

(2010) 12 GUJ CK 0225
In the Gujarat High Court
Case No : Criminal Appeal No. 1050 of 2007

Rathod Gopalji Laxmanji

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 29-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 397

Citation : (2010) 12 GUJ CK 0225

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

Bench : Single Bench

Advocate : Jayshree C. Bhatt, for the Appellant; H.L. Jani, Ld. APP for Opponent 1, for the Respondent

Judgement

Z.K. Saiyed , J.—The present Appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 17.3.2007 passed by the learned Addl. Sessions Judge, Mehsana in Sessions Case No. 159/2006, whereby, the learned Judge has convicted the Appellant u/s 397 of IPC and sentenced to undergo R/I for 7 years and to pay a fine of Rs. 1000/-, in default, to undergo further S/I for six months. The Appellant is also convicted u/s 135 of BP Act and sentenced to undergo S/I for a period of six months and to pay a fine of Rs 100/- in default, to undergo further S/I for seven days. The Appellant is also convicted u/s 142 of BP Act and sentenced to undergo S/I for six months and to pay a fine of Rs. 100/-, in default, to undergo S/I for 7 days, which is impugned in this appeal.

2. The brief facts of the prosecution case is as under:

3. That, on 23.2.2006, at about 11.00am while passing through near the statue of Dr. Ambedkar, at that time, the accused -Appellant who was standing there had called the complainant and said that as he has some personal work and therefore, the complainant has parked his motorcycle on road side and went with accused Appellant in his Maruti Zen car bearing No. GJ-2K-7875 and when they

crossed Bhimnath Petrol Pump on Mehsana-Ahmedabad road, at that time, the accused - Appellant has taken out the knife and looted golden chain and three golden rings and also gave threat.

4. Therefore a complaint came to be filed by the complainant. Thereafter, the police has started investigation and statements of the witnesses were recorded and on completion of the investigation, charge-sheet was filed in the Court of learned Chief Judicial Magistrate, Mehsana. Thereafter, as the case was exclusively triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions, which was given number as Sessions Case No. 159/2006.

5. Thereafter, the charge was framed at Ex. 3 against the Appellant. The Appellant - accused has pleaded not guilty and claimed to be tried.

6. In order to bring the home the charge leveled against the Appellant- accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

7. Thereafter, after examining the witnesses, further statement of the Appellant accused u/s 313 of Code of Criminal Procedure was recorded in which the Appellant-accused has denied the case of the prosecution.

8. After considering the oral as well as documentary evidence and after hearing the parties, learned Judge vide impugned judgment and order dated 17.3.2007 held the Appellant - accused guilty to the charge leveled against him u/s 397 of IPC and u/s 135 and 142 of BP Act and convicted and sentenced the Appellant accused, as stated above.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, Mehsana, the present Appellant has preferred this appeal.

10. Heard Ms. JC Bhatt learned advocate for the Appellant and Mr HL Jani learned APP for the Respondent-State.

11. Ms. Bhatt learned advocate for the Appellant has fairly admitted that she is only arguing the matter on the point of quantum of punishment and not arguing the matter on merits. She has also contended that a very harsh conviction has been imposed upon him by the learned Judge, which is required to be reduced. In that view of the matter, the period of sentence is very harsh and looking to the age of the Appellant, he has undergone the sentence of more than four years. She has further contended that the Appellant is a very poor person and he is the only bread earner member in the family, and therefore, the sentence imposed upon the present Appellant by the learned Judge may be reduced to the sentence as already undergone by the Appellant-accused.

12. On the other side, learned APP Mr HL Jani has read the impugned judgment and order of conviction and sentence passed by the learned Judge and contended

that the impugned judgment and order is required to be confirmed.

13. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness-complainant and also perused the charge framed against the Appellant. Looking to the allegations leveled against the present Appellant, they are very serious in nature, but when sufficient period of sentence is already undergone by the present Appellant, then, I am of the opinion that looking to the poverty of the Appellant, this is a fit case to consider the submissions of the learned advocate for the Appellants. In that view of the matter, when the learned advocate Ms Bhatt appearing for the Appellant is not arguing the matter on merits but arguing the matter on the point of quantum of punishment, I am of the opinion that this is a fit case to reduce the sentence.

14. In the result, this appeal is partly allowed. The impugned judgment and order of conviction dated 17.3.2007 passed in Sessions Case No. 159/2006 by the learned Addl. Sessions Judge, Mehsana convicting the Appellant-accused u/s 397 of IPC and u/s 135 and 142 of BP Act is hereby confirmed. However, the order of sentence sentencing the Appellant-accused to undergo R/I for 7 years for the aforesaid offence u/s 397 of IPC, is hereby modified to the extent that instead the Appellant-accused is hereby sentenced to undergo the period of sentence already undergone. Rest of the impugned judgment and order is confirmed. The Appellant is ordered to be set at liberty forthwith, if he is not required in any other case. R & P to be sent back to the trial Court.