

(2015) 04 GUJ CK 0047
In the Gujarat High Court

Case No : Criminal Appeal Nos. 336, 337, 338, 339 and 340 of 2007, 1079 of 2008 and 2033 of 2010

State of Gujarat

APPELLANT

Vs

Aadam

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Arms Act, 1959 — Section 25(1)(b)(a), 27
Penal Code, 1860 (IPC) — Section 114, 394, 397

Citation : (2015) 04 GUJ CK 0047

Hon'ble Judges : G.R. Udhwani, J.; Anant S. Dave, J.

Bench : Division Bench

Advocate : J.K. Shah, A.P.P., for the Appellant

Judgement

Anant S. Dave, J.—This group of appeals arises out of the judgement and order dated 11.12.2006 passed by the learned Additional District and Sessions Judge, Dhragandhra in Sessions Case Nos. 18 of 2006, 16 of 2006 and 19 of 2006.

2. Criminal Appeal Nos. 336 of 2007 and 340 of 2007 has been preferred by the State of Gujarat for enhancement of sentence awarded to accused Aadam @ Javed Aamad Siddikbhai Sandhi (original accused No. 1 in Sessions Case No. 18 of 2006) and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki (original accused No. 1 of Sessions Case No. 16 of 2006) passed vide the impugned judgement dated 11.12.2006.

3. Criminal Appeal Nos. 337 of 2007, 338 of 2007 and 339 of 2007 has been preferred by the State of Gujarat against the order of acquittal passed vide the impugned judgement dated 11.12.2006.

4. Criminal Appeal Nos. 1079 of 2008 and 2033 of 2010 has been preferred by the accused Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki (original accused No. 1 of Sessions Case No. 16 of 2006) and Aadam @ Javed Aamad Siddikbhai Sandhi (original accused No. 1 in Sessions Case No. 18 of 2006)

against the conviction recorded against them and sentence imposed vide the impugned judgement and order dated 11.12.2006.

5. The learned Judge convicted Aadam @Javed @ Aamad Siddikbhai Sandhi, original accused No. 1 of Sessions Case No. 18 of 2006 (respondent in Criminal Appeal No. 336 of 2007) and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki, original accused No. 1 of Session Case No. 16 of 2006 (respondent in Criminal Appeal No. 340 of 2007) for the offences under Sections 394 read with Section 114 of IPC and ordered to suffer R.I. of 10 years and fine of Rs. 10,000/- in default further to undergo simple imprisonment of one year whereas acquitted for the other charges.

6. The learned Judge except accused Aadam @Javed @ Aamad Siddikbhai Sandhi and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki, all other accused persons of Sessions Case No. 16/2006, 18/2006 and 19/2006 were acquitted for the offences under Sections 394, 397, 114 of Indian Penal Code as well as Section 25(1)(b)(a) and 27 of Arms Act.

7. That facts in short giving rise to the present appeals are as under:

7.1. The case of the prosecution is that on the date of incident i.e. on 10.11.2004 at about 12.30 hours at noon, complainant Bharatbhai Umedbhai Joshi and employees of State Bank of Saurashtra, Govindbhai Sangrambhai Rabari, an employee of Indian Railway, Halvad went to deposit cash worth Rs. 14,50,388/- in State Bank of Saurashtra, Halvad and while going towards Bank, the complainant was having this cash in his cotton bag and it was kept on carrier of the cycle. It is further the case of prosecution that at about 12.30 hours, when aforementioned persons came to the State Bank of Saurashtra, Halvad, one black coloured motor bike came from behind with two pillion riders. That said two accused persons intercepted complainant and other persons with a view to commit robbery of cash of Rs. 14,50,388/- and one of them fired from country made Tamancha in air with a view to create fear in the mind of complainant and others. It is further the case of prosecution that there after, the accused persons had asked for cotton bag containing cash and started giving kick and fist blows to the points-man Shri Govindbhai. As a result of this assault, Govindbhai Sangrambhai Rabari, who was accompanying had fallen down and thereafter complainant had tried to remove cotton bag containing cash from the carrier of the cycle and making an attempt to run away with said bag. In the meantime, respondents-accused gave push to the complainant and as a result of which complainant had also fallen down and thereafter accused snatched away bag containing cash of Rs. 14,50,388/-. While trying to run away from the place of incident, the respondent accused had also fired from his country made Tamancha. Thus, in all respondent accused had committed offence under Sections 394, 397, 114 of Indian Penal Code as well as Sections 25(1)(b)(a) of Arms Act. Therefore, aforesaid complaint was filed before Halvad Police Station, which was registered at C.R.No. I-87 of 2004.

