
(2010) 10 GUJ CK 0113
In the Gujarat High Court
Case No : Criminal Appeal No. 870 of 2007

Shukkarbhai Kolubhai Dokiya	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 326, 506(2)

Citation : (2010) 10 GUJ CK 0113

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

Bench : Single Bench

Advocate : Mukesh B. Dave, for the Appellant; H.H. Parikh, Ld. Addl. Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellant has preferred this Appeal against the judgment and order of conviction and sentence dated 21st May 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 2nd Fast Track Court, Valsad, in Sessions Case No. 85 of 2006, whereby the Appellant was convicted u/s 307 of the Indian Penal Code.

2. It is the case of the prosecution that on 13th May 2006 the complainant and his family members were sleep at about 09:00 p.m. That around 00-15 a.m. on 14th May 2006, neighbour of the complainant namely Jasvantiben jashubhai Dokiya, who was dumb, had gone to the place where the complainant was sleeping and woke him up by shaking the complainant. Since she was frightened, was making signs in the manner a dumb person would do and thereby, had indicated signs of some one beating, towards her house. Therefore, the complainant gone to her house along with her. There was no light in the house and only a lamp was lightening. On the bed cousin sister-in-law (cousin brother's wife) of the complainant Shukriben Shukkarbhai Dokiya was sleeping. As Jasvantiben had pointed out finger towards her, when I saw under the light of the lamp, there was a tear would on the stomach of Shukriben and her intestines were out. There were also injury marks on her shoulder and back portion; and

blood stains were found on the bed. It is also the case of the prosecution that when the complainant shook Shukriben, she had told the complainant that it is good that he has come, otherwise brother of the complainant will kill her. Thereafter, the complainant had gone to the house of his cousin's son Bharatbhai Dhedkabhαι and woke him up. Thereafter, I went to wake up Mangalbhai Bhavdubhai Gawli and Rasubhai, son of Shukkarbhai and other persons of street. They all are gathered at Shukriben's house. Thereafter Mangalbhai and Bharatbhai was sent on motorcycle to bring some vehicle to take Shukriben to hospital. At about 05:30 a.m. when Mangalbhai and Bharatbhai brought Jeep of one Jiperbhai Bhoya of village Naddhari, complainant along with other six other persons take Shukriben to Dharampur Government Hospital. At the time when Shukriben brought to the hospital she was conscious and therefore, the persons who brought Shukriben to hospital asked her about the incident. Therefore, Shukriben told that there is ulcer in her husband's hand and her husband occasionally told Shukriben that this ulcer was done by her only, she was eaten me and she was supernatural element. Therefore, husband of Shukriben given knife blow on stomach and also injured Shukriben at shoulder and back portion also.

3. Therefore, a complaint to the said effect was registered with Dharampur Police Station. The Investigating Officer drawn panchnama of seen of offence in the presence of two panchas and muddamal was recovered from the place and the said muddamal was sent to Forensic Science Laboratory. Thereafter, the accused was arrested and taken into custody. Thereafter, the accused person was charge-sheeted before the JMFC, Dharampur.

4. As the case against the Appellant-accused was sessions triable, same was transferred to the District Court, Valsad for further adjudication and disposal.

5. Thereafter below Exhibit 4 charge was framed against the Appellant-accused and as the Appellant-accused pleaded not guilty, and below Exhibit 5 his statement was recorded. Thereafter the trial was conducted before the learned Judge. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence.

6. After hearing both the sides, the learned Additional Sessions Judge and Presiding Officer, 2nd Fast Track Court, Valsad, by his judgment and order of conviction dated 21st May 2007 passed in Sessions Case No. 85 of 2006, convicted the Appellant-accused for the offence punishable u/s 307 of the Indian Penal Code and ordered to suffer rigorous imprisonment for a period of seven years and fine of Rs. 100/-, and in default of payment of fine, ordered to undergo imprisonment for a further period of 15 days. However, the Appellant-accused was acquitted from the offence punishable u/s 506(2) of the Indian Penal Code. It was clarified that the period, which the Appellant has spent in judicial custody, shall be given as a set off.

7. Being aggrieved by and dissatisfied with the said judgment and order of

conviction dated 21st May 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 2nd Fast Track Court, Valsad, the Appellant hereinabove has preferred the present Criminal Appeal before this Hon'ble Court.

8. I have heard Mr. Mukesh Dave, learned Counsel for the Appellant appointed through Legal Aid and Mr.H.H. Parikh, learned Additional Public Prosecutor, appearing on behalf of the respondent-State.

9. Mr. Dave has taken me through the evidence of prosecution witnesses and the documentary evidence and submitted that from the evidence produced on record it is established that the prosecution has failed to prove its case beyond reasonable doubt. He has also contended that looking to the provision of Indian Penal Code, it is the duty of the prosecution to prove the intention of the Appellant, but the the prosecution has miserably failed to prove the same. He has also contended that looking to the injury, recovery and medical evidence, this is a simple case of 326 of the Indian Penal Code. Without appreciating the facts of the case and evidence on record, the learned Judge has erred in convicting the Appellant u/s 307 of the Indian Penal Code. He has also contended that the Appellant is a old aged person of 75 years. He has also contended that the Appellant is behind the bars for sufficient period i.e. more than four years, lenient view is required to be taken in the matter and therefore, the Appellant is required to be set at liberty by reducing the sentence imposed upon him.

10. Heard Mr. H.H. Parikh, learned Additional Public Prosecutor for the respondent-State. He has supported the judgment and order of conviction passed by the learned Judge. He has contended that looking to the charge framed against the Appellant, order passed by the learned Judge is absolutely just and proper. He has also read the documentary evidence produced on record and contended that learned Judge has not committed any error in convicting the Appellant-accused u/s 307 of the Indian Penal Code. He has also contended that the Appellant is involved in the serious offence. He, therefore, contended that the present appeal is required to be dismissed.

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

12. No doubt it is true that the prosecution has proved its case before the learned Judge, but looking to the age of the Appellant, i.e. 75 years, looking to the fact that the Appellant is behind the bars for the last more than four years, I am of the opinion that if the sentence already undergone by the Appellant-convict may be treated as sentence, same would meet with the 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.

13. Hence, in view of the foregoing reasons, present appeal is partly allowed.

The judgment and order of conviction dated 21st May 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 2nd Fast Track Court, Valsad, in Sessions Case No. 85 of 2006, is hereby confirmed. However, the judgment and order of conviction dated 21st May 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 2nd Fast Track Court, Valsad, in Sessions Case No. 85 of 2006 is hereby reduced and modified to the extent of sentence which the Appellant has already undergone. At present the Appellant is on furlough leave and he has to surrender on 14th October 2010 before the Jail Authority. As and when the Appellant surrender himself, he shall be set at liberty forthwith, if he is not required to be detained in any other case. The rest of the judgment and order of conviction dated 21st May 2007 shall remain unaltered. Bail bond, if any, shall stand discharged. Record and Proceedings, if any, be sent back to the trial Court, forthwith.