

(2014) 02 GUJ CK 0026
In the Gujarat High Court
Case No : Criminal Appeal No. 1423 of 2010

State of Gujarat

APPELLANT

Vs

Nitin

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 324, 34, 342

Citation : (2014) 3 GLH 62

Hon'ble Judges : Z.K. Saiyed, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : H.S. Soni, APP, Advocate for the Appellant; Ajay L. Pandav and Rajkumar Chaumal, Advocate for the Respondent

Judgement

Jayant M. Patel, J.—The present Appeal has been preferred by the State for enhancement of sentence imposed by the learned Sessions Judge in Sessions Cases No. 264 of 2007 whereby the learned Sessions Judge had imposed sentence upon the respondent-accused for the offence under Sections 307, 342, 452, 323, 324 read with Section 34 of I.P. Code for 7 years R.I. with fine of Rs. 2,000/- and further 3 months S.I. for default in payment of fine and had imposed sentence of 5 years R.I. with fine of Rs. 2,000/- and further 2 months S.I. in default of payment of fine for the offence under Section 395 of I.P. Code. The short facts of the case are that the complaint was filed by Pritiben (P.W. 1) (Ex. 10) with Navrangpura Police Station, stating that on 11.2.2007 at about 2.00 O'clock in the night when she was with her husband in their Hardik Bungalow, her former employee working as Security Man, with the help of other 4 persons assaulted with deadly weapon for committing crime of dacoity and when it was resisted, her husband and her son were assaulted with the knife and multiple serious injuries were caused and the cash amount and other ornaments etc., worth Rs. 14,25,000/- were robbed. The complaint was investigated by the police and the charge was framed. The prosecution, in order to prove the guilt, had examined 15 witnesses and has produced 18 documents, the details of which are recorded by the learned Sessions Judge at Para-4 of the Judgment. The learned

Sessions Judge thereafter recorded the statement of the accused wherein the accused denied the evidence against him and in the further statement the accused has stated that since the complainant Pritiben had illicit relation with the accused and when her husband had seen him, he was beaten and removed from service and he has been wrongly involved in the offence. The learned Sessions Judge thereafter heard both the side, the prosecution as well as defence, and found the appellant original accused guilty for the offence under Sections 307, 342, 452, 323, 324, 395 read with Section 34 of I.P. Code and imposed sentence upon the respondent - accused for the offence under Sections 307, 342, 452, 323, 324, read with Section 34 of I.P. Code for 7 years R.I. with fine of Rs. 2,000/- and further 3 months S.I. for default in payment of fine and had imposed sentence of 5 years R.I. with fine of Rs. 2,000/- and further 2 months S.I. in default of payment of fine for the offence under Section 395 of I.P. Code. The learned Sessions Judge further directed the sentence to run concurrently. It is under these circumstances the State has preferred present Appeal for enhancement of sentence. It may be recorded that the accused-respondent had preferred Appeal against the Judgment and order of conviction being Criminal Appeal No. 607 of 2011 which came to be disposed of vide order dated 5.7.2013 since the accused had already undergone sentence period.

2. At the out set we may record that as the conviction for the offence under Sections 307, 342, 452, 323, 324, read with Section 34 of I.P. Code is not interfered with by this Court in Criminal Appeal No. 607 of 2011 disposed of vide order dated 5.2.2013, we are not required to examine the aspect of conviction made by the learned Sessions Judge. The only question to be considered in the present appeal is for appropriate sentence whether has been rightly imposed by the learned Sessions Judge or not.

3. The principles of sentencing policy are by now well settled. Broadly three aspects are required to be taken into consideration; one is the gravity of the offence, the second is mitigating circumstances of the accused concerned or convict and the third is the deterrent effect to be created in the society. Further it is by now well settled that merely because maximum sentence has been provided it is not necessary that in every case the Court should impose maximum sentence, but the Court has the power to impose appropriate sentence by exercising sound judicial discretion taking into consideration the aforesaid three broad principles, unless a minimum sentence has already been provided by the Statute leaving no discretion to the Court to impose sentence less than minimum. In either of the case Court is required to record reasons while imposing sentence. It appears from the reasons recorded by the Sessions Court that the Sessions Court has taken into consideration the age of the accused and the dependency of the family members and he has also taken into consideration the aspects of causing injury while committing crime, but they are all considered by the Court, as per the submission by both the sides and there are no specific reasons recorded by the Court except that the manner in which the crime is committed and the evidence produced calls for imposition of sentence of 07

years R.I. with the fine of Rs. 2,000/- for the offence under Section 307 and 05 years R.I. with the fine of Rs. 2,000/- for the offence under Section 395 read with Section 34 of I.P. Code.

4. If we consider the matter only on the ground of non-recording of the reasons or imposition of appropriate sentence, we may say that we are not satisfied with the method and manner of recording of reasons and it can rather be said as no specific reasons recorded. But thereby it cannot be said that such would call for enhancement of sentence and for maximum sentence provided by I.P. Code. Section 307 of I.P. Code provides for sentence which may be either for the imprisonment of life or imprisonment which may extend to 10 years. But considering the facts and circumstances it appears that as it has transpired from the evidence that when the offence under Section 307 of I.P. Code was committed a hurt is also caused the gravity of the offence can be said as more in comparison to simpliciter an attempt to commit murder, but at the same time the nature and the gravity of the injury may be required to be considered. The medical evidence shows that there were in all five injuries found on the body of Pradip Shah P.W. No. 12, husband of the complainant. Out of those injuries, injury Nos. 3 and 4 could be said as serious.

5. Section 395 of I.P. Code provides for the sentence of life or imprisonment which may extend to 10 years. Again while considering the gravity of the offence one may be required to consider the amount involved or the subject matter involved for a dacoity and the injury caused while committing the crime. It has come on record that the amount of Rs. 14,25,000/- as per the complainant was lost, but the recovery is of ornaments and other items total worth Rs. 4,48,748/-. The deterrent effect to be created in the society is one of the relevant aspect to be considered while imposing sentence. In case for the offence under Section 395 coupled with the injury caused while committing offence it can be said that such instances if not strictly dealt with it would loss deterrent effect in the society, more particularly when accused was ex-employee of the victim. It is true that the mitigating circumstances which has come on record of the accused are that the accused is of a young age and there is responsibility of the family.

6. In view of the aforesaid, we find that when the crime is for the offence under Section 307 while committing crime for the offence under Section 395 of the I.P. Code, the appropriate sentence should have been more than 07 years but less than 10 years. In our view, taking into consideration the aforesaid aspects it was required for the learned Sessions Judge to impose sentence of 08 years, as against the same the learned Sessions Judge has imposed sentence of 07 years for the offence under Section 307 and 05 years for the offence under Section 395 of I.P. Code which can be said as not by proper exercise of the judicial discretion. Hence, the sentence imposed upon the accused for the offence under Section 307 read with offence under Section 395 deserves to be modified to the effect that for the offence under Section 307, 07 years R.I. is not interfered with but for

the offence under Section 395 since it is with the offence under Section 307 of I.P. Code, 08 years R.I. deserves to be imposed with the further observations that the sentence already undergone shall be given set off and sentence undergone for the offence under Section 307 and for the offence under Section 395 shall also be given set off. Both the sentences would run concurrently. The other part of the order of the learned Sessions Judge for imposition of fine and/or the other incidental directions are not interfered with. The judgment and the order of the learned Sessions Judge shall stand modified to the aforesaid extent. The appeal is allowed to the aforesaid extent. The accused shall be taken into custody. Time to surrender shall be for a period of four weeks from today.