7.2. The police recorded the statement of witnesses and after thorough investigation as there was a sufficient evidence connecting the respondents for crime produced in this case, charge sheet was filed in the Court of learned Judicial Magistrate, First Class, Halvad.

7.3. It is further the case of prosecution that at the relevant point of time, accused Aamad @ Javed @ Aamad Siddikbhai, Divyarajsinh @ Lakki Rajsinh Bihari and Kailassing s/o Gurumukhsing Shikh Sardarji Sikligar were absconding and therefore, three different charge-sheet were submitted and accordingly three different criminal cases were registered against respondents which were committed to the court of learned Additional Sessions Judge, Dhrangadhra and numbered as Sessions Case No. 16/2006, 18/2006 and 19/2006.

8. Before trial Court, charges were read over to the respondents, wherein the respondents have not pleaded guilty to the charges levelled against them and claimed to be tried. Before trial Court the prosecution has examined complainant, panch witnesses and police witnesses who were supporting to the case of prosecution. The prosecution has also relied upon the documentary evidence in support of oral evidence laid by prosecution before the trial Court.

9. The appellant submits that all the Sessions Cases arises out of C.R.No. I-87/2004 registered before Halvad Police Station, and therefore, all the three cases namely Sessions Case Nos. 16/2006, 18/2006 and 19/2006 were tried together and consolidated evidence of all the Sessions Case and recorded in Sessions Case No. 16/2006.

10. The prosecution has produced the following documents to prove its case and the same have been adduced by us:

11. Mr. J.K. Shah, learned APP appearing for the appellant-State of Gujarat in Criminal Appeal Nos. 336/2007 and 340/2007 for enhancement of sentence submits that the learned Judge has failed to appreciate the fact that while trying to commit offence of robbery, the respondents-accused (Aadam @ Javed Aamad Siddikbhai Sandhi of Sessions Case No.18/2006 and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki of Sessions Case No. 16/2006) has taken away the public money, which is very heinous. He further submits that the trial Judge failed to appreciate the sentence provided under Section 394 of IPC which provides that it shall be punishable with imprisonment for a life or with RI for a term, which may extent to 10 years and shall also be liable to fine for such crime. Learned APP therefore submits that the reasons given by learned Judge while awarding lesser sentence upon the accused are general in nature and therefore, same do not require to be accepted while awarding lesser sentence. In fact a strict view ought to have been taken by learned Judge while imposing sentence upon the accused.

11.1. Mr. J.K. Shah, learned APP contends that the punishment imposed upon accused (Aadam @ Javed Aamad Siddikbhai Sandhi of Sessions Case No. 18/2006 and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki of Sessions

Case No. 16/2006) is on a lower side and considering the gravity of offence, this Court may enhance the sentence imposed upon them.

12. Mr. J.K. Shah, learned APP appearing for the appellant-State of Gujarat in Criminal Appeal Nos. 337/2007, 338/2007 and 339/2007 submits that the learned Judge has not properly appreciated the oral as well as documentary evidence and thereby committed error by acquitting respondents (Divyarajsinh @ Lakkiraj Narendrasinh Rathod, original accused No. 2 of Sessions Case No.18/2006, Kailashsing s/o Gurumukhsing Shikh Sardarji Sikligar, original accused of Sessions Case No. 19/2006, Ibrahimbhai Kasambhai Miyana, Dharabhai Karnabhai Chu.Koli, Rajeshbhai Jivanbhai Rathod, Hasambhai Kasambhai Miyana, original accused Nos. 2, 3, 4 and 5 of Sessions Case No. 16/2006). He further states that the learned Judge has failed to appreciate the facts of the case that prosecution has proved its case beyond reasonable doubt by way of evidence of complainant Bharatbhai, injured Govindbhai and Prabhubhai Laxmanbhai Patel. It is the evidence of all these witnesses, which gets corroborated to the incident in question, inspite of the fact, the learned Judge observed minor omissions and contradictions committed error in acquitting the respondents. He further states that in all prosecution has examined 31 witnesses and out of which injured complainant Bharatbhai Umedbhai Joshi has been examined at Exh. 18, Govindbhai Sangrambhai at Exh.36, employee of the railway and eye witness Prabhudas Laxmanbhai Patel at Exh.37, Sardul Bhagwan at Exh.42, Sushilkumar Ramkripal, Railway Station Master, Halvad at Exh.47 and Mahipal Bharatsing Tank at Exh. 49. All these prosecution witnesses fully supported the prosecution case. Inspite of the above fact, learned Judge committed error in acquitting respondents.

