

(2011) 07 GUJ CK 0102
In the Gujarat High Court
Case No : Criminal Appeal No. 923 of 2001

Rakeshbhai Zaverbhai Chavda @ Bob/Pappu	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (2011) 07 GUJ CK 0102

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

Bench : Single Bench

Advocate : Jyoti Mehta and H.L. Patel, for the Appellant; H.L. Jani, Id. Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The present appeal, filed u/s 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction and sentence dated 06th December, 2001 passed by the learned Additional Sessions Judge, Bharuch, in Sessions Case No. 134 of 1995, whereby the learned Additional Sessions Judge was pleased to convict the Appellant for the offence punishable u/s 324 of the Indian Penal Code and sentenced him to undergo simple imprisonment for a period of two years. The learned Additional Sessions Judge has acquitted the Appellant from the offence punishable under Sections 147, 148, 149, 307 of the Indian Penal Code as well as from the offence punishable u/s 135 of the Bombay Police Act.

2. The case of the prosecution in brief is that prior to 4-5 days of 06th April, 1995 the complainant had quarreled with the Appellant and therefore, the Appellant threatened to kill the complainant. Thereafter, on 06th April, 1995 at about 21.00 hours in Ranapanch-ni-Waadi, Fatatalav, some persons from complainant's side and some persons from Appellant's side gathered to arrive at

conclusion of the matter and for compromise. Two persons, viz. Sanatbhai Rana and Kalpeshbhai Chauhan, tried to give understanding to both the sides. At that point of time, the Appellant with other co-accused were present there. At that time, accused No. 2 asked as to who is Umesh-complainant, accused No. 1-Appellant by his finger towards the complainant and told that he is Umesh. Therefore, all these persons surrounded by the complainant and at that time, accused No. 1-present Appellant taken out his Rampuri Knife and had give a blow to the complainant. As the complainant turned, he received injuries on his back. The accused No. 1-present Appellant had also given a knife blow to Kalpesh Bhagvanbhai Solanki on his left leg about knee. Thereafter, as the people gathered, accused No. 1 and other persons ran away from that place. Therefore, a complaint to the said effect was lodged before the "B" Division Police Station, Bharuch being I-C.R. No. 42 of 1995.

3. Thereafter, necessary investigating was carried out and panchnama of seen of offence came to be drawn. Thereafter, after completion of investigation, the Investigating Officer had submitted the charge-sheet before the learned Chief Judicial Magistrate, Bharuch; however, the as the case was exclusively triable by the Court of Sessions, the same was transferred to the Sessions Court, Bharuch for further proceedings.

4. Thereafter, charge at Exhibit 15 came to be framed against the accused persons for the offences as mentioned above and read over to the accused persons, to which accused persons did not plead guilty and claimed to be tried.

5. In order to bring home the charges against the accused persons, prosecution has examined in all 13 witnesses and also produced documentary evidence in support of its case.

6. Thereafter, after conclusion of oral as well as documentary evidence on the part of prosecution, further statement of accused persons u/s 313 of the Code of Criminal Procedure, 1973 was recorded wherein the accused not pleaded guilty.

7. After hearing both the sides, the learned Additional Sessions Judge, Bharuch, by his judgment and order of conviction and sentence dated 06th December, 2001, convicted the Appellant as stated above.

8. Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence dated 06th December, 2001, passed by the learned Additional Sessions Judge, Bharuch, the Appellant has preferred the present appeal before this Hon''ble Court.

9. Heard Ms. Jyoti Mehta for H.L. Patel Advocates, learned Counsel for the Appellant and Mr. H.L. Jani, learned Additional Public Prosecutor for the Respondent-State.

10. Ms. Mehta has read charge at Exhibit 15 and argued that looking to the place of offence, which is narrated in the charge, the prosecution has failed to prove the same. She has also read oral evidence of P.W. No. 1-complainant and P.W.

