

(2023) 09 GUJ CK 0084

In the Gujarat High Court

Case No : R/Criminal Appeal No. 1342, 1405 Of 2004, R/Criminal Revision
Application No. 609, 694 8789 Of 2004

Naranbhai Keshavlal Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 114, 294(b), 307, 323, 324, 506(1)
Bombay Police Act, 1951 — Section 135, 135(1)
Code Of Criminal Procedure, 1973 — Section 320, 320(5), 482

Citation : (2023) 09 GUJ CK 0084

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : P B Khandheria, Bhargav Pandya

Final Decision : Disposed Of

Judgement

Gita Gopi, J

1. The above Criminal Appeals are Cross Appeals arising from a common incident where both the parties have sustained injuries, the offences came to be registered as First Information Report bearing I-C.R. No.511 of 2002 with Naranpura Police Station, Ahmedabad for the offences punishable under Section 323, 324, 294(b), 506(1) of the Indian Penal Code (IPC) and under Section 135 of the Bombay Police (B.P.) Act, and another cross complaint came to be registered as First Information Report bearing I-C.R. No.512 of 2002 with Naranpura Police Station, Ahmedabad for the offences punishable under Sections 307, 324 and 114 of the IPC and under Section 135 of the B.P. Act.

2. The facts of the case suggest that on 23.09.2002 in the evening at about 6.15, there was a verbal altercation relating to parking of motor bike and the scuffle which took place had reached to an extent that one of the accused went into the house and brought a crow bar (Kosh) and gave a blow using the same to the other side. Both the sides sustained injuries in the said incident and

therefore, the above complaints were filed before Police Station.

3. The charge was framed under Sections 307, 324 and 114 of the IPC and under Section 135(1) of the B.P. Act and after the trial against three of them, the learned Additional Sessions Judge, Ahmedabad (Rural), Navrangpura ordered the conviction against the accused No.1 – Naranbhai Keshavlal Patel under Section 324 of the IPC and under Section 135(1) of the B.P. Act and the accused No.2 and 3 were released under benefit of doubt. Against the conviction and sentence, Criminal Appeal No.1342 of 2004 was filed.

4. A Suo Motu notice was issued by the Registrar for enhancement of the sentence making it, to be heard with Criminal Appeal No.1342 of 2004 on the ground that two persons have been injured and one had sustained injury on the vital part of the body with 'kosh' and a strong iron bar was used for causing the injury.

5. Criminal Appeal No.1405 of 2004 had been raised since the accused found the conviction under Section 323 of the IPC where the learned Sessions Judge had ordered for conviction and sentence against Jigishbhai Chandulal Gajjar where the trial was against four persons and the rest of the accused No.2, 3 and 4 were given benefit of doubt for acquittal. The accused No.1 convicted under Section 323 of the IPC was ordered to undergo simple imprisonment for a period of three months and pay a fine of Rs.200/- and in default of payment of fine, was ordered to undergo further simple imprisonment for a period of further seven days, with the benefit of set off.

6. Qua Criminal Appeal No.1342 of 2004, the accused No.1 convicted under Section 324 of the IPC and under Section 135(1) of the B.P. Act, was ordered to undergo simple imprisonment of one year and pay a fine of Rs.500/- and in default of payment of fine, was ordered to undergo simple imprisonment of further three months. Under Section 135 of the B.P. Act, the accused No.1 was ordered to undergo simple imprisonment of four months and pay a fine of Rs.400/- and in default of payment of fine, was ordered to undergo simple imprisonment of further six days. Both the sentences were directed to run concurrently and benefit of set off was also granted.

7. Today when the matters were listed for final hearing, it has been stated by both the learned Advocates appearing on record, Mr. P.B. Kandheria and Mr. Pawan A. Barot that both the accused of the Criminal Appeals are complainants in the inter-se matters, and that the issue had arisen for simple cause of parking of motor bike. The family members of both the accused got involved and had to face trial. The other family members were acquitted by the learned trial Court while the complainant in both the matters came to be convicted. It is further submitted that parties were neighbours and with the intervention of the common friends, relatives and well wishers, a joint meeting was held and the misunderstanding got cleared. The elderly persons of the Society had intervened for arriving at a settlement between the parties to maintain harmony, peace and

healthy personal relationship in future and also for peaceful co-habitation of the society members.

