

(2019) 03 GUJ CK 0023
In the Gujarat High Court
Case No : R/Criminal Appeal No. 810 Of 2003

Jamu Abdulla Gameti & 4 Other(S)	Vs	APPELLANT
State Of Gujarat		RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307, 324

Citation : (2019) 03 GUJ CK 0023

Hon'ble Judges : R.P.Dholaria, J

Bench : Single Bench

Advocate : Yogesh S Lakhani, Monali Bhatt

Judgement

1. During the course of hearing, it is pointed at the bar that appellant Nos.1 to 4 have died during pendency of this appeal and therefore, appeal qua them is abated vide order dated 28.2.2019 and therefore, the appeal qua appellant No.5 - Habib Jamu Gameti is surviving for consideration.

2. The appellant came to be convicted for the offence punishable under sections 307 and 324 of IPC respectively for a period of three years and one year.

3. Mr.Yogesh Lakhani, learned senior advocate pointed out that the incident in question happened for about 29 years back and allegations are levelled against accused Nos.1 and 2 for giving blow over head of the victim and nothing is clearly revealing so as to connect the present appellant accused with the crime in question. He submitted that no overt act is revealing though the presence of the appellant accused is noted to be at the place of incident. Mr.Lakhani, therefore, submitted that in view of the aforesaid peculiar facts and circumstances of the case and since the prime culprits have been died during pendency of this appeal and that in the interregnum period, nearly 30 years is passed, while maintaining conviction if this Court is kind enough to reduce the sentence to the extent of sentence already undergone, he would not claim clean acquittal.

4. On the other-hand, Ms.Monali Bhatt, learned APP has supported the

judgment rendered by learned trial Court so far as it relates to conviction of the appellant - original accused. She submitted that this is a fit case wherein learned trial Court has considered voluminous evidence in its proper perspective and rightly convicted the accused. She submitted that finding recorded by learned trial Court is based upon the concrete and clinching evidence and therefore, punishment inflicted upon the accused does not call for any interference.

5. This Court has heard Mr.Yogesh Lakhani, learned senior advocate for the appellant - accused and Ms.Bhatt, learned APP for the State.

6. This Court has minutely gone through the Record and Proceedings, evidence of material witnesses and perused the impugned judgment. It can be noticed that though victim - Sarman Vikrambhai received grievous injuries over parietal region as well as other parts of the body and even in pursuance of the order passed by this Court, he remained present before this Court yesterday and his physical condition is yet not improved. Similarly, sole surviving appellant is also present before this Court and he had also received fracture injuries due to the accident and who is stated to be 55 years old.

7. Under the circumstances, upon assessing the source of income and occupation of the appellant, this Court is of the considered opinion to reduce the sentence to the extent of sentence already undergone while increasing fine to Rs.25,000/-.

8. For the reasons recorded above, the appeal succeeds partly. The impugned judgment and order dated 20.6.2003 passed by learned Second Fast Track Judge, Junagadh in Sessions Case No.82 of 1990 is confirmed so far it relates to conviction. The appellant accused is convicted and sentence is imposed to the extent he has already undergone. The appellant accused needs not to surrender before the jail authority for serving the sentence. The appellant is directed to deposit fine of Rs.25,000/- in all within a period of three months before learned trial Court. On deposit of fine by the appellant as aforesaid, the same be handed over to victim Sarman Vikrambhai by way of account payee cheque as the amount of compensation after due identification and verification. In default of payment of fine of Rs.25,000/-, the appellant accused to undergo imprisonment for six months. The case stands closed. Bail bond, if any, stands cancelled. Record & Proceedings, if any, be sent back to the trial Court concerned forthwith.