

(2010) 09 GUJ CK 0033
In the Gujarat High Court
Case No : Criminal Appeal No. 348 of 2006

Rakeshbhai @ Ashok @ Suresh @ Hariram Sharma	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 34, 394, 411, 412

Citation : (2010) 09 GUJ CK 0033

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

Bench : Single Bench

Advocate : Harnish V. Darji, for the Appellant; H.H. Parikh, APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The appellant original accused No. 2 has filed this Appeal u/s 374 of Cr.P.C. against the Judgment and order of conviction and sentence dated 19.01.2008 passed by the learned Additional Sessions Judge, Fast Track Court, Nadiad, in Sessions Case No. 49 of 2004, whereby the learned Additional Sessions Judge has held the appellant/accused guilty for the offence u/s 328 read with Section 34 of I.P. Code and sentenced him to suffer Rigorous Imprisonment for 5 years with fine of Rs. 5,000/- i/d to further undergo SI for one year, held the appellant/accused guilty for the offence u/s 394 read with Section 34 of I.P. Code and sentenced him to suffer RI for 5 years with fine of Rs. 5,000/- i/d to further undergo SI for one year, held the appellant-accused guilty for the offence u/s 411 of I.P. Code sentenced him to suffer RI for one year with fine of Rs. 1000/- i/d to further undergo SI for 3 months, and also held the appellant-accused guilty for the offence u/s 412 of I.P. Code and sentenced him to undergo RI for 3 years with fine of Rs. 2000/- i/d to further undergo SI for 6 months. The learned Judge has also ordered that all the sentence awarded to the accused shall run concurrently.

2. The brief facts of the case of prosecution are that the complainant was serving

as truck driver. It is alleged that on 30.8.2003 at about 4.30 P.M. the complainant, along with his cleaner, after loading the goods in the Truck bearing No. GJ 1 UU 6494, have proceeded from Ahmedabad to Indor. It is alleged that at about 5.30 PM they reached near Kathlal Char Rasta where they stopped the truck and at that time two persons aged about 25 to 30 years came and as they wanted to go to Balasinor, the complainant agreed to drop them at Balasinor. Both the persons sat in the truck. It is alleged that thereafter, after some time, one person has opened the sweet box which he was having and offered the sweet to the complainant and the cleaner as 'Prasad'. After taking the said sweet the cleaner of the truck felt dizziness. Thereafter, at Balasinor both the persons got down. However, since the cleaner was feeling dizziness, the driver stopped the truck at Janpath Hotel, Sevaliya. Since the cleaner was feeling dizziness, chawkidar of the hotel asked the complainant-driver and the cleaner to take rest. Therefore, the complainant along with the cleaner slept in the cabin of the truck. However, when he woke up, he was on the road near Dakor and he came to know that the truck with the goods were not there and the cleaner was also not found. Thereafter, he went to Sevaliya at Janpath Hotel and inquired about the truck and cleaner. Since they were not found he informed the owner of the truck about the said fact and thereafter he lodged complaint before the Police.

3. Necessary investigation was carried out by the Police. The statements of the complainant and the owner of the truck were recorded. Thereafter, on 2.9.2003 Kamabhai Rabari, owner of shri Khimoi Krupa Parotha & Guest House, Chotila, informed the Police on telephone that Truck No. GJ 1 UU 6494 is lying there since last two days, without any goods in the truck. Thereafter, Police reached there, necessary panchnama was drawn. Thereafter, during the investigation it was found that appellant-accused, with others, are involved in the commission of offence. Some muddamal were also recovered from the accused and offence was registered against them. Thereafter, the identification Parade was held and the accused were identified. Thereafter, after completion of investigation the charge-sheet against the accused came to be submitted before the Court. The learned Additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

4. To prove the case against the accused the prosecution has examined 73 witnesses and also relied upon documentary evidence and at the end of trial, after recording the statement of the accused u/s 313 Cr.P.C., and after hearing the arguments on behalf of the prosecution and the defence, the learned Additional Sessions Judge held the appellant-accused guilty of the offences charged against him and awarded sentence as narrated herein above.

5. Being aggrieved by and dissatisfied with the aforesaid Judgment and order of conviction and sentence the appellant-accused has preferred this Appeal.

6. Heard learned advocate Mr. Darji, appearing on behalf of the appellant and learned APP Mr. H.H. Parikh on behalf of the respondent State. I have gone through the Judgment and order passed by the trial Court. I have also

considered the documents produced on the record of the case.

7. Learned Advocate, appearing on behalf of the appellant/accused, has contended that he is not arguing the matter on merit. However, he has contended that the accused is poor and layman. The appellant/accused has to maintain his family and he is the only earning member in his family. He has contended that the sentence imposed by the learned Additional Sessions Judge is very harsh. He has contended that since last 4 years the appellant/accused is in jail and looking to the facts of the case some mercy is required to be shown and the sentence which the accused has already undergone may be treated as sentence and he may be set at liberty forthwith.

8. Learned APP has supported the Judgment and order passed by the Sessions Court and contended that looking to the seriousness of offence no interference of this Court is called for.

9. I have gone through the Judgment and order passed by the learned Additional Sessions Judge and also gone through the documents produced before me. I have also considered the submissions made by the learned Advocates for the parties.

10. Looking to the facts and circumstances of the case and looking to the fact that since long the appellant/accused is in jail and if the sentence is reduced to the extent that the sentence, already undergone by the appellant/accused, be treated as sentence the same would meet with the ends of justice.

11. Accordingly, this Appeal is partly allowed. The Judgment and order dated 19.01.2006 passed by the learned Additional Sessions Judge, Fast Track Court, Nadiad, in Sessions Case No. 49 of 2004 is confirmed. However, the sentence awarded to the appellant/accused by the Sessions Court is reduced and modified to the extent that the sentence which the appellant/accused has already undergone may be treated as sentence and the appellant/accused be set at liberty forthwith if he is not required to be detained in any other case. Rest of the judgment and order passed by the Sessions Court is hereby confirmed.