
(2015) 09 GUJ CK 0062

In the Gujarat High Court

Case No : Criminal Appeal Nos. 429 and 508 of 2012

State of Gujarat

APPELLANT

Vs

Dharmendra

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 294(b), 307, 326
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10), 3(2)(5)

Citation : (2015) 09 GUJ CK 0062

Hon'ble Judges : K.S. Jhaveri, J;G.B. Shah, J

Bench : Division Bench

Advocate : L.R. Pujari, A.P.P., for the Appellant

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J—Heard learned Additional Public Prosecutor Mr. L.R. Pujari for the State and learned Advocate Mr. Chetan B. Raval for the accused.

2. Criminal Appeal No. 429/2012 is the Appeal for Enhancement preferred by the Appellant - State being aggrieved by the judgment and order dated 22.02.2012 of the learned Additional Sessions Judge, A"bad (Rural), Mirzapur in Special Atrocity Case No. 37/2008 whereby the respondent herein was convicted and sentenced as under:-

Under Section 307 of the Indian Penal Code

Rigorous imprisonment for 7 years and fine of Rs. 1,500/=, in default of payment of fine, simple imprisonment for 10 days.

Under Section 294(B) of the Indian Penal Code

Simple imprisonment for one month

Criminal Appeal No. 508/2012 is the Appeal preferred by the respondent - accused herein challenging his conviction as stated above.

3. The case in brief and the incident which occurred on 13.05.2008 are as under:-

3.1. At about 9.30 hours at Village Iyava, Indiranagar Vasahat, near the house of PW. 3 Bhikhabhai Khodabhai, while complainant - Dineshbhai Khemabhai and the prosecution witness No. 1 Babubhai Lavjibhai were having a discussion about playing of drums, it is alleged that the accused came at the place of the offence, asked the complainant and the prosecution witness as to why they were quarreling and thereafter, started giving filthy abuses relating to the caste of the complainant. It is further the case of the prosecution that the complainant requested the accused not to give filthy abuses. However, the accused got excited, ran towards his house, brought a gupti and inflicted repeatedly three blows on the complainant, in which one was given on the upper portion of the abdomen, second on the right side and third on the left side. Therefore, the complainant lodged the aforesaid complaint before the PSI, Sanand Police Station vide I-C.R. No. 148/2008 for the offences punishable under Sections 307, 326, 294(b) of the Indian Penal Code and under Sections 3(1)(10) and 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter, the police started investigation. After completion of investigation, the chargesheet was filed against the accused for the above cited offence and as the case was triable by Court of Sessions, the learned Magistrate committed the case to the Sessions Court at Ahmedabad (Rural) where it was numbered as Special Atrocity Case No. 37/2008. Thereafter charge was framed against the accused.

The accused pleaded not guilty to the charge and claimed to be tried.

3.2. At the time of the trial, the prosecution examined the following witnesses:-

The prosecution also relied upon various documentary evidence, some of them are as under:-

3.3. At the conclusion of the trial, the learned Additional Sessions Judge, A"bad (Rural), Mirzapur passed the order as above.

4. With regard to Criminal Appeal No. 429/2012, learned Additional Public Prosecutor Mr. L.R. Pujari has submitted that the order of sentence passed by the learned Judge for the offences punishable under Sections 307 and 294(b) of the Indian Penal Code is too lenient. The learned Judge has erred in imposing the simple imprisonment as stated above. It is further submitted that the learned Judge ought to have appreciated the evidence of the prosecution witnesses, i.e. Babubhai Lavjibhai at Exhibit 23 and Baluben Bhikhabhai at Exhibit 24. Both these witnesses have stated in detail about the entire incident and also the repeated blows of gupti inflicted by the accused on the vital parts of the body. It is also submitted that the learned Judge has failed to appreciate that young age and poor condition of the accused as well as not having any criminal antecedents are not the grounds for imposing lesser sentence. Considering the above, it is submitted that this is a fit case which requires the interference of this Court and the judgment and order of the learned Additional Sessions Judge, A"bad (Rural),

Mirzapur requires to be upturned.

