
(2008) 10 GUJ CK 0034
In the Gujarat High Court
Case No : Criminal Appeal No. 866 of 2006

Jahid Harunbhai Khokhar and Others APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 357, 357(3), 377, 431
Penal Code, 1860 (IPC) — Section 307, 320, 323, 324, 34

Citation : (2008) 10 GUJ CK 0034

Hon'ble Judges : J.C. Upadhyaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : Harshit S. Tolia, for the Appellant; U.R. Bhatt, APP, for the Respondent

Judgement

J.C. Upadhyaya, J.—The challenge in this appeal is to the judgment and order rendered by the learned Sessions Judge, Bhavnagar, in Sessions Case No. 162/2003, dated 6th March, 2005, whereby the learned Sessions Judge convicted the appellant-accused No. 1 for the offences punishable under Sections 307 324 & 504 of the Indian Penal Code and was sentenced to undergo R.I. for eight years and fine of Rs. 20,000/-, in default, to undergo S.I. for two years, and R.I. for six months and R.I. for six months for the offences punishable under Sections 307 324 & 504 of the Indian Penal Code respectively; whereas the appellants-accused Nos. 2 & 3 came to be convicted for the offences punishable u/s 323 of the Indian Penal Code and each of them was sentenced to undergo R.I. for seven days.

2. The case of the prosecution, in nutshell, is as under:

The incident took place on 13.5.2003 at about 10.30 A.M., near the house of appellant No. 1 and the house of father of first informant Mukeshbhai in Bhavnagar city. It is the case of the prosecution that before about six months from the date of the incident, appellant No. 1-Jahid had abducted the sister of

the first informant. That, at that time, no police complaint was lodged, but, after sometime, both- appellant No. 1 and the sister of the first informant were found out. That, keeping this grudge in mind, on the date and time of the incident, accused No. 1 abused first informant Mukeshbhai and inflicted knife blow on the right side chest of Mukeshbhai and also inflicted 2nd blow on the right side forearm of injured Mukeshbhai. It is the case of the prosecution that at the time of the incident, appellants No. 2 & 3 inflicted fist and kick blows on the body of Mukeshbhai. Injured Mukeshbhai was removed to hospital and he lodged first information report before the police. Police investigation was commenced, statements of witnesses were recorded, weapon knife was recovered, necessary medical certificates of injured Mukeshbhai were received from the hospital. After completion of the investigation, police filed charge sheet in the Court of learned J.M.F.C. Bhavnagar for the offences punishable under Sections 307 324 323 504 r.w. Section 34 of the Indian Penal Code and Section 135 of the Bombay Police Act. Since the offence was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, Bhavnagar.

3. The learned Sessions Judge framed charge at Exh.3. When the charge was read over to the appellants-accused, they did not admit the offence and claimed to be tried. Therefore, the prosecution adduced its oral as well as documentary evidence. After the evidence was completed by the prosecution, the learned Sessions Judge recorded further statements of the accused u/s 313 of the Code of Criminal Procedure, wherein generally the accused denied all the allegations levelled against them and stated that they were falsely implicated in this offence.

4. After considering the evidence on record and hearing the arguments advanced on behalf of both the parties, the learned Sessions Judge delivered the impugned judgment and order, whereby he was pleased to convict the appellant No. 1- accused No. 1 for the offences punishable under Sections 307 324 504 of I.P.C., and appellants No. 2 & 3- accused Nos. 2 & 3 came to be convicted for the offence punishable u/s 323 I.P.C. and awarded sentence as mentioned hereinabove.

5. On behalf of the appellants-accused, learned advocate Mr. Tolia, during the course of arguments, did not dispute the involvement of all the three appellants in connection with the incident. Furthermore, so far as the conviction of appellants No. 2 & 3 for the offence punishable u/s 323 IPC is concerned, it was not disputed. However, learned advocate Mr. Tolia for the appellants vehemently submitted that so far as appellant No. 1- Jahid Harunbhai Khokhar is concerned, the learned Sessions Judge erred in convicting him for the offences punishable under Sections 307 & 324 IPC simultaneously because as per the case of the prosecution, appellant No. 1 caused injuries only to the first informant injured Mukeshbhai. That, therefore, the learned Sessions Judge erred in simultaneously convicting appellant No. 1 for the above offences. So far as his conviction u/s 307 IPC is concerned, learned advocate Mr. Tolia vehemently submitted that considering the medical evidence on record and especially, looking to the

