

**(2016) 03 GUJ CK 0084**

**In the Gujarat High Court**

**Case No :** Criminal Appeal Nos. 522 and 335 of 2011

State of Gujarat

APPELLANT

Vs

Babubhai Jadavbhai

RESPONDENT

**Date of Decision :** 11-03-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 307, Section 323, Section 324, Section 504

**Citation :** (2016) 03 GUJ CK 0084

**Hon'ble Judges :** M.R. Shah and Mohinder Pal, JJ.

**Bench :** Division Bench

**Advocate :** K.P. Raval, APP, for the Appellant; Madansingh O. Barod, Advocate, for the Respondent

**Final Decision :** Partly Allowed

## **Judgement**

M.R. Shah, J.—1. As both these appeals arise out of the impugned judgment and order passed by the learned Additional Sessions Judge, Amreli (hereinafter referred to as "the learned trial court") in Sessions Case No. 34 of 2005 dated 3/2/2011, one preferred by the original accused No. 2 challenging his conviction for the offence under section 307 of Indian Penal Code and another by the State for enhancement of the sentence imposed by the learned trial court imposed while convicting the original accused No. 2 for the offence under section 307 of the Indian Penal Code and sentencing him to undergo 3 years" S.I. with fine of Rs. 5000/- and in default, to undergo further 1 month"s S.I., both these appeals are decided and disposed of by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned trial court in Sessions Case No. 34 of 2005, by which the learned trial court has convicted the original accused No. 2 for the offence under section 307 of Indian Penal Code and has sentenced 3 years" SI with fine of Rs. 5000/- and in default, to undergo further 1 month"s S.I., original accused No. 2

has preferred Criminal Appeal No. 335 of 2011.

2.1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned trial court insofar as imposing sentence as aforesaid, the State has preferred Criminal Appeal No. 522 of 2011 for enhancement of the sentence imposed by the learned trial court while convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code.

3. The case of the prosecution, in nutshell, is as under:--

"The complainant Anilbhai Bhanubhai Vala lodged First Information Report being CR No. I-5 of 2005 before Savarkundala City Police Station for the offences punishable under sections 147, 148, 323, 324, 307, 504 read with section 149 of Indian Penal Code inter-alia alleging that on 8/1/2005 at about 8.00 hours in the morning, at the area of Ganeshvadi situated at Savarkundala, District Amreli, accused persons formed an unlawful assembly by assembling each other became member of said unlawful assembly and in furtherance of their criminal intention, they attacked on complainant and witnesses by holding deadly weapons in their hands, intentionally caused simple hurt and hurt to them, abused them in public and also tried to commit murder. Therefore, the complainant lodged the aforesaid First Information Report."

3.1. The First Information Report was investigated by PSI, Savarkundala Town Police Station - Mr. Naranbhai Karshanbhai Chanchiya and thereafter by CIP Mr. Rameshchandra Nimavat. The investigating officer recorded statements of the concerned witnesses; he also prepared panchnama of the place of incident and he also collected medical evidences. At this stage, it is required to be noted that in the said incident four persons from the side of the accused herein also sustained injuries and even a cross complaint was given on behalf of the accused herein which, as such, was prior in time.

3.2. Thereafter at the conclusion of the investigation, the investigating officer filed Chargesheet against the accused persons for the offences punishable under sections 147, 148, 323, 324, 307, 504 read with section 149 of Indian Penal Code in the court of learned Judicial Magistrate (First Class), Savarkundala. The chargesheet was filed against three persons including one Chhagan Jadav.

3.3. As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate (First Class) committed the case to the Sessions Court, Amreli which was transferred to the court of learned Additional Sessions Judge, Amreli which was numbered as Sessions Case No. 34 of 2005. Even cross case was also transferred to the court of learned Additional Sessions Judge, Amreli which was numbered as Sessions Case No. 33 of 2005.

3.4. The learned trial court framed charge against the accused for the offences punishable under sections 147, 148, 323, 324, 307, 504 read with section 149 of Indian Penal Code. Even charge was also framed by the learned trial court against three persons. However, during the pendency of the trial, original

accused No. 1 Chhaganbhai Jadavbhai died and therefore, the trial qua him came to be abated and therefore, the trial proceeded against remaining two accused persons.

