
(2011) 01 GUJ CK 0038
In the Gujarat High Court
Case No : Criminal Appeal No. 864 of 2004

State of Gujarat	Vs	APPELLANT
Ashwin @ Akkubhai Gamanbhai Nayaka		RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 377
Penal Code, 1860 (IPC) — Section 307, 324

Citation : (2011) 01 GUJ CK 0038

Hon'ble Judges : Bankim N. Mehta, J

Bench : Single Bench

Advocate : Kodekar, app, for the Appellant; Notice Served, for the Respondent

Final Decision : Dismissed

Judgement

Bankim N. Mehta, J.—The Appellant State has preferred this appeal u/s 377 of the Code of Criminal Procedure, 1973, against the sentence imposed by learned Additional Sessions Judge, Fast Track Court, Navsari, in Sessions Case No. 54 of 2003 on 11.2.2004 convicting the Respondent accused for the offence u/s 324 of the Indian Penal Code and sentencing him to undergo simple imprisonment of six months and to pay fine of Rs. 1,000/-and in default thereof, to undergo imprisonment for 15 days.

2. According to the prosecution case, Sanjay Ratilal Patel lodged a complaint before Navsari Town Police Station on 9.8.2003 alleging that on 8.8.2003 at about 9 O'clock at night his brother Deepak went out. As Deepak did not return, he went in search of Deepak. He went towards Makhia Panch Wadi. When he reached behind Ramji Mandir, he saw Respondent accused Ashwin @ Akkubhai Gamanbhai Naika catching hold of his brother Deepak and asking as to why he was demanding money. Therefore, he tried to intervene. At that time, Respondent accused Ashwin @ Akkubhai Gamanbhai Naika took out a big knife and caused two blows on back of Deepak and also gave fist blow on face of Deepak. Respondent accused Ashwin @ Akkubhai Gamanbhai Naika ran away as

people started to assemble. Thereafter, Deepak was taken to Navsari Civil Hospital for treatment. Hence complaint was filed against Respondent accused Ashwin @ Akkubhai Gamanbhai Naika.

3. On the basis of the complaint, offence u/s 307 of the Indian Penal Code was registered by Navsari Town Police Station as I -C.R. No. 100 of 2003 and investigation was started. During the course of investigation, statements of the witnesses were recorded. Panchnama of scene of offence was drawn. Weapon used in commission of the offence was discovered at the instance of the Respondent accused and panchnama in that regard was drawn. Injury certificate of the victim was obtained and muddamal was recovered. On completion of investigation, chargesheet was filed in the Court of learned Chief Judicial Magistrate, Navsari for the aforesaid offence. As the offence was triable by Court of Sessions, the case was committed to the Sessions Court, Navsari and it was registered as Sessions Case No. 54 of 2003.

4. Learned Additional Sessions Judge, Fast Track Court, Navsari, framed charge Exh. 1 for the offence punishable u/s 307 of the Indian Penal Code against the Respondent accused. The charge was read over and explained to the Respondent accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence. On completion of recording of evidence, further statement of the Respondent accused was recorded u/s 313 of the Code of Criminal Procedure, 1973. The Respondent accused in his further statement denied having committed the offence and stated that a false case has been filed against him. After hearing learned A.P.P. and learned advocate for the Respondent accused, the Court convicted the Respondent accused u/s 324 of the Indian Penal Code and imposed the sentence as mentioned hereinabove. The State has preferred this appeal challenging the quantum of sentence imposed upon the Respondent accused.

5. The record indicates that during the course of trial the Respondent accused was in jail. It appears that the Respondent accused has not challenged the judgment and order of conviction and sentence passed against him.

6. I have heard learned APP Mr. Kodekar for the Appellant State. Notice is served to the Respondent accused but has neither appeared nor engaged advocate to defend him.

7. Learned APP Mr. Kodekar has mainly submitted that looking to the injuries sustained by the injured witness, learned trial Judge committed error in convicting the Respondent accused for the offence u/s 324 of the Indian Penal Code. He has also submitted that the evidence clearly indicates that the injuries were caused with intention to cause injuries and the Respondent accused had knowledge that the injuries would result into serious consequences. He has also submitted that the injuries were caused on vital part of the body and hence the sentence imposed by learned trial Judge is illegal, improper and bad in law. Hence it is required to be enhanced.

8. It appears from the impugned judgment that there was a free fight between the Respondent accused and injured Deepak. It is alleged that two injuries with knife were inflicted on the injured. In order to prove injuries the prosecution has examined PW-13 Dr Ajay kumar Jankiprasad Sharma Exh. 36 and produced injury certificate Exh. 37. It appears from the evidence of the Doctor that the injured had sustained the injuries as per the medical Certificate Exh. 37 and as described in his deposition at Exh. 36.

9. According to the Doctor, the injuries were possible by sharp portion of knife and injuries of forehead were possible by fist blows. Injury Certificate Exh. 37 also indicates the injuries sustained by the injured. In view of this evidence, it emerges that knife was used for causing injuries. It also appears from the impugned judgment that muddamal knife was discovered at the instance of the Respondent accused. Therefore, the prosecution has proved beyond reasonable doubt that knife was used in causing the injuries.

10. It also appears from the complaint Exh. 28 that there was a free fight between the Respondent accused and injured Deepak with regard to money transaction. The evidence of PW-7 Deepak Ratilal Patel Exh. 26, injured, indicates that he demanded money from the Respondent accused but the Respondent accused refused to give and thereafter the incident occurred. It also appears from the prosecution evidence that the accused also sustained injuries in the incident and was treated by the Doctor. The prosecution has examined PW-3 Dr Omprakash Prasad Exh. 14 and produced medical certificate Exh. 15 which indicates that the Respondent accused also sustained injuries in the incident and was treated by the Doctor. This evidence clearly indicates that as the injured demanded money from the Respondent accused, the incident ensued. Therefore, the assault was not premeditated.

11. The prosecution has not been able to produce any evidence to indicate that the Respondent accused inflicted injuries with intention or knowledge that such injuries would cause in death. Therefore, learned trial Judge was justified in recording conviction u/s 324 of the Indian Penal Code.

12. As regards the quantum of sentence, learned trial Judge after hearing the Respondent accused passed the order of sentence. It appears that learned trial Judge has considered the fact that the Respondent accused is a poor person. Learned APP Mr. Kodekar has not been able to satisfy this Court that the sentence imposed u/s 324 of the Indian Penal Code is disproportionate to the gravity of the offence. Therefore, no interference is required in the quantum of sentence imposed by learned trial Judge. Hence the appeal is required to be dismissed.

13. In the result, the appeal fails and stands dismissed.