No. 3-injured witness and argued that even from the oral evidence of both these witnesses, prosecution has failed to prove the seen of offence beyond reasonable doubt. She has also read oral evidence of other witnesses, viz. Chaganbhai Vaghela and Shaileshbhai, who are cited as eye-witnesses, and contended that they are concocted witnesses and their presence at the place of offence is not natural. She has also read oral evidence of P.W. No. 9 at Exhibit 51 and P.W. No. 10 at Exhibit 61 and contended that the prosecution has failed to prove the injury beyond reasonable doubt. She has also contended that the learned Additional Sessions Judge has not considered the defence version of the Appellant. She has also contended that the reasons assigned by the learned Additional Sessions Judge is not sufficient and cogent reasons to convict the Appellant. Later on Ms. Mehta, learned Counsel for the Appellant, has contended that she is not arguing the matter on merits, but arguing the matter only for the purpose of quantum. She has further contended that looking to the facts of the case as well as evidence produced on record, conviction imposed upon the Appellant is very harsh. She has also contended that looking to the circumstantial evidence and evidence produced on record, some lenient view is required to be taken in the matter.

11. As against this, Mr. Jani, learned Additional Public Prosecutor for the Respondent-State, has supported the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge. He has contended that looking to the charge framed against the Appellant, order passed by the learned Additional Sessions Judge is absolutely just and proper. Mr. Jani has read complaint at Exhibit 67 and recovery panchnama of muddamal and contended that recovery is proved through oral evidence of Investigating Officer and injured witness. He has read oral evidence of P.W. Nos. 1 and 3 and contended that both these witnesses have explained the whole incident and their evidence is corroborated with the complaint at Exhibit 67. He has also contended that the learned Additional Sessions Judge has taken lenient view and has passed absolutely just and proper order and no interference is required to be called for. He, therefore, contended that the present appeal is required to be dismissed.

12. I have gone through papers produced before me and the judgment and order passed by the Sessions Court. I have also perused the oral as well as documentary evidence led before the Sessions Court and also considered the submissions made by learned Counsel for the respective parties.

13. It appears from the papers produced before me that P.W. Nos. 1 and 3 have narrated the incident in question and it is totally corroborated with the complaint at Exhibit 67. Even medical certificates produced on record suggest the injury received by both these witnesses, which shows that the Appellant has committed the said offence in question. The learned Additional Sessions Judge has rightly convicted the Appellant for the said offence punishable u/s 324 of the Indian Penal Code. I have also considered the submission of Ms. Mehta, learned Counsel for the Appellant, that the Appellant is of the young age and is bread winner of

his family and looking to the offence punishable u/s 324 of the Indian Penal Code, I am of the opinion that the learned Additional Sessions Judge has imposed harsh conviction upon the Appellant. Therefore, looking to the facts of the case, evidence produced on record and circumstantial evidence, I am of the opinion that conviction imposed upon the Appellant is harsh. I am of the opinion that if the sentence imposed upon the Appellant be reduced, same would meet with ends of justice. Even looking to the submissions advanced by the learned Counsel for the Appellant and circumstances of the case, sentence imposed upon the Appellant is required to be reduced and modified on the ground of sympathy also.

14. Hence, in view of the foregoing reasons, present appeal is partly allowed. The impugned judgment and order of conviction dated 06th December, 2001 passed by the learned Additional Sessions Judge, Bharuch, in Sessions Case No. 134 of 1995 is hereby confirmed. However, the judgment and order of sentence dated 06th December, 2001 passed by the learned Additional Sessions Judge, Bharuch, in Sessions Case No. 134 of 1995 is hereby reduced and modified to the extent that now the Appellant shall have to undergo simple imprisonment for a period of one-and-half-year instead of simple imprisonment for a period of two years for the offence punishable u/s 324 of the Indian Penal Code. The Appellant is on bail. His bail bond shall stand cancelled. The Appellant is, therefore, directed to surrender himself before the Jail Authority to undergo remaining sentence, if any, within a period of four weeks from today, failing which the trial Court concerned is directed to issue non-bailable warrant against the Appellant to effect his arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.