8. The Affidavits of the complainant, in Criminal Appeal No.1342 of 2004 – Jigishbhai Chandubhai Gajjar and the affidavit of the complainant in Criminal Appeal No.1405 of 2004 – Naranbhai Keshavlal Patel are produced on record. Today, both the accused / complainants are present before this Court and confirm the contents of the above Affidavit/s. It is further stated by both the accused that now their grievances have been resolved and they have friendly relations and they repent about a quarrel for a minor cause and since both of them are facing conviction, they have resolved for settlement for maintaining peace, and have gone for amicably settling the dispute, and prayed for compounding the offence.

9. Learned Additional Public Prosecutor Mr. Bhargav Pandya submitted that the parties could have resolved the issues during the trial and after facing the trial and having been awarded conviction, this Court should be slow in considering the settlement. It is further submitted that the ultimate aim of the process of law is to be maintained and the wider interest of justice should prevail.

10. Having heard learned Advocates for the respective parties, perused the records of the case. The initial prosecution against the accused in Sessions Case No.65 of 2003 was under Section 307 of the IPC but the conviction resulted under Section 324 of the IPC, while in Sessions Case No.58 of 2004, the proceedings were under Section 323 of the IPC and the conviction also resulted under the same Section.

11. This Court would like to refer to the decision of the Hon'ble Apex Court in the case of State of Madhya Pradesh v. Laxmi Narayan and Others reported in (2019) 5 SCC 688, wherein the Apex Court had the occasion to consider the issue as to whether an FIR lodged for the offences punishable under sections 307 and 34 IPC could be quashed on the basis of the settlement between the parties. While considering the said issue, the Apex Court observed in para-13 thus:

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under: (i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the noncompoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

(iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

(v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

12. Here in this case, the proceedings were initiated under Section 307 of IPC in Sessions Case No.65 of 2003 but the conviction was under Section 324 of IPC. Hence, the above decision in the case of Laxmi Narayan (supra) would not come in the way, to consider the genuine approach of both the parties to resolve the dispute, where they were neighbours at the relevant time and the issue had arisen on the trivial matter of parking of a vehicle.

13. Section 320(5) of the Code of Criminal Procedure, 1973 (hereinafter referred to in short as 'the Code') provides that when an accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is

committed, or, as the case may be, before which the appeal is to be heard.

14. This Court under provision of sub-section (5) of Section 320 of the Code considers that permission is required to be granted for compounding the offences since the matter had arisen between two neighbours and they have already suffered the brunt of the order of conviction and sentence and now with the intervention of the family friends and society members, they have settled the dispute with an object of maintaining peace and tranquility.

15. In view of the above, the offences are permitted to be compounded and in the result, the judgment of conviction and sentence dated 30.07.2004 passed by the learned Additional Sessions Judge, Navrangpura, Ahmedabad (Rural) in Sessions Case No.65 of 2004 qua the appellant – Naranbhai Keshavlal Patel as also the judgment of conviction and sentence dated 30.07.2004 qua the appellant – Jigishbhai Chandulal Gajjar passed by the learned Additional Sessions Judge, Navrangpura, Ahmedabad (Rural) in Sessions Case No.58 of 2004 are quashed and set aside. The appellants herein are acquitted of all the charges leveled against them.

16. Bail bond, if any, stands cancelled. Record and proceedings, if any, be sent to the concerned Trial Court forthwith.

17. The judgments and orders both dated 30.07.2004 passed by the learned Additional Sessions Judge, Navrangpura, Ahmedabad (Rural) in Sessions Case No.65 of 2004 and Sessions Case No.58 of 2004 are modified to the above extent.

18. Resultantly, the Criminal Revision Application/s pending, also stand disposed of.