

(2015) 12 GUJ CK 0024

In the Gujarat High Court

Case No : Criminal Appeal Nos. 319 and 320 of 2010

State of Gujarat

APPELLANT

Vs

Jayeshbhai Dahyabhai Solanki and Others

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 313, 377, 378(1)(3)

Penal Code, 1860 (IPC) — Section 114, 118, 323, 325, 334

Citation : (2015) 12 GUJ CK 0024

Hon'ble Judges : M.R. Shah and Z.K. Saiyed, JJ.

Bench : Division Bench

Advocate : K.P. Raval, APP, for the Appellant; P.H. Buch, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Z.K. Saiyed, J.—The Criminal Appeal No. 319 of 2010 for enhancement has been filed by the appellant - State under Section 377 of the Criminal Procedure Code and Criminal Appeal No. 320 of 2010 for acquittal has been filed by the appellant - State under Section 378(1)(3) of the Criminal Procedure Code against the Judgment and order dated 12.11.2009 rendered by the learned Additional Sessions Judge, Fast Track Court No. 1, Gandhinagar, in Sessions Case No. 2 of 2008. The said case was registered against the present respondents original accused for the offence under Sections 363, 364, 325, 118, 504, 506(2) read with Section 114 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2. According to the prosecution case, complainant Urmilaben Purshottambhai Parmar is residing in Plot No. 13/2, Sector 14 and her husband is retired government servant. It is further case of the prosecution that marriage of elder son Mitesh took place with one Pragna Dinkar Vaghela by way of love marriage and he was staying at Kenya and presently he is in India. The second son of

complainant viz. Ronak Rajput is studying in Standard XII and daughter Sonal is married with one Vikramsinh Prabhatsinh Rathod and she is staying with her husband.

3. According to the complainant, on 28.1.2007 at about 8:00 hours at night accused Nos. 1 to 3 came to the house of complainant and accused Nos. 4 and 5 were standing on road with Metador. The accused Nos. 1 and 3 told the complainant to show house of Pragna Dinkar Vaghela and accordingly complainant requested his son Ronak and his friend Rashmi Chavda to go with accused persons in Metador to show house of Pragna Dinkar Vaghela. Thereafter till late night Ronak and Rashmi Chavda did not return and accordingly complainant informed her husband. Thereafter, at about 11: 30 hours at night Rashmi Chavda came back and informed complainant that accused persons had taken them in Metador and driven it towards Ahmedabad Airport, where they dropped him and told to go to Gandhinagar by giving Rs. 50/-. It is further case of the prosecution that accused persons are staying at Polson Dairy, Anand and they have administered threat to release Ronak against custody of elder son Mitesh as well as demanded Rs. 2 lacs, otherwise they will cause death of Ronak. Therefore, complainant went to lodge complaint before Police Station but complaint was not accepted by the police. In the meanwhile, several telephone calls from accused persons were received by son-in-law of the complainant Vikramsinh in which accused persons were giving filthy abuses as well as administering threat to cause death and, therefore, on 29.1.2007 complainant gave direct complaint before Judicial Magistrate First Class, Gandhinagar, whereby learned Magistrate was pleased to issue inquiry under Section 156(3) of the Criminal Procedure Code.

4. On the basis of complaint, investigation was carried out and statements of several witnesses were recorded. During the course of investigation, accused persons were arrested and, ultimately, charge-sheet came to be filed against them in the Court of learned Magistrate. As the case was sessions triable the same was committed to the Court of Sessions.

5. Thereafter, charge came to be framed and explained to the accused persons, to which the accused persons pleaded not guilty and claimed to be tried.

6. In order to bring home the charges against the accused persons, prosecution has examined following witnesses:--

prosecution has produced following documentary evidence in support of its case:--

7. Thereafter, after filing closing pursis by the prosecution, further statements of the accused persons under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused persons have denied the case of the prosecution and submitted that a false case is filed against them.

