
(1993) 02 GUJ CK 0018
In the Gujarat High Court

Mer Ranmal Arjan and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-02-1993

Acts Referred:

Arms Act, 1959 — Section 25(1), 25(1)
Bombay Police Act, 1951 — Section 135(1)
Penal Code, 1860 (IPC) — Section 147, 147, 148, 148, 149

Citation : (1995) 1 GLR 275

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—Since common questions are involved in this group of three matters* they are being disposed of, on joint request, by this common judgment. Initially, a short resume of the material facts giving rise to this group of matters may be narrated.

2. The appellant in Criminal Appeal No. 238 of 1985, Ranmal Arjan, alongwith seven other accused persons, came to be tried in the Sessions Case No. 12 of 1983, by the Additional Sessions Judge, at Porbandar, in Junagadh District, for the alleged offence punishable under Sections 147, 148, 149, 452, 307, 324, 385 and 323 of the Indian Penal Code and u/s 25(1) of the Arms Act and also u/s 135(1) of the Bombay Police Act. In that, the prosecution alleged that, on 17-11-1982, at about 7-30 p.m. in the area near Sutarwada, in the town of Porbandar, all the accused persons came with arms and assaulted the complainant-Mansukh Jamnadas and his brothers, Dhansukh and Laxmidas. Accused No. 1-appellant herein also opened fire from the pistol which did not hit any person. Version of the prosecution was that the attacking party, firstly, demanded an amount of Rs. 50,000 from the complainant. As the said demand was not accepted, the complainant party was attacked.

3. In order to substantiate and fortify the prosecution case, the prosecution "relied on the evidence of 12 prosecution witnesses. The viva voce evidence of

the prosecution witnesses consisted of following 12 witnesses:

P.W. No. Name of the witness Ex. No. 1. Mansukhlal Jamnadas 12 2. Dhansukhlal Jamnadas 24 3. Asgarali Mohmadali 25 4. Laxmidas Jamnadas 34 5. Amrutlal Haridas 35 6. Dineshbhai Tulsidas 36 7. Rameshchandra Premjibhai 37 8. Premji Morarji 39 9. Hirji Lakha 42 10. Mohan Kala 44 11. Arun Shamji 46 12. Premsingh Mahadevsing 47 The prosecution has also relied on documentary evidence to which reference will be made at an appropriate stage hereinafter.

4. On analysis of the evidence on record, the learned Additional Sessions Judge, at Porbandar held accused No. 1, Ranmal Arjan, guilty for the offence punishable u/s 307 of the Indian Penal Code and consequently sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs. 2,250 and, in default, to undergo further rigorous imprisonment for 2 months. The trial Court also held accused No. 1, Ranmal Arjan and accused No. 5, Harbham Karsan, guilty for the offence punishable u/s 385 and sentenced them to undergo rigorous imprisonment for four months. The trial Court directed that both the substantive sentences shall run concurrently.

5. Being aggrieved by the said judgment and order of conviction and sentence, the original accused No. 1, Ranmal Arjan, has filed Criminal Appeal No. 238 of 1985 by invoking the aids of the provisions of Section 374 of the Criminal Procedure Code, 1973 ("Code" for short, hereinafter).

6. Criminal Appeal No. 438 of 1985 filed by the State, against the acquittal recorded by the trial Court in so far as original accused Nos. 2, 3, 4, 6 and 7 were concerned, the said acquittal appeal of the State came to be dismissed at the admission stage, whereas, this Court, considering the facts and circumstances, at the admission stage, was pleased to issue a "suo motu" notice for enhancement of sentence in Criminal Miscellaneous Application No. 659 of 1985.

7. After having examined the facts and circumstances emerging from the evidence of the present case and after having heard the learned Counsel for the appellant and the learned Additional P.P. for the respondent-State, this Court is of clear opinion that the impugned order of conviction and sentence recorded by the learned Additional Sessions Judge, cannot be said to be reasonable and justified in the circumstances.

8. It is very clear from the impugned judgment of the learned Additional Sessions Judge that he has not believed more than 80% of the story prepounded by the prosecution. Originally, seven accused persons were tried, out of whom, the learned Additional Sessions Judge, on evidence, has reached to the conclusion that there is no evidence against accused Nos. 2, 3, 4, 6 and 7. The story of the prosecution in respect of those persons, is, totally, disbelieved by the trial Court.

9. Now the question would arise as to whether the order of conviction and sentence recorded by the learned Additional Sessions Judge against the accused Nos. 1 and 5 for the offence punishable under Sections 307 and 385 of the Indian Penal Code, is just and legal? In order to examine this aspect, it will be necessary to refer to the relevant material circumstances emerging from the record of the present case.

