

(2010) 09 GUJ CK 0147
In the Gujarat High Court
Case No : Criminal Appeal No. 1896 of 2004

Satishbhai Punjabhai Chamar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37(1)
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 307

Citation : (2010) 09 GUJ CK 0147

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

Bench : Single Bench

Advocate : Pinakin B. Raval, for the Appellant; H.H. Parikh, Ld. APP, 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 28.4.2004 passed by the learned Assistant Sessions Judge, Mehsana in Sessions Case No. 64/2004, whereby, the learned Judge has convicted the appellant u/s 307 of IPC and u/s 135 and 37(1) of the BP Act and sentenced to undergo imprisonment of 5 years years and to pay a fine of Rs. 500/-, in default, to undergo further S/I for one month, which is impugned in this appeal.

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

3. That on 9.10.2002, the complainant and one witness Umedbhai Hemrajbhai were going on a tractor. The complainant was dropped at the Harijanvas and witness Umedbhai went to take diesel. Therefore, near the house of Thakore community, all the accused persons have intercepted the tractor and abused the said witness and it was also alleged that the present appellant was having dhariya in his hand and he gave a blow on the head of the said witness and accused No. 1 gave stick blow and other two original accused No. 3 and 4 were

also beating with stick and, therefore, the complainant intervened, the accused persons ran away from the place of offence. While leaving the place of offence, the accused persons have also threatened them to kill.

4. Therefore a complaint came to be filed by the complainant before the Kheralu Police Station. The panchnama of the scene of offence place was prepared in the presence of panch witness and the statements of witnesses were recorded and on completion of the investigation, charge-sheet was filed in the Court of learned Judicial Magistrate First Class, Kheralu. 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. 64/2004.

5. Thereafter, the charge was framed at Ex. 1 against the appellant. The appellant - accused has pleaded not guilty and claimed to be tried.

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

7. Thereafter, after examining the witnesses, further statement of the appellant-accused u/s 313 of CrPC 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 28.10.2004 held the appellant - accused guilty to the charge levelled against him u/s 307 of IPC and Section 135 and 37(1) 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 Asstt. Sessions Judge, Mehsana, the present appellant has preferred this appeal.

10. Heard Mr. Pinakin Raval learned advocate for the appellant and Mr. H.H. Parikh learned APP for the respondent-State.

11. Mr. Raval learned advocate for the appellant has stated that the appellant is before this Court and he has obtained the sense of the appellant that he is only arguing the matter on the point of quantum of punishment and not arguing the matter on merits. He has also contended that looking to the age of the present appellant, a very harsh conviction has been imposed upon him by the learned Judge, which is required to be reduced. He has further submitted that the present appellant has already undergone the sentence of three years, three months and fifteen days. He 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 otherside, learned APP Mr. H.H. Parikh 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 levelled 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 Mr. Raval 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 28.10.2004 passed in Sessions Case No. 64/2004 by the learned Assistant Sessions Judge, Mehsana convicting the appellant-accused u/s 307 of IPC and Section 135 and 37(1) of the Bombay Police Act, is hereby confirmed. However, the order of sentence sentencing the appellant-accused to undergo R/I for 5 years for the aforesaid offence u/s 307 of IPC and Section 135 and 37(1) of the Bombay Police Act, 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.