

(2015) 01 GUJ CK 0003
In the Gujarat High Court
Case No : Criminal Appeal No. 240 of 1995

Laxmansinh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 209, 313
Penal Code, 1860 (IPC) — Section 307, 308, 309, 310, 311

Citation : (2015) 4 CCR 534

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Vijay H. Patel, Advocate, for the Appellant; Monali Bhatt, A.P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

Kaushal Jayendra Thaker, J.—This appeal is directed against the judgment and order of the learned Additional City Sessions Judge, Court No. 7, Ahmedabad dated 22.3.1995 in Sessions Case No. 185 of 1991, whereby the appellant-original accused No. 1 came to be convicted under Section 307 of the Indian Penal Code (for short "IPC") and was directed to suffer rigorous imprisonment for 3 years and 6 months and for the offence under Section 135(1) of the Bombay Police Act, the appellant-original accused No. 1 came to be convicted for simple imprisonment for one month. The brief facts of the case of the prosecution, as set out before the learned Trial Court, read as under:

1.1. A complaint was lodged by the complainant-Chanduji Bababji Thakor being I-C.R. No. 200 of 1991 on 17.4.1991 registered at Madhavpura Police Station, Ahmedabad, wherein on 17.4.1991 at about 2:30 p.m., when the complainant-Chanduji Bababji Thakor was present at his home, the accused came to plastic factory which is in front of the house of the complainant where there was a quarrel between the accused and his nephew viz. Goga Athaji Thakor. Therefore,

the complainant went there to pacify them from doing so and, therefore, because of that the appellant-original accused No. 1 got excited and threatened to see him and thereafter, the appellant-original accused No. 1 left the said place. It is further prosecution case that the complainant had gone towards Dhobhi Ghatt cross roads to pay the light bill and while he was returning from there, the accused had come out from the Gujarat Colony and assaulted him. The appellant-original accused No. 1 had inflicted razer blow on his right cheek and because of that, he received injuries and fallen down from the scooter. Further, the other accused persons had given kick and fists blows and threatened to kill him. Thereafter, a complaint was lodged.

2. After completion of the investigation, the chargesheet was filed before the learned Metropolitan Magistrate Court, Ahmedabad. As the case was exclusively triable by the Court of Sessions, learned Magistrate Court, Ahmedabad under Section 209 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") committed the said case to the Court of learned Additional City Sessions Judge, Court No. 7, Ahmedabad, which was, thereafter, numbered as Sessions Case No. 185 of 1991. Since the appellant-original accused No. 1 did not plead guilty and claimed to be tried, he was tried for the alleged offence.

3. To prove the prosecution case, the prosecution has examined the following witnesses:

4. The prosecution has led the following documentary evidence in support of its case:

5. At the end of the Trial and after recording the statement of the accused under Section 313 of Cr.P.C. and hearing the arguments on behalf of the prosecution and the defence, the learned Additional City Sessions Judge, Ahmedabad convicted the accused of the charges leveled against him. On completion of the trial, the Sessions Court passed the judgment and order convicting the appellant-original accused No. 1.

6. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned Trial Court, the appellant-original accused No. 1 has preferred the present Criminal Appeal.

7. Learned Advocate for the appellant-original accused No. 1 submitted that the learned Trial Judge ought to have considered the evidence of eye-witness PW 4 Devji Kodaji Thakor, who was examined at Exh. 13 and he stated in his statement dated 17.4.1991 that he knew the names of the assailants and had shown the scene of offence. Learned Advocate further submitted that the learned Trial Judge erred in not considering the evidence of complainant, who was injured. The learned Trial Judge erred in not considering the another eye-witness PW 3 Galabji, who was examined at Exh. 12 and has stated that he had shown the scene of offence. Learned Advocate further submitted that the learned Trial Court ought to have considered that as per the FSL Report, the blood was found on the weapon as well as on the clothes of the injured complainant. 20 years have

passed after the so-called incident occurred. The incident occurred in the year 1991. He therefore seeks the mercy of this Court and relies on the decision of the Apex Court the case of Rajput Naranbhai Jethabhai Vs. State of Gujarat, , and requested that this Court may consider the case in light of the said judgment. He has prayed that the conviction under Section 307 of the IPC cannot be sustained in light of the medical evidence. The learned advocate, further, submitted that this Criminal Appeal is required to be allowed.

8. As against that, learned APP for the State supported the judgment and order of the Trial Court submitting that the same was passed after appreciating the evidence adduced on record by the prosecution and hence, no interference is called for with the same at the hands of this Court. She prays the Hon"ble Court to dismiss the present appeal.

9. I have heard the learned Advocate for the appellant-original accused No. 1 and learned APP for the State and perused the material on record with their assistance.

10. Heard the learned Advocates for the parties. The appellant was undertrial prisoner for some time. It appears that the incident occurred out of sudden provocation. The medical evidence shows that injured was not hospitalized but was given O.P.D. Treatment. P.I. Jayendrasinh stated in his deposition that the second report of medical treatment was never produced and accepted this in his evidence cross-examination. The injuries not such that the appellant-accused had tried to commit murder of the injured complainant.

11. Section 307 of IPC reads as under:

"307. Attempt to murder--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts--[When any person offending under this section is under sentence of 1 [imprisonment for life] he may, if hurt is caused, be punished with death]."

Further, Section 323 reads as under:

"323. Punishment for voluntarily causing hurt--Whoever, except in the case provided for by Section 334 , voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

12. Therefore, in the totality of all these and looking to the injuries sustained in the injured, I am of the opinion that the sentence awarded to the appellant is

required to be converted to Section 324 of IPC from Section 307 of IPC.

13. Therefore, the conviction of the appellant-original accused No. 1 is altered from Sections 307 to 324 of IPC. In view of the punishment of imprisonment under Section 324 of IPC, the appellant is ordered to pay a fine of Rs. 10,000/- out of which Rs. 8,000/- would be paid to the original complainant as compensation. The same shall be deposited within six weeks from today failing which the earlier order shall revive. The sentence awarded by the Court below stands altered accordingly. In the result, the appeal is partly allowed. The judgment and order of the Trial Court dated 22.3.1995 stands modified to the aforesaid extent. Bail and bail bonds of the accused, if any, stands discharged. R. & P. be sent back to the concerned Trial Court, forthwith.

Direct service is permitted.