13. Mr. Harshit Tolia and Mr. Pratik Barot, learned advocates appearing for the appellants-accused in Criminal Appeal No. 1079/2008 and Criminal Appeal No. 2033/2010 (Aadam @ Javed Aamad Siddikbhai Sandhi of Sessions Case No. 18/2006 and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki of Sessions Case No. 16/2006) jointly submits that looking to the papers it is clear that the witnesses have not clearly stated that whether the firearm is a pistol or revolver and the said firearm is not recovered. Even the deposition of the doctor do not inspire confidence so as to convict the appellants (Aadam @ Javed Aamad Siddikbhai Sandhi of Sessions Case No. 18/2006 and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki of Sessions Case No. 16/2006) for the offence in question. They further state that the statement of complainant is not corroborating the evidence on record and the statement of witnesses are having material contradictions regarding usage of weapon by the appellants-accused. Even T.I. Parade is defective and to be discarded. It is stated that the learned Judge has mainly discussed the statement of witnesses and has not given reasoning for the same and therefore, the impugned judgement and order dated 11.12.2006 passed by the Additional Sessions and District Judge, Dhragandhra is illegal convicting appellants and contrary to evidence and has resulted into miscarriage of justice to the appellants and is required to be quashed and set

aside.

14. In view of submissions made by learned advocates appearing for the parties and all appeals are heard together with prayers therein namely, setting aside conviction, setting aside acquittal and enhancement of sentence, evidence of injured PW"s and medical officer are necessary to be looked into.

14.1. Bharatbhai Umedbhai Joshi, PW-1 Exh.18, a booking cum luggage clerk working at Railway Station, Halvad stated about procedure to be followed of depositing cash amount with State Bank of Saurashtra, Halvad Branch in view of strategic location of Halvad which is surrounded by salt deposits and traders depositing such cash amount with railway authority. On the day of incident he along with points-man Shri Govindbhai Sangrambhai Rabari had gone at State Bank of Saurashtra, Halvad Branch on bicycle, a bag containing cash of RS.14,50,388/- was placed and suddenly they were chased by two persons on a motorbike from behind and stopped the two wheeler in front of them and fired in the air. That reluctance on his part resulted into scuffle and once again firing had taken place. The complainant was given a push and was injured by butt of revolver. Similar treatment was given to pointsman Govindbhai Sangrambhai Rabari. He further states that he had taken treatment at Government Hospital, Halvad and thereafter at Dhragandhra and later on shifted to Railway Station at Sabarmati, Ahmedabad. In detail, he has described presence of accused and further in T.I. parade identified before Executive Magistrate and Mamlatdar and confirmed in his testimony.

14.2. That another injured eye witness Govindbhai Sangrambhai Rabari PW-15, Exh.36 and Prabhudas Laxmanbhai Patel PW-16 Exh.37 also narrates the very incident in the manner what is described by PW-1 and they were also injured by blunt substance and became unconscious thereafter. In his cross-examination he denies any irregularities in T.I. parade and identifies the accused in the Court. That, other eye witness Prabhudas Laxmanbhai Patel PW-16 Exh.37, a customer who had gone along with his friend Anilkumar Trambaklal Raval at State Bank of Saurashtra for encashing the cheque and while coming out of the bank had seen scuffle between four persons and noticed firing by the accused. The above witness was also threatened and noticed accused escaping on motorbike. In cross-examination the above PW confirms procedure followed in T.I. parade and identifies the accused in the Court.

15. In continuation of appreciation of evidence of injured eye witnesses including complainant and other eye witnesses with documentary evidence of case papers, submissions made by learned advocates appearing for the parties, it is true that main accused namely, Aadam @ Javed Aamad Siddikbhai Sandhi, Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki and Divyarajsinh @ Lakkiraj Narendrasinh Rathod were arrested by way of transfer warrant issued by learned Magistrate of Halvad. That upon information received from Jamnagar "B" Division police station Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki was arrested on 9.5.2005 and his T.I. parade was held on 11.5.2005 after following

due procedure by Mamlatdar and Executive Magistrate and thereafter demonstration panchnama of scene of offence was drawn on 14.5.2005. Likewise, Aadam @ Javed Aamad Siddikbhai Sandhi was brought on 10.9.2005 by way of transfer warrant from Rajkot upon a message received on 29.8.2005 and demonstration panchnama was drawn on 12.9.2005 and T.I. parade was held on 17.9.2005. Both the above accused were identified and even later on in the Court also by eye witnesses including injured eye witnesses. Likewise, Divyarajsinh @ Lakkiraj Narendrasinh Rathod was brought by way of transfer warrant from Chotta Udaipur on 5.9.2005.