3.5. The accused pleaded not guilty and therefore, they came to be tried by the learned trial court for the aforesaid offences.

3.6. To prove the case against the accused persons, the prosecution examined the following witnesses:--

3.7. Through the aforesaid witnesses, the prosecution brought on record the following documentary evidences:--

3.8. That after closing pursish submitted by the prosecution, Further Statement of the accused came to be recorded under section 313 of the Code of Criminal Procedure.

3.9. The accused filed their separate Further Statement at Ex. Nos. 6 to 16. All of them stated they are falsely implicated in the offence. It was their specific case that the complainant and others went to the place of the accused with deadly weapons and caused injuries on original accused - Champaben, Sangitaben and Daxaben. They have also further stated that in fact, there was no injury caused by any of the accused on the injured eye witness Bhanubhai, however, in the scuffle when he fell down on the iron gate, he sustained injuries and the injury was not caused by weapon as alleged to have been used by the accused more particularly by the original accused No. 2 Babubhai Jadavbhai.

3.10. That at the conclusion of trial, by the impugned judgment and order, the learned trial court has held the original accused No. 2 guilty for the offence under section 307 of Indian Penal Code and has held the original accused No. 4 - Champaben for the offence under section 323 of Indian Penal Code. That while convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code the learned trial court has imposed sentence of 3 years" S.I. with fine of Rs. 5000 and in default to undergo further S.I. for 1 month.

3.11. So far the original accused No. 4 - Champaben who was convicted for the offence under section 323 of Indian Penal Code is concerned, the learned trial court has given benefit of probation.

3.12. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the original accused No. 2 who has been convicted for the offence under section 307 of Indian Penal Code has preferred Criminal Appeal No. 335 of 2011 and the State has preferred Criminal Appeal No. 522 of 2011 for enhancement of the sentence imposed by the learned trial court imposed while convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code.

4. Mr. Barod, learned advocate has appeared on behalf of the original accused No. 2 in both the appeals. Mr. K.P. Raval, learned Additional Public Prosecutor has

appeared on behalf of the State also in both the appeals.

4.1. Mr. Barod, learned advocate appearing on behalf of the original accused No. 2 has vehemently submitted that the learned trial court has materially erred in convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code. It is vehemently submitted that the learned trial court has not properly appreciated the facts and defence of the accused that as such the complainant and others came to the place of the accused with deadly weapons and they started quarreling and started beating the family members of the accused. It is submitted that therefore, when the complainant and others came to the place of the original accused No. 2 with deadly weapons and they were the aggressors and even from the side of the accused, accused No. 3 sustained injuries and when it was free fight, the learned trial court has materially erred in convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code. It is further submitted that even looking to the injuries sustained by the injured eye witness Bhanubhai, the learned trial court ought not to have convicted the original accused No. 2 for the offence under section 307 of Indian Penal Code.

By making above submissions it is requested to quash and set aside the impugned judgment and order of conviction.

4.2. Criminal Appeal No. 335 of 2011 is vehemently opposed by Mr. K.P. Raval, learned Additional Public Prosecutor appearing on behalf of the State. It is submitted that considering the fact that in fact the offence of the incident is not in dispute. It is submitted that it has come on record that after the first incident/quarrel which had taken place at the Madhav Pan House, the dispute was settled and thereafter when the complainant and other persons were returning to their house, at that time, original accused No. 2 and others attacked with deadly weapons on the complainant - injured eye witness and the family members. It is submitted that it has come on record that it was the only way available with the complainant and others to go to their house and therefore, it cannot be said that the complainant and others went to the place of the original accused No. 2 and attacked them with deadly weapons. It is submitted that even the original accused No. 2 gave blow on the vital part of the body of Bhanubhai i.e. on the head/scull with iron rod and there was extradural haemorrhage in bilateral high fronto parietal region with mild midline shift to right side and multiple linear fractures through right frontal bone and bilateral parietal bone. It is submitted that therefore, the learned trial court has not committed any error in convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code. It is submitted that on the contrary, the learned trial court has shown undue sympathy and/or is more liberal while imposing sentence. It is submitted that even the defence on behalf of the accused that the injured witness Bhanubhai sustained injury on scull not because of the iron rod inflicted by the original accused No. 2 but he sustained injury as he fell down on the iron gate, has not been established and proved by the defence. It is submitted that on the

contrary it has come on record that on the iron gate no blood stains were found. It is submitted that, therefore, as such the original accused more particularly original accused No. 2 came with false story. It is submitted that in any case, the accused have failed to prove their defence so stated by them in their Further Statements.