8. At the conclusion of trial and after appreciating the oral as well as

documentary evidence, the learned Judge vide impugned Judgment, acquitted the respondents - accused. Looking to the injuries examined by the doctor, who is an independent witness, the learned Judge has convicted all the respondents accused for the offence under Section 323 read with Section 114 of the Indian Penal Code till rising of the Court and imposed fine of Rs. 1,000/-, in default of payment of fine, simple imprisonment of 07 days is imposed.

9. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 12.11.2009 rendered by the learned Additional Sessions Judge, Fast Track Court No. 1, Gandhinagar, in Sessions Case No. 2 of 2008 the appellant - State has preferred the present appeals before this Court.

10. Heard Learned APP Mr. K.P. Raval, appearing on behalf of the appellant - State. He has contended that the judgment and order passed by the learned Judge is contrary to law and evidence on record. He has contended that the learned Judge has not properly appreciated oral as well as documentary evidence adduced by the parties in its proper perspective.

11. He has read the charge and contended that as per the evidence disclosed by the mother of the victim as well as father and close friends, who were with the victim, they have disclosed real scene of the offence in their oral version as well as statement made before the police. He has further drawn attention to the evidence of the Medical Expert at Ex. 38 and contended that as per evidence of the Medical Expert he has disclosed before the learned Judge that 12 injuries were found from the body of the injured and out of the said injuries 11 injuries were simple in nature and 01 injury was fracture on the last finger of left hand of the injured person. He has contended that T.I. Parade was carried out by the Investigating Officer before the Executive Magistrate and respondents accused were identified by the witnesses. He has further contended that when the real incident was disclosed before the learned Judge, only on the ground of contradiction the learned Judge cannot hold that prosecution has failed to prove its case beyond reasonable doubt.

12. He has further contended that present respondents have not challenged the order of conviction. He has contended that prima facie it appears from the conduct of the respondents that they have accepted the order of conviction and guilt. He has contended that learned Judge has convicted the respondents accused only for the offence under Sections 323 read with Section 114 of the Penal Code, which is a very lenient view. He has drawn attention of the Court to the provisions of Section 323 of the Indian Penal Code and contended that the learned Judge has not followed the provisions of law. He has contended that as per evidence of the prosecution the learned Judge has not given any reason to reduce the sentence for the offence under Section 323 read with Section 114 of the Indian Penal Code. He has contended that learned Judge has committed grave error in awarding lesser punishment to the respondents - accused.

13. He has contended that in the present case when the appeal is filed for

enhancement of sentence, it is required to be allowed and maximum sentence is required to be awarded. He has contended that serious charges have been framed against the respondents - accused persons by the learned Judge and as per the evidence of the victim he has disclosed real role of the respondents accused. He has contended that from the cross-examination the defence could not establish its case properly. Lastly, he has contended that the observations made by the learned Judge are not proper in the eye of law and therefore, judgment and order of the learned Judge is required to be set aside.

14. Heard Mr. P.H. Buch, learned advocate for the respondents. He has supported the judgment rendered by the learned Judge. He has drawn attention of the Court to the evidence of the victim and contended that so far as evidence of the victim is concerned, he has disclosed before the Investigating Officer that he was never kidnapped, he was never threatened and he was never beaten by anyone. He has read evidence of the mother of the victim and father and contended that it is established in cross-examination that brother of the victim was involved in so many criminal cases and was not living with the victim and parents. He has contended that motive or guilt of the present respondents is prima facie not established. He has drawn attention to the main ingredients of the offence in question and contended that it is the duty of the prosecution to prove its case prima facie against the respondents as per the charge framed against them. He has contended that learned Judge has rightly observed that injuries of the victim are not proved beyond reasonable doubt and simply the learned Judge has convicted them for the offence under Section 323 read with Section 114 of the Indian Penal Code till rising of the Court. He has fairly conceded that respondents have not challenged the judgment and order of conviction by filing appeal.