deposition of Medical Officer Dr. Kashyap Dave recorded at Exh.39 and the injury-certificate issued by him, it becomes clear that the injured sustained two injuries, one on the right side of his chest and another on his right forearm, and so far as injury sustained on the right side chest is concerned, it was not grievous injury or there is no evidence whatsoever on record to come to the conclusion that, that injury was sufficient in the ordinary course of nature to cause death. That, considering the medical evidence on record, because of the injuries, no internal organ was damaged. That, considering the scheme of Section 320 of the Indian Penal Code, injury does not fall within any of the clauses referred in that Section. That, the incident took place suddenly. It is, therefore, submitted that so far as appellant No. 1-Jahid Khokhar is concerned, he can be said to have committed offence punishable u/s 324 I.P.C. and his conviction recorded by the learned Sessions Judge for the offence punishable u/s 307 IPC cannot be sustained. It is further submitted that the learned Sessions Judge awarded sentence of fine to the tune of Rs. 20,000/- and further directed that out of the fine, Rs. 10,000/- be paid to first informant injured Mukeshbhai by way of compensation. It is submitted that since the offence punishable u/s 307 IPC cannot be said to have been made out and the offence, which the appellant No. 1 can be said to have been committed is u/s 324 IPC, the order of fine to the tune of Rs. 20,000/- requires to be set aside and in its place, appropriate fine be awarded considering the poor status of the accused. Learned advocate Mr. Tolia for the appellants further submitted that so far as appellants No. 2 & 3 are concerned, they were awarded sentence of R.I. for 7 days and they have already undergone the said sentence, and so far as appellant No. 1-Jahid Khokhar is concerned, he is in jail since last 2 years & 7 months. It is, therefore, requested that so far as appellant No. 1-Jahid Khokhar is concerned, while convicting him for the offence punishable u/s 324 IPC, the period undergone by him in jail, would be the appropriate sentence of imprisonment.

6. Learned A.P.P. Mr. Bhatt for the State submitted that considering the deposition of the Medical Officer and the medical evidence on record, the learned Sessions Judge did not commit any illegality or irregularity in coming to the conclusion that the offence u/s 307 IPC was made out. Therefore, it is submitted that the appeal deserves to be dismissed.

7. Considering the arguments advanced by learned advocate Mr. Tolia for the appellants, so far as appellants No. 2 & 3 are concerned, by virtue of the impugned judgment and order, the learned Sessions Judge convicted both these appellants for the offence punishable u/s 323 IPC and they were sentenced to undergo R.I. for 7 days, and as submitted, they have already undergone the said sentence. It further appears that the appeal is not argued out on behalf of the appellants on merits. Even considering the deposition of the injured first informant Mukeshbhai recorded at Exh.14, involvement of all the three appellants in this offence is clearly reflected. Therefore, the only question, which is required to be decided in this appeal, is the nature of offence committed by appellant No. 1.

8. Considering the deposition of Dr. Kashyap Dave recorded at Exh.39, it transpires that the injured sustained two incised wounds; one on the right side chest which was 8 cm x 2.5 cm, it was wall deep, and the second incised wound was on the right side forearm of the injured. Considering the deposition of Dr. Dave (Exh.39), it nowhere transpires that both or any of the injuries sustained by the injured were such, which can be termed as 'grievous hurt' as defined in Section 320 IPC. It becomes clear that the injured was admitted in the hospital on 13.5.2003 and was discharged on 17.5.2003. Thus, the treatment ended for only 4 days. It also becomes clear that at the time of discharge, no complications were there. The x"ray reports reflect no fracture or any complication. Considering the cross-examination of Dr. Dave, he clearly admitted that because of the injury on the right side chest of the injured, no internal organ was damaged. In other words, no internal injury to any of the vital organs was caused. He further admitted that so far as the injury on the right forearm was concerned, it was not on any vital part of the body. He admitted that x"ray reports were normal. He further stated that neither in the case paper nor in the injury certificates, injury No. 1 on the right side chest of the injured is described as serious injury.

