

(2011) 03 GUJ CK 0039

In the Gujarat High Court

Case No : Criminal Appeal No. 214 of 1995 and Criminal Revision Application No. 98 of 1995

State of Gujarat

APPELLANT

Vs

Girishkumar Kanaiyalal Raval

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 307, 324, 34, 364

Citation : (2011) 03 GUJ CK 0039

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

Bench : Single Bench

Advocate : R.C. Kodekar, Addl. Public prosecutor, for the Appellant; Notice Served, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—Since the present appeals are arising from the judgment and order of conviction and sentence dated 30th December, 1994 passed by the learned Additional Sessions Judge, Mehsana, appeals are decided by the present common judgment.

2. The parties have preferred the present appeals for enhancement of sentence dated 30th December 1994 passed by the learned Additional Sessions Judge, Mehsana, in Sessions Case No. 79 of 1994.

3. The case of the prosecution is that on 15th November, 1993 at 23.00 hours at village Patan, the original accused and two other absconding accused persons abducted Rakesh and Kamlesh on account of their previous enmity with an intention to kill them and they took them in a rickshaw and they have been given threat to them. It is also the case of the prosecution that thereafter, they took them to different places and caused them injuries on different part of bodies. Therefore, a complaint to the said effect is filed with Patan City Police Station. One of the accused was caught on the said place as the Police Van passed

through the said road. Thereafter, panchnama of seen of offence was drawn, statements of witnesses were recorded and also seized the clothes of the complainant. Even muddamal weapon was also recovered and the muddamal were sent for analysis to the Forensic Science Laboratory.

4. After completion of the investigation the charge-sheet was filed against the accused for the offence punishable under Sections 304 and 307 read with Section 34 of the Indian Penal Code before the Judicial Magistrate First Class, Patan. Thereafter as the case was exclusively triable by the Court of Sessions, the case was transferred to the Sessions Court, Mehsana.

5. Thereafter the trial was conducted before the learned trial Judge. To prove the case of the prosecution, prosecution has examined witnesses and also produced oral as well as documentary evidence in support of the prosecution case.

6. After hearing both the sides, the learned Additional Sessions Judge, Mehsana, has passed the judgment and order of conviction and sentence dated 30th December, 1994, in Sessions Case No. 79 of 1994, whereby the learned Judge was pleased to convict the Respondent u/s 364 of the Indian Penal Code read with Section 34 and ordered to undergo rigorous imprisonment for a period of 18 months and also imposed fine of Rs. 500/-, and in default of payment of fine, ordered to undergo simple imprisonment for a further period of three months. The Respondent is also held guilty for the offence punishable u/s 324 of the Indian Penal Code read with Section 34 and ordered to undergo simple imprisonment for a period of 18 months.

7. Being aggrieved by and dissatisfied with the said order of conviction and sentence dated 30th December 1994, the Appellant-State has preferred the present Criminal Appeal for enhancement of the sentence awarded to the Respondent-original accused.

8. Heard Mr. R.C. Kodekar, learned Additional Public Prosecutor for the Appellant-State.

9. Mr. Kodekar has contended that the order passed by the learned trial Judge is not just and proper and is contrary to law and evidence on record. He has contended that without appreciating the documentary evidence produced on record of the case, the learned trial Judge has passed the order. He has also contended that the learned trial Judge has not properly appreciating the gravity of the offence committed by the Respondent-accused. He has also contended that u/s 364 of the Indian Penal Code, maximum sentence provided under the law is of life or 10 years of imprisonment whereas the learned trial Judge has imposed sentence of only 18 months. The learned trial Judge has not considered the gravity of the offence. The learned trial Judge has ought to have considered that 14 injuries were caused to Kamlesh. The learned trial Judge has without appreciating the facts of the case and evidence on record, taken lenient view in the matter, which is not just and proper. He has also contended that there are no reasons to impose lesser punishment. He, therefore, contended that looking to

the facts of the case and provisions of law, this is a fit case to enhance the sentence imposed upon the Respondent-accused.

10. 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 advanced by learned Counsel. It appears from the papers that prosecution has failed to prove the case beyond reasonable doubt against the Respondent-accused with regard to intention on the part of the Respondent-accused to cause particular injury and the said injury was not accidental or unintentional or that other kind of injury was not intended and further that the injury was sufficient to cause death in the ordinary course of nature. It also appears that the prosecution has failed to establish that the Respondent-accused has breached the Notification of "Hathiyarbandhi" issued by the District Magistrate. Even the prosecution has failed to produce on record the Notification of "Hathiyarbandhi" issued by the District Magistrate. It also appears that the Respondent-accused is the only earning member of the family.

11. In view of above observations, I have not found any substance in the present appeals to enhance the sentence imposed upon the Respondent-accused. Hence, the present appeals, i.e. Criminal Appeal No. 214 of 1995 and Criminal Revision Application No. 98 of 1995, are dismissed. The judgment and order of conviction and sentence dated 30th December 1994 passed by the learned Additional Sessions Judge, Mehsana, in Sessions Case No. 79 of 1994 is confirmed. Record and Proceedings, if any, be sent back to the concerned trial Court concerned, forthwith.