15. He has contended that so far as role of the present respondents is concerned, the same is not established beyond reasonable doubt on record of this case. He has contended that respondents are merchant and agriculturist. He has contended that Section 323 of the Indian Penal Code is non-cognizable offence and looking to the injury found on the body of the victim it is simple in nature. He has contended that no sufficient cause is shown for enhancement of sentence and appeal against the acquittal order. He has therefore prayed that no interference is called for in the judgment and order passed by the learned Judge.

16. Heard learned advocates for both the parties. We have gone through the charge, complaint and documentary evidence produced on record in the case. We have minutely perused oral evidence of the victim, in which he has disclosed two sets of evidence. We have also perused evidence of the victim and evidence of the panchas, who have been declared hostile. But from the evidence of the mother, father and friend of the victim prima facie we have found that story which is narrated by the witnesses is not proved beyond reasonable doubt before the learned Judge. In the evidence of mother and father of the victim they have disclosed the story totally in contradictory manner against the version of the panchas of the prosecution case. Here it is required to quote Section 323 of the

Indian Penal Code which reads as under:--

"323. Punishment for voluntarily causing hurt:

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

Looking to the ingredients of above section we find that learned Judge has rightly observed that except offence under Section 323 read with Section 114 of the Indian Penal Code no offence is proved.

17. In view of above observations we are of the opinion that learned Judge has rightly observed that prosecution could not prove its case beyond reasonable doubt and in result of that respondents - accused are acquitted for the offence under Sections 363, 364, 325, 118, 504, 506(2) read with Section 114 of the Indian Penal Code and Section 135 of the Bombay Police Act. However, looking to the evidence of medical expert Ex. 38, who is independent witness, he has clearly stated that among other injuries there was a fracture injury on the last finger of the left hand of the victim. Looking to this evidence the learned trial Judge has failed to appreciate that fracture injury was caused to the victim on the last finger of his left hand among other injuries. This fact has gone unnoticed by the learned Judge. The Division Bench of this Court (Coram : Hon''ble Mr. Justice M.R. Shah and Hon''ble Mr. Justice K.J. Thaker, JJ) in a judgment dated 03.11.2015 rendered in Criminal Appeal Nos. 461, 594 and 595 of 1996 has in the facts and circumstances of that case reversed the judgment and order of learned trial Judge. The said judgment is also applicable to this case. Further it is required to be observed that when the injury of the victim is proved through evidence of medical expert and presence of the respondents is also proved, we are of the opinion that as per provisions of Section 323 of the Indian Penal Code the learned Judge has committed grave error and imposed lesser punishment to the respondents - accused. Hence, in the facts and circumstances of the case awarding of sentence till rising of the Court cannot be said to be sufficient and appropriate punishment. It cannot be disputed that the sentence is required to be imposed in connection with the offence committed. Under the circumstances looking to the medical evidence and the injury sustained by the victim the sentence imposed cannot be said to be proportionate.

18. The Criminal Appeal No. 320 of 2010, preferred by the State against the impugned judgment and order of acquittal passed by the learned trial Court, acquitting the accused of the offence punishable under Sections 363, 364, 325, 118, 504, 506(2) read with Section 114 of the Indian Penal Code and Section 135 of the Bombay Police Act is hereby dismissed.

19. The Criminal Appeal No. 319 of 2010 for enhancement is partly allowed. The sentence of rising till Court imposed by the judgment and order dated 12.11.2009 rendered by the learned Additional Sessions Judge, Fast Track Court

No. 1, Gandhinagar, in Sessions Case No. 2 of 2008 is modified to the extent that, sentence of 15 (fifteen) days simple imprisonment is imposed upon the respondents - accused persons and fine of Rs. 5,000/-(Rupees Five Thousand Only) and in default of payment of fine, the accused persons to undergo simple imprisonment of 15 (fifteen) days. The respondents accused are directed to surrender before the jail authority forthwith. Bail bond, if any, stands cancelled.

20. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.