9. In the light of the above medical evidence on record, it becomes clear that though injury No. 1 on the right side chest of the injured was incised wound, but, it was wall deep on the chest, no internal organ, especially lungs and heart sustained any injury. The treatment ended within 4 days and at the time of discharge, there was no any complication. X"ray reports were normal. The medical evidence nowhere reveals that the injury was such, which may endanger human life or that it was grievous in nature. Therefore, considering the definition of 'grievous hurt' as defined in Section 320 IPC, we are of the considered opinion that the medical evidence, regarding injury, adduced by the prosecution cannot be said to be sufficient to attract any of the clauses of Section 320 IPC.

10. In light of the above discussion, it becomes clear that the learned Sessions Judge erred in convicting appellant No. 1- Jahid Khokhar for the offence punishable u/s 307 IPC. The learned Sessions Judge should not have convicted appellant No. 1 for the offence punishable u/s 307 IPC. Moreover, simultaneous conviction of appellant No. 1 for the offence punishable u/s 307 as well as for the offence punishable u/s 324 IPC for causing identical injuries on the body of the injured cannot be sustained, and as stated above, even his conviction u/s 307 IPC deserves to be set aside. Therefore, in sum and substance, appellant No. 1- Jahid Khokhar is guilty for the offences punishable under Sections 324 & 504 IPC.

11. So far as appropriate sentence for the offence punishable u/s 324 IPC is concerned,, learned advocate Mr. Tolia for the appellants submitted that so far as conviction of appellant No. 1 u/s 324 IPC is concerned, the learned Sessions Judge awarded R.I. for six months and no order of fine was made. Considering the impugned judgment delivered by the learned Sessions Judge, it becomes apparent that the learned Sessions Judge awarded sentence of R.I. for six

months and no order of fine was passed, so far as offence punishable u/s 324 IPC is concerned. Therefore, so far as the sentence of imprisonment awarded by the learned Sessions Judge for commission of offence u/s 324 IPC is concerned, the same is required to be sustained. However, so far as fine is concerned, the learned Sessions Judge did not impose any fine so far as conviction u/s 324 IPC is concerned. No enhancement appeal u/s 377 of the Criminal Procedure Code is filed. However, the learned advocate Mr. Tolia for the appellants submitted that the learned Sessions Judge awarded compensation to injured Mukeshbhai as envisaged u/s 357 of Cr.P.C. He, therefore, submitted that he has no objection if reasonable amount of compensation is ordered, which would be ultimately received by injured Mukeshbhai.

12. We have considered the provisions contained in Sub-section (3) of Section 357 of Cr.P.C., which prescribes that when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order, to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

13. Considering the above submissions and the scheme contained in Sub-section (3) of Section 357 of the Criminal Procedure Code, and the overall evidence on record, it is clear that so far as the conviction of the appellant No. 1 u/s 324 IPC is concerned, the learned Sessions Judge awarded R.I. for six months, but, no order as to fine has been passed by the learned Sessions Judge. Under such circumstances, the provisions contained in Sub-section (3) of Section 357 of the Criminal Procedure Code shall apply in this case.

14. For the foregoing reasons, the appeal is partly allowed, so far as appellant No. 1 is concerned, and the appeal stands dismissed, so far as appellants No. 2 & 3 are concerned. The conviction recorded by the learned Sessions Judge, Bhavnagar by the impugned judgment and order dated 6th March, 2005 rendered in Sessions Case No. 162/2003, so far as appellant No. 1- Jahid Harunbhai Khokhar is concerned, for commission of offence punishable u/s 307 of the Indian Penal Code, is hereby set aside; whereas his conviction and sentence recorded by the learned Sessions Judge for commission of offences punishable under Sections 324 & 504 IPC, is hereby confirmed. However, appellant No. 1 "" Jahid Harunbhai Khokhar is directed to pay Rs. 10,000 (Rupees Ten Thousand only) by way of compensation to first informant injured Makwana Mukeshbhai Thakarshibhai. The amount of compensation shall be deposited by appellant No. 1 in the Trial Court within one week from today, failing which, the amount shall be recoverable as provided u/s 431 of the Code of Criminal Procedure. On the amount being deposited, the same shall be paid to first informant Makwana Mukeshbhai Thakarshibhai after following due procedure by the Trial Court.