

(2011) 04 GUJ CK 0166
In the Gujarat High Court
Case No : Criminal Appeal No. 2607 of 2009

Jangubhai Bhotiabhai Rathva

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Arms Act, 1959 — Section 25(1), 40
Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 307, 504

Citation : (2011) 04 GUJ CK 0166

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

Bench : Single Bench

Advocate : Hardik A Dave, for the Appellant; H.L. Jani, LD. Addl. Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellant has preferred the present appeal against the judgment and order of conviction and sentence dated 24th December, 2009 passed by the learned 4th Additional Sessions Judge, Vadodara at Camp Chhotaudaipur, in Sessions Case No. 70 of 2008, whereby the learned Judge has convicted the Appellant-accused for the offence punishable u/s 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of seven years, and also imposed fine of Rs. 1,000/-, and in default of payment of fine, sentenced him to undergo simple imprisonment for a further period of six months. The Appellant has also convicted for the offence punishable u/s 25(1)(a) of the Arms Act and sentenced him to undergo simple imprisonment for a period of six months, and also imposed fine of Rs. 500/-, and in default of payment of fine; sentenced him to undergo simple imprisonment for a further period of one month. However, the Appellant was acquitted from the offence punishable u/s 504 of the Indian Penal Code, Section 40 of the Arms Act and u/s 135 of the Bombay Police Act.

2. It is the case of the prosecution that on 20th May, 2008 at village Zaab, the

complainant and other persons were sitting in open space just opposite to the house of Bhagubhai Bavabhai Rathava. It is the case of the prosecution that at that point of time, the present Appellant and other accused persons came there and abused the complainant and other persons. It is further the case of the prosecution that thereafter the Appellant had come there with gun in his hand and the other two accused persons had come there with stick and sword in their hand and thereby the Appellant fired the arms four times. Because of firing, the complainant and other persons got injured.

3. Therefore, a complaint to the said effect was registered by the complainant with Karali Police Station. Thereafter, as the sufficient evidence found, the accused persons came to be chargesheeted before the Court of Chhotaudaipur. Thereafter, as the case was exclusively triable by the Court of Sessions, the same was transferred to the Court of Sessions.

4. Thereafter, charge came to be framed at Exhibit 4 against the accused persons for the offences punishable under Sections 307, 504 and 114 of the Indian Penal Code and u/s 30 of the Arms Act. Thereafter, as the accused persons pleaded not guilty to the charge framed against them, trial commenced.

5. Thereafter, the prosecution has produced oral as well as documentary evidence on record in support of their case. Prosecution has examined 13 witnesses and also produced 18 documentary evidence on record.

6. Thereafter, after filing closing pursis by the prosecution, u/s 313 of the Code of Criminal Procedure, 1973 further statements of the accused persons were recorded. Neither the accused had examined defence witnesses nor the accused had given any evidence on oath.

7. After hearing both the sides, the learned 4th Additional Sessions Judge, Vadodara at Camp Chhotaudaipur, by his judgment and order of conviction dated 24th December, 2009 passed in Sessions Case No. 70 of 2008, convicted the Appellant as stated above. The learned trial Judge was pleased to acquit the original accused Nos. 2 and 3 from the charges levelled against them.

8. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 24th December, 2009 passed by the learned 4th Additional Sessions Judge, Vadodara at Camp Chhotaudaipur in Sessions Case No. 70 of 2008, the Appellant here-in-above has preferred the present Criminal Appeal before this Hon''ble Court.

9. I have heard Mr. Hardik A. Dave, learned Counsel for the Appellant and Mr. H.L. Jani, learned Additional Public Prosecutor appearing on behalf of the Respondent-State.

10. Mr. Dave has taken me through the evidence of prosecution witnesses and the documentary evidence and submitted that from the evidence produced on record it is established that the prosecution has failed to prove its case beyond reasonable doubt. He has read the oral evidence of medical expert and

contended that this is not the case of Section 307 of the Indian Penal Code. He has also contended that as per the evidence of medical expert, injured persons have received only simple injuries. He has also read the oral evidence of PW No. 9 at Exhibit 42 and also read the oral evidence of panchas and contended that the prosecution has failed to prove their case beyond reasonable doubt. He has contended that the learned trial Judge has committed grave error in convicting the Appellant u/s 307 of the Indian Penal Code. Mr. Dave has also contended that the Appellant is in jail for about three years. He has further contended that looking to the facts of the case as well as evidence produced on record, conviction imposed upon the Appellant is very harsh. He has contended that he is not arguing the matter on merits, but he has arguing the matter for the purpose of quantum. He has also contended that the Appellant is an agriculturist and is old aged person. He was having licence also of the arm, which he had used. He has also contended that the Appellant is behind the bars for sufficient period and looking to the overall facts and circumstances of the case, lenient view is required to be taken in the matter.

11. As against this, Mr. H.L. Jani, learned Additional Public Prosecutor for the Respondent-State has supported the judgment and order of conviction passed by the learned trial Judge. He has contended that looking to the charge framed against the Appellant, order passed by the learned trial Judge is absolutely just and proper. He has also contended that injuries are serious in nature. Injured persons have received injuries on vital parts of body. He has also read the documentary evidence produced on record and contended that learned trial Judge has not committed any error in convicting the Appellant-accused. He, therefore, contended that the present appeal is required to be dismissed.

12. I have gone through papers produced before me and the judgment and order passed by the trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned Counsel for the parties.

13. From the oral evidence of the medical expert as well as evidence of Police Inspector, it is true that prosecution has proved its case beyond reasonable doubt. I find nothing to say that the learned Judge has committed any grave error. I have also perused the submission made by the learned Counsel for the Appellant that the Appellant is behind the bars for almost three years. Looking to the facts and circumstances of the case, I am of the opinion that conviction imposed upon the Appellant is very harsh. I am of the opinion that when the Appellant is behind the bars for almost three years, if the sentence be reduced, same would meet with the ends of justice. Even looking to the submissions advanced by the learned Counsel for the Appellant and circumstances of the case, sentence imposed upon the Appellant is required to be reduced and modified on the ground of sympathy also.

14. Hence, in view of the foregoing reasons, present appeal is partly allowed. The judgment and order of conviction dated 24th December, 2009 passed by the

learned 4th Additional Sessions Judge, Vadodara at Camp Chhotaudaipur, in Sessions Case No. 70 of 2008, is hereby confirmed. However, the judgment and order of conviction dated 24th December, 2009 passed by the learned 4th Additional Sessions Judge, Vadodara at Camp Chhotaudaipur, in Sessions Case No. 70 of 2008 is hereby reduced and modified to the extent that now the Appellant shall have to undergo rigorous imprisonment for a period of five years instead of seven years for the offence punishable u/s 307 of the Indian Penal Code. The rest of the judgment and order dated 24th December, 2009 shall remain unaltered. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.