4.3. Mr. Raval, learned Additional Public Prosecutor appearing on behalf of the State has further submitted that considering the facts and circumstances of the case and on appreciation of evidence, when the learned trial court, by giving cogent reasons and on appreciation of evidence, has convicted the original accused No. 2 for the offence under section 307 of Indian Penal Code, the same is not required to be interfered with by this Court in exercise of appellate jurisdiction.

4.4. Now, so far as criminal Appeal No. 522 of 2011 preferred by the State for enhancement of the sentence imposed by the learned trial court imposed while convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code is concerned, Mr. Raval, learned Additional Public Prosecutor appearing on behalf of the State has vehemently submitted that while imposing the sentence, the learned trial court has not properly appreciated the gravity of the offences and injuries caused by the original accused No. 2 on injured eye witness Bhanubhai which was on the vital part of the body i.e. on the skull. It is submitted that in fact, the injured eye witness Bhanubhai sustained multiple fractures and there was extradural haemorrhage. As per the Certificate of C.T. Scan of injured eye witness Bhanubhai Ratnabhai Vala, the injured had extradural haemorrhage in bilateral high fronto parietal region with midline shift to right side and multiple linear fractures through right frontal bone and bilateral parietal bone.

4.5. Mr. Raval, learned Additional Public Prosecutor appearing on behalf of the State has further submitted that as per the settled proposition of law, the sentence must be just, adequate and commensurate with the gravity of the offence. It is submitted that therefore, even while imposing the sentence of 3 years" the learned trial court has passed an order to undergo simple imprisonment only and not awarded rigorous imprisonment. It is submitted that therefore, the learned trial court has not exercised the discretion judiciously while imposing the punishment/sentence.

By making above submissions it is requested to allow Criminal Appeal No. 522 of 2011 and impose maximum punishment provided under section 307 of Indian Penal Code.

4.6. Criminal Appeal No. 522 of 2011 is vehemently opposed by Mr. Barot, learned advocate appearing on behalf of the original accused No. 2. It is submitted that in the facts and circumstances of the case and more particularly when there was cross case and even on the side of the accused, three ladies sustained injuries and even on the side of the complainant also in the cross case

five persons were tried and as it is a case of free fight, in the facts and circumstances of the case, imposing punishment of three years cannot be said to be inadequate, which calls for interference of this Court in exercise of appellate jurisdiction. However, he fairly conceded and has stated at the bar that if the conviction of 3 years" S.I. is converted into 3 years" R.I. In that case, he has no objection. Therefore, he has requested to pass appropriate order to the aforesaid extent.

5. Heard the learned advocates appearing on behalf of the respective parties at length. Perused the impugned judgment and order passed by the learned trial court and the reasoning given by the learned trial court. We have reappreciated the entire evidence on record.

5.1. At the outset, it is required to be noted that the original accused No. 2 has been convicted for the offence under section 307 of Indian Penal Code having caused serious injuries on the injured eye witness Bhanubhai who has been examined as PW No. 6, Rambhaben Bachubhai who has been examined as PW No. 7.

5.2. That by the impugned judgment and order the learned trial court has also convicted the original accused No. 4 for the offence under section 323 of Indian Penal Code, however, in the facts and circumstances of the case the learned trial court has given her benefit of probation.

5.3. At this stage it is required to be noted and it is brought to the notice of this Court that on the complainant side in a cross case being Sessions Case No. 33 of 2005, five persons were convicted for the offence under section 323 of Indian Penal Code and all of them are given benefit of probation.