16. As per description of persons committing crime as registered and in view of intelligence information, the accused came to be arrested. The prosecution could succeed in establishing guilt of the accused by examining Bharat Joshi, the complainant PW-1 Exh.18 who was having injury on elbow having injury mark of 1/1/0.5 cm as per injury certificate at Exh.58 and deposed by Dr. Ashwin Ramniklal Aadroja PW 28 Exh.54 who was Medical Officer at Halvad Government Hospital. Likewise, serious injuries on parietal region on a person named Govindbhai Sangrambhai Rabari with measurement of 6.2 cm was treated by the very Doctor and later on shifted to Morbi Civil Hospital having injury certificate at Exh.56 came to be confirmed in testimony with possibility of such injury by blunt substance including butt of the revolver.

16.1. Bharatbhai Umedbhai Joshi and Govindbhai Sangrambhai Rabari injured eye witnesses and an employee of Indian Railway, both deposed about manner in which crime was committed and also identified the accused at two stages namely before Mamlatdar and Executive Magistrate, Halvad and also in the Court. Apart from both the above eye witnesses, two other independent eye witnesses namely Prabhudas Laxmanbhai Patel PW-17 Exh.37 and Anilkumar Trambaklal Raval who were coming out of the Bank, at the scene of offence and Govindbhai and Bharatbhai being assaulted by two accused persons, who also identified them in due course. The Mamlatdar and Executive Magistrate namely, Shardul Hira Bhagvanbhai PW-20 Exh.42 confirmed procedure of T.I.Parade in accordance with law, for which, no major lacuna appears if considered in juxtaposition to testimonies of injured eye witnesses and other eye witnesses of identifying accused persons. Even, depositing cash amount of Rs. 14 lakhs by salt trader, Allarakha Yakubbhai Dhachi with Railway's has come on record.

16.2. One more circumstance which was proved substantially of prosecution was recovery of amount of Rs. 1,60,000/- out of total amount of crime proceed and was given by accused to one Mahipal Tank PW-25 to a person named Narpatsingh Bapu of Shehra, District: Panchmahal to multiply the amount as promised and out of Rs. 2,00,000 of which Rs. 1,60,000/- was recovered for which affidavit was executed. Though denial appears on the part of PW-25 about name of the persons from whom he has received but he had confirmed having given such amount to Narpatsingh. The fact of involvement of two main accused namely Aadam @ Javed Aamad Siddikbhai Sandhi and Mahendra @ Tako Salim

Narayanbhai Lavjibhai Valmiki in various similar offences and their arrest after three months, however, is well supported by identification parade, statements of injured eye witnesses including complainant and other eye witnesses namely, customer of the bank, injuries of injured so deposed by medical officer of Halvad Government Hospital and in the testimonies of Mamlatdar and Executive Magistrate of Halvad for appreciating such evidence, learned trial Judge has committed no error, though the manner in which the judgement is written need to be taken care on administrative side.

17. In absence of any major contradictions, discrepancies or improvements in testimonies of witnesses resulting into creating doubt over prosecution case as highly improbable or unbelievable, it cannot be said that prosecution has failed to prove its case beyond reasonable doubt, warranting interference by the appellate court as prayed for by respective appellants in their appeals against setting aside conviction, acquittal or for even enhancement.

17.1. We are neither persuaded by arguments of learned APP to enhance sentence awarded to two accused of Criminal Appeal No. 336 of 2007 and Criminal Appeal No. 340 of 2007 filed by the State against Aadam @ Javed Aamad Siddikbhai Sandhi and Mahendra @ Tako Salim Narayanbhai Lavjibhai Valmiki nor for setting aside acquittal of the accused and also by submissions made by learned counsel for the appellants-convict to set aside the conviction and sentence for 10 years rigorous imprisonment and fine of Rs. 10,000 and in default one year S.I., and accordingly, all criminal appeals arising out of judgement and order dated 11.12.2006 in Sessions Case Nos. 16/2006, 18/2006 and 19/2006 by learned Additional Sessions Judge, Dhragandhra are hereby rejected.

18. R and P to be sent back to the trial court forthwith.