10. First of all, it is not in dispute that accused No. 1, Ranmal Arjan, accused No. 2, Dinesh Arjan and accused No. 5, Harbham Karsan, had sustained serious injuries out of the incident in question. According to the medical evidence on record, accused Nos. 1, 2 and 5 have sustained following serious injuries: Accused No. 1, Ranmal Arjan, sustained the following injuries as per the medical certificate, at Ex. 32:

1. I.W. of 2" x 1/4" on (Lt.) side of scapular region. Skin Deep B/+.
2. I.W. of 1/2" x 1/4" on (Rt) side of back. Skin deep B/+.
3. I.W. of 1/2" x 1/2" on back of neck. Skin deep B/+.
4. Bruise of 2" x 1/4" reddish colour on (Rt) shoulder. Tenderness+.

Accused No. 2 Dinesh Arjan, sustained the following injuries as per the medical certificate, at Ex. 31:

1. I.W. of 1/2" x 1/4" skin deep on back of neck B/+.
2. I.W. of 1/2" x 1/4" skin deep (Rt) shoulder muscle deep B/+.
3. I.W. of 1/2" x 1/4" on base of back (Lt) side B/+ muscle deep.
4. I.W. 1/4" x 1/4" on (Lt) Arm back side skin deep.

Accused No. 5, Harbham Karsan, sustained the following injuries as per the medical certificate, at Ex. 33:

1. I.W. of 1/2" x 1/4" on Back skin deep (Lt) side scapular region.
2. I.W. of 1/4" x 1/4" on back of (Rt) shoulder skin deep B/+.
3. I.W. of 3" x 1/2" skin deep B/+ on top of scalp. No fracture B/+.

11. The prosecution has not been able to explain the injuries on the person of the accused persons. Although non-explanation is not always fatal to the prosecution, the fact of failure to explain is to be taken into account to test the truth of the prosecution story and the veracity of the prosecution witness. For failure to explain the injuries on the person of the accused, following inferences may be drawn:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has not presented the true version;

(2) that the witness who has denied the presence of injuries is lying on a

material point and his version is not reliable; and

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to cast a cloud on the prosecution story.

No doubt, the injuries sustained by the accused Nos. 1, 2 and 5 in the present case are serious in nature. It is only when the injuries sustained are minor and superficial and the evidence is so clear and cogent, so independent and disinterested and that it far outweighs the effect of omission on the part of the prosecution, non-explanation of injury does not affect the prosecution case. So is not the position in the present case.

12. Needless to reiterate that the prosecution is obliged to establish the guilt of the accused beyond shadow of doubt. Any non-explanation of injury on the body of the accused will affect the prosecution case more so when the prosecution evidence is consisted of interested and inimical witnesses.

13. It may also be mentioned that the injuries sustained by the complainant "party are not only less in number but they are also very minor. In fact it may be because of free fight between two groups out of rivalry. When both sides have sustained injuries, and in case like one on hand, the injuries are serious in nature and more in number in so far as the defence party is concerned and the said injuries have remained unexplained, the prosecution version becomes very weak and adverse. In such a factual scenario, it is obligatory on the part of the prosecution to explain the injuries on the person of the accused. Non-explanation of the injuries sustained by the accused persons at the time of occurrence or in the course of the altercation and from the circumstances the Court can draw inference that the version of the prosecution is not clear and true and, therefore, the benefit of doubt could be given to the accused person. In *Lakshmi Singh and Others Vs. State of Bihar*, , which is very relevant to the facts of the present case, the Supreme Court has clearly held that the High Court was in error in brushing aside the serious infirmities in the prosecution case regarding non-explanation of injuries sustained by the accused on unconvincing premises, and the appeal was allowed.

14. Learned Counsel for the appellant has also pointed out number of discrepancies and contradictions, which are not minor in nature. In fact, they are pertaining to the sequence of the offence and even the venue of the offence. The omissions pointed out are also going to the root of the matter. Most of the witnesses are relatives and inimical and only one independent eye witness was examined, who has not supported the prosecution case.

15. Having examined the facts and circumstances emerging from the record of the present case, this Court has no hesitation in holding that the prosecution has failed to establish the material ingredients attracting the rigours of the provisions of Sections 307 and 385 of the Indian Penal Code. With the result, the views adopted and the ultimate conclusion recorded for conviction by the learned

Additional Sessions Judge are required to be interfered with and quashed.

16. Having regard to the facts and circumstances narrated hereinbefore and the aforesaid discussion, the original accused No. 5, who has not preferred any appeal would be also entitled to the benefit of acquittal in the aforesaid circumstances and this proposition is not disputed by both the sides in this appeal.

17. In view of the facts and circumstances, the impugned order of conviction and sentence recorded against the appellant-original accused No. 1, Ranmal Arjan, is quashed and set aside. The amount of fine, if any paid by him, shall be refunded to him after due verification. Appeal is allowed.

18. In view of the fact that the impugned conviction and sentence order under Sections 307 and 385 of the Indian Penal Code are not sustainable, they are quashed. The question of examining enhancement of sentence in Misc. Criminal Application No. 659 of 1985, therefore, would not assume any survival value. The Misc. Criminal Application No. 659 of 1985 is, therefore, dismissed.