5.4. Thus, in view of the cross cases/complaints, the incident is not in dispute. It has come on record and it is established from the deposition of the injured eye witness Bhanubhai PW No. 6 who has been examined at Ex. 79, that original accused No. 2 Babubhai Jadavbhai inflicted blow on his head/scull by iron rod on the injured eye witness Bhanubhai. It was the case on behalf of the accused that he sustained the said injury on the scull as he fell down on the iron gate. However, the same is not supported by any evidence. No blood stains are found on the iron gate. On the contrary, blood stains are found on the iron rod.

5.5. Considering the aforesaid facts and circumstances, it cannot be said that the learned trial court has committed any error in convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code more particularly when the injury caused by the original accused No. 2 on the injured eye witness Bhanubhai was on the vital part of the body i.e. on the scull and he sustained multiple fracture and he had extradural haemorrhage in bilateral high fronto parietal region with mild midline shift to right side and multiple linear fractures through right frontal bone and bilateral parietal bone.

5.6. It was also the case on behalf of the original accused that as such the

complainant and others went to the place of the original accused No. 2 with deadly weapons and they started quarreling and they first attacked. However, the aforesaid is also not proved.

5.7. From the evidence on record, it appears that first there was a dispute at Madhav Pan House where the parents reached, however, the said dispute was settled, however, while returning, the incident had taken place near the house of the original accused No. 2. It has also come on record that the place of dispute was the only way available to the complainant to go to his house and therefore, while returning to their house, the incident has taken place near the house of the original accused No. 2. Under the circumstances, when the incident is not in dispute and it is proved that the accused No. 2 caused injury on the injured eye witness Bhanubhai by iron rod that too on the scull, and when the learned trial court has convicted the learned trial court for the offence under section 307 of Indian Penal Code, the same is not required to be interfered with by this Court.

5.8. We concur with the findings recorded by the learned trial court while convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code.

5.9. Now, so far as Criminal Appeal No. 522 of 2011 preferred by the State for enhancement of the sentence imposed by the learned trial court imposed while convicting the original accused No. 2 for the offence under section 307 of Indian Penal Code is concerned, considering the overall facts and circumstances of the case and conviction of persons from the complainant side in the cross case, imposition of 3 years sentence cannot be said to be adequate sentence/punishment. However, it is true that in the incident the injured eye witness Bhanubhai sustained injury on the head which was caused by the accused No. 2 with iron rod. However, it is required to be noted that it is a case of free fight between two groups and as stated above from the side of the accused, three ladies also sustained injuries. As stated above all the persons from the complainant side, who were accused in the cross case filed by the side of the accused herein have been convicted for the offence under section 323 of Indian Penal Code, however are given benefit of probation. Even in the present case, accused No. 4 Champaben who has been held guilty for the offence under section 323 of Indian Penal Code is also given benefit of probation. Under the circumstances, imposing 3 years punishment/sentence cannot be said to be so adequate which calls for interference of this Court in exercise of appellate jurisdiction. Therefore, the impugned judgment and order of sentence is required to be interfered with and modified to the extent that the 3 years" Simple Imprisonment is required to be converted into 3 years Rigorous Imprisonment, with the fine and default punishment imposed by the learned trial court.

6. In view of the above and for the reasons stated above, Criminal appeal No. 335 of 2011 preferred by the original accused No. 2 is hereby dismissed. The impugned judgment and order dated 03/02/2011 passed by the Additional Sessions Judge, Amreli in Sessions Case No. 34 of 2005 convicting the original

accused No. 2 for the offence punishable under section 307 of Indian Penal Code, is hereby confirmed. It is reported that the original accused No. 2 is on bail. On his conviction being confirmed, his Bail Bonds stands cancelled.

Criminal appeal No. 522 of 2011 of 2011 preferred by the State for enhancement of the sentence is hereby partly allowed to the above extent and instead of sentence of 3 years" Simple Imprisonment, as imposed by the learned trial court, the original accused No. 2 is ordered to undergo 3 years" Rigorous Imprisonment with fine of Rs. 5000/- and in default, to undergo further 1 month"s Simple Imprisonment.

Now, the Original Accused No. 2 be taken into custody forthwith to undergo the remaining sentence as per this judgment and order forthwith.

Registry is directed to return R&P of the case to the learned trial court forthwith.