manusinh Rathod

(ii) Dahiben Mausinh Rathod + Kalusinh Manusinh Rathod

(iii) Dahiben Mausinh Rathod + Vikramsinh Manusinh Rathod

(iv) Dahiben Mausinh Rathod + Bhupendrasinh Manusinh Rathod"

11. It is clarified that such amount of Rs. 2,50,000/- each shall be invested in cumulative fixed deposit receipts initially for a period of three years, which may be renewed from time to time. The widow of the deceased, Dahiben Manusinh Rathod, will be entitled to receive interest on the total amount of Rs. 10 Lacs during her life time.

12. For the foregoing reasons, Criminal Appeal Nos. 2805, 2806 and 2808 of 2008 are allowed. Conviction of accused-appellants herein recorded by the impugned judgment and order dated 24.10.2008 passed by Additional Sessions Judge, Court No. 4, Ahmedabad City in Sessions Case No. 211 of 2000 and allied matters is quashed and set aside. The accused are acquitted of all the charges levelled against them.

13. So far as Criminal Appeal No. 2807 of 2008 is concerned, it is partly allowed. The impugned judgment and order dated 24.10.2008 passed by Additional Sessions Judge, Court No. 4, Ahmedabad City in Sessions Case No. 211 of 2000 convicting the accused-Mahipalsinh Ajabsinh Chauhan is modified and instead of offence under Section 302 of IPC, the accused is held guilty for offence under Section 304, Part II of IPC and ordered to undergo five years" rigorous imprisonment. The period of sentence already undergone by the accused, Mahipalsinh Ajabsinh Chauhan be given set off to him. Looking to the special circumstances and the principles enunciated in the case of Ankush Shivaji Gaikwad v. State of Maharashtra, , 2013 (6) SCALE 778, employer of the accused is directed to deposit an additional sum of Rs. 12,00,000/- towards compensation before the trial Court. If such amount is deposited before the trial Court within a period of ten weeks from today, the accused-Mahipalsinh Ajabsinh Chauhan is not required to undergo the period of sentence imposed by this Court and if the amount of compensation, as aforesaid, is not deposited within ten weeks from today, the accused-Mahipalsinh Ajabsinh Chauhan shall surrender before the jail authorities to undergo the period of sentence imposed by this judgment. Upon deposit of the amount of compensation, the trial Court shall disburse such amount as per the direction given earlier in this judgment.

14. Remaining part of the impugned judgment shall remain unaltered. Bail bond, if any, of the accused stands cancelled. Record and Proceedings, if lying here, be sent back to the concerned trial Court forthwith.