5. Qua Criminal Appeal No. 508/2012, it is submitted by learned Advocate Mr. Chetan B. Raval appearing for the accused that the learned Judge has failed in considering the necessary ingredients of Section 307 of the Indian Penal Code and also to consider the fact that there was no attempt of murder. Even the complainant was quarreling near the house of the accused and thereafter, the incident in question is alleged to have occurred. This clearly shows that there was no intention to kill the complainant. It is further submitted that the panchas i.e. Divansinh Pavansinh Vaghela at Exhibit 7 as also Ganpatsinh Umedsinh Vaghela at Exhibit 9 and Baldevbhai Lakhaji Thakore at Exhibit 11 have also turned hostile,. It is further submitted that there was no previous enmity and there was no intention on part of the accused to kill the injured complainant. Considering the above, it is submitted that the order of the learned Additional Sessions Judge, A''bad (Rural), Mirzapur requires interference by this Court.

6. We have heard learned Advocates appearing for the respective parties and perused the records of the case, more particularly the Medical Report furnished by PW. 10 Dr. Sanathan Krishnakant Vaishnav, the Medical Officer of Civil Hospital, Ahmedabad whose deposition is recorded at Exhibit 29, in respect of complainant - Dineshbhai Khemabhai. Relevant translated portion of the Report reads as under:

"1) A cavity deep stab wound of 2.5 cm x 5 cm in sixth rib on right side of chest which was 1 cm away towards right side and 10 cm away towards left side from right at below part. It was leading downwards inside and it was oblique. Outer upper angle was sharp and inside below angle was blunt. Margins of the wound were sharp and clear. It was bleeding.

2) A muscle deep vertical slab wound of 2.5 cm x 5 cm in sixth rib on left side of chest which was 6 cm away from left nipple and 10 cm away from midline towards left side. It was leading downwards. Its upper angle was sharp. Margins of the wound were sharp and clear.

3) A muscle deep punctured wound of 0.5 cm x 0.5 cm in fourth rib on left side of chest which was 6 cm away towards right side from left nipple and 3 cm in left side from midline. It was bleeding.

I transferred this patient to the unit of Dr. M.M. Anchaliya, Surgeon. The patient was admitted there and on conducting sonography of abdomen and chest free fluid was found in left side cavity of chest. The said sonography was performed by Dr. J.M. Patel, tutor, Radiology. On getting x-ray of chest, free gas was found below diaphragm muscle. Its reporting was made by K.N. Patel, Tutor, Radiology. Operation was performed on this patient; wherein, following injuries were found in exploratory laparotomy.

1) There were two holes of 0.5 cm x 0.5 cm each in front side and back side wall of stomach.

2) There was a hole in the initial part of intestine in jejunum which was 5 cm away from duodenum junction.

3) There was a stab wound in the body part of pancreas."

7. It is also relevant to reproduce Section 307 of the Indian Penal Code which reads as follows:-

"307. Attempt to murder. -Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned."

8. It is not in dispute that the injuries were inflicted on the vital parts of the body of complainant - Dineshbhai Khemabhai and which has been detailed as above. In addition, there is the evidence of various witnesses especially Babubhai Lavjibhai at Exhibit 23 and Baluben Bhikhabhai at Exhibit 24, who have supported the case of the prosecution in toto. The learned Additional Sessions Judge, A"bad (Rural), Mirzapur has, in his judgment and order, given very cogent and convincing grounds for arriving at such a conclusion by convicting the accused and imposed as aforesaid and this Court is in complete agreement with the reasons given and findings recorded by the trial Court and adopting the said reasons as well as the reasons aforesaid, in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court.

9. In the aforesaid circumstances, the judgment and order dated 22.02.2012 of the learned Additional Sessions Judge, A"bad (Rural), Mirzapur in Special Atrocity Case No. 37/2008 is confirmed.

10. Both the Appeals are devoid of merits and stands dismissed. Bail and bail bond, if any, stands cancelled. Record and proceedings, if any, be sent to the concerned Trial Court forthwith. If the accused has not undergone the entire sentence, he is directed to surrender before the concerned jail authority within eight (8) weeks from today.