
(2010) 07 GUJ CK 0008
In the Gujarat High Court
Case No : Criminal Appeal No. 232 of 2006

Meghraj Savaisingh Rajpurohit	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 391, 392, 394, 397

Citation : (2010) 07 GUJ CK 0008

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : R.B. Patel and Shirish R. Patel, for the Appellant; L.R. Poojari, APP, for the Respondent

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—The present appeal is directed against the impugned judgment and order rendered in Sessions Case No. 57 of 2005 by the Learned Additional District & Sessions Judge, Gandhinagar dated 14.12.2005 recording conviction of the appellant-accused for the offence u/s 392 read with Section 397 of the Indian Penal Code imposing the sentence of rigorous imprisonment for seven years and fine of Rs. 5,000/-, in default, simple imprisonment for three months.

2. The facts of the case briefly summarized are that on the day of incident, when the complainant was proceeding towards his hostel from college at about 7 O'clock as he was studying Second Years of Engineering in Dhirubhai Ambani College, Gandhinagar, two persons dragged him in the bushes and on the point of knife, he was robbed and snatched away his mobile phone, wrist watch and cash amount of Rs. 600/-. After consulting with his professor as he is outside the State, he lodged complaint for the alleged incident, which came to be registered as C.R. No. I-18/2005 with Pethapur Police Station under Sections 394 and 114

of the Indian Penal Code. On the basis of said complaint, the investigation was started. At the conclusion of investigation, chargesheet came to be filed and, thereafter, the case was committed to the Court of Sessions Judge, where the Learned Sessions Judge framed the charge for the offence under Sections 394, 397 and 114 of the Indian Penal Code and u/s 135 of the Bombay Police Act and, thereafter, proceeded with the trial. After the recording of evidence of the prosecution witnesses was over, the Learned Sessions Judge recorded further statement of the accused person u/s 313 of the Code of Criminal Procedure, 1973. After hearing the learned Public Prosecutor as well as the learned Advocate for the defence, the learned Sessions Judge passed impugned judgment and order and sentenced him as stated above.

3. It is this judgment and order, which has been assailed in the present Appeal on the grounds set out in detail in the memo of the Appeal.

4. However, learned Counsel, Mr. Shirish Patel appearing for the appellant-accused submitted that out of awarded sentence of seven years after considering the remission, he has undergone more than five years and after considering the remission, he would, otherwise, be entitled for the release on 30.10.2010. Learned Counsel, Mr. Patel submitted that the Court below has failed to appreciate the material and evidence on record and has recorded the conviction of the accused for the offence u/s 397 for the robbery of Rs. 600/- and mobile phone. Therefore, he referred to the provisions of Sections 391, 392, 394 and 397 of the Indian Penal Code and submitted that Section 391 of the Indian Penal Code provides as to when the case would be covered as dacoity and when five or more persons conjointly commit or attempt to commit a robbery. He submitted that as stated in this case, admittedly, only two persons were there, who dragged the complainant and snatched away his mobile phone and Rs. 600/-. He, therefore, submitted that in any case, conviction for the offence u/s 397 of the Indian Penal Code could not have been recorded. Learned Counsel submitted that therefore at the most, even if conviction for the offence u/s 394 of the Indian Penal Code regarding robbery is maintained even then he has served substantial sentence. Therefore, considering the facts of the case, the present appeal may be allowed. He submitted that the Court below has committed grave error in appreciating the evidence and not making a distinction between the robbery and dacoity. Therefore, conviction u/s 397 of the Indian Penal Code would not be attracted at all. He submitted that if the offence, for which, at the most the accused is convicted is u/s 394 of the Indian Penal Code then he has served almost substantial substance. Therefore, the present appeal may be allowed as the sentence provided is upto 10 years and he has undergone more than five years.

5. Learned A.P.P., Mr. Poojari resisted the appeal and submitted that the complainant is the student of engineering college, who is from outside the State and in the manner in which he has been robbed with the help of weapon, the conviction is justified though the learned advocate stated that it may be

considered with regard to offence u/s 397 of the Indian Penal Code.

6. In rejoinder, learned Counsel, Mr. Patel submitted that no injury has been caused to the complainant as admittedly stated by the complainant.

7. In view of the rival submission and having perused the material and evidence including the testimony of the complainant, P.W. No. 6, Exh.14 and also other witnesses including the testimony of I.O., P.W. No. 15, Exh.26, it transpires that even if the prosecution case is accepted at its face value, the charge for the offence u/s 397 of the Indian Penal Code cannot be sustained. Section 397 of the Indian Penal Code would not be attracted as rightly submitted by the learned Counsel. Section 391 of the Indian Penal Code provides for dacoity as to when it could be said to be dacoity and in the facts of the present case, admittedly two persons were there. Further, Section 397 of the Indian Penal Code provides that "If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years." Thus, Section 397 of the Indian Penal Code refers to robbery or dacoity and it also refers to the aspect of grievous injury or hurt where punishment provided is not less than seven years considering the gravity of the offence. Though weapon, which is used, is utilized for creating terror in mind of the victim, which may not have actually used or may not have caused injury, however, considering the totality of the facts and circumstances, it could not be termed as dacoity and particularly when the complainant, who was a student passing on the road is said to have robbed of his watch, mobile phone and some amount. It could not be termed as dacoity. The Legislature, also by providing a different section for the two separate set of offences has clearly made a distinction between robbery and dacoity, meaning thereby, two offences are separate and distinct. The offence of dacoity is a graver offence. Therefore, as the appellant-accused has already served the sentence for more than five years as it transpires from the jail remark sheet, he would be completing seven years as on 30.10.2010. Therefore, even if the conviction for the offence u/s 394 of the Indian Penal Code is maintained as it is, the Court is required to consider the conviction for the offence u/s 397 of the Indian Penal Code in background of the facts and material and evidence on record. It is also required to be noted that though it is claimed that the complainant was threatened with knife, the conviction has been recorded for the offence u/s 397 of the Indian Penal Code, charge for the offence u/s 135 of the Bombay Police Act is not established.

8. Therefore, as discussed above referring to the bare perusal of the provisions of law and the definition of Section 397 of the Indian Penal Code, the case would not be covered u/s 397 of the Indian Penal Code and, therefore, the conviction recorded for the offence u/s 397 of the Indian Penal Code cannot be sustained. The accused has been charged for the offence u/s 394 of the Indian Penal Code and, therefore, it appears that the accused, who has been convicted u/s 392 of

the Indian Penal Code for the offence of robbery, is required to be maintained. Therefore, in any case, the conviction u/s 397 of the Indian Penal Code could not have been recorded. Therefore, the present appeal deserves to be allowed partly.

9. In the result, the present appeal stands partly allowed. The impugned judgment and order dated 14.12.2005 rendered in Sessions Case No. 57 of 2005 by the learned Additional District & Sessions Judge, Gandhinagar recording conviction of the accused for the offence u/s 397 read with Section 114 of the Indian Penal Code is hereby quashed and set aside. However, impugned Judgment & Order recording conviction of the appellant-accused for the offence u/s 394 of the Indian Penal Code (though it is stated as Section 392 of the Indian Penal Code) is maintained/confirmed and punishment imposed under this Section is reduced to the sentence already undergone by the appellant-accused. The appellant-accused is in jail, and, hence, he is ordered to be set at liberty forthwith, if not required in any other offence.