

(2015) 10 GUJ CK 0099
In the Gujarat High Court
Case No : Criminal Appeal No. 2127 of 2006

State of Gujarat

APPELLANT

Vs

Sahdevsinh Anopsinh Jadeja

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313, 378
Penal Code, 1860 (IPC) — Section 307, 325, 332, 504

Citation : (2015) 10 GUJ CK 0099

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

Bench : Division Bench

Advocate : C.M. Shah, A.P.P., for the Appellant; P.M. Lakhani, R.I. Sharma and R.P. Lakhani, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J—The present appeal, under section 378 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") is directed against the judgment and order dated 19/07/2006 passed by the learned Sessions Judge, Jamnagar in Sessions Case No. 122 of 2003, whereby the accused has been acquitted of the charges levelled against him for the offence punishable under Sections 307, 332 and 504 of the Indian Penal Code, 1860 (for brevity, "the IPC") and Section 135 of the Bombay Police Act, 1935.

2. The brief facts of the prosecution case are that on 25/06/2003, at about 6:30 a.m. near the main gate of G.G. Hospital, Jamnagar, near Shivam Hotel, the accused came there with intention to take revenge and attacked on Umedbhai Thakariya with stick on his head which could have caused his death and thus, attempted to commit his murder and for the said alleged offence, a complaint came to be lodged against him for the offence punishable under section 307, 504 and 332 of the IPC and Section 135(1) of the Bombay Police Act.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it

was committed to the Sessions Court, Jamnagar.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 In order to bring home the charge against the respondent - original accused, the prosecution has examined as many as 23 witnesses and also produced several documentary evidence.

2.4 At the end of the trial and after recording the Further Statement of the accused under Section 313 of Code and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the accused of all the charges levelled against him by impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant - State has preferred the present appeal.

3. Ms. C.M. Shah, learned Additional Public Prosecutor for the appellant - State, submitted that the trial Court committed an error in releasing the respondent - accused. She contended that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has proved the whole ingredients of the offence against the present respondent. She also took this Court through the oral as well as the entire documentary evidence and submitted that though the prosecution has proved the case against the accused beyond reasonable doubt, the learned Sessions Judge has acquitted the respondent - accused.

3.1 The learned Additional Public Prosecutor for the appellant - State took us mainly to the evidence of PW-1 - Narvarlal Bhagvanji Joshi, exh. 20, the evidence PW-4 - Umedbhai Dhanrajbhai Thakariya, the victim, exh. 37 and the evidence of the Medical Officer - PW-2 - Dr. Suraj Jawaharlal Chhatwani, exh. 30, the evidence of PW-18 - Hitesh Ramniklal Bhatt, exh. 54, the evidence of PW-19 - Dharmendrasinh Lakhubha Jhala, the police witness, exh. 56, the evidence of PW-20 - Surendrasinh Pratapsinh Jadeja, the police witness, exh. 61, the evidence of PW-21 - Dr. Divyesh Amrutbhai Patel, exh. 65, the evidence of PW-23 - Jayendrasinh Joravarsinh Jadeja, the police witness, exh. 75 and contended that in view of the same, the trial Court has committed a serious error in not believing the evidence on record, more particularly, of the complainant and the victim who have clearly identified the accused. Moreover, she submitted that in view of the medical evidence, serious injuries were caused to the victim and he was to be hospitalized for more than six days and the injuries which are caused to the victim were of very serious in nature and only because of the immediate medical treatment given to him, he could survive. Moreover, PW-3 - Dr. Sudhir Gulabray Mehta, whose deposition is recorded at exh. 35, has clearly described the injuries sustained by the victim and stated that the injury which

was caused on the head of the victim was of very serious in nature and accordingly, the injury caused is required to be considered grievous. She further submitted that the victim has also pointed out the incident in question and also identified the accused in the Court and stated the name of the accused. Further, on the aspect of Test Identification Parade, she relied upon a decision of the Hon"ble Apex Court in the case of Shyamal Ghosh Vs. State of West Bengal, AIR 2012 SC 3539 : (2012) CriLJ 3825 : (2012) 3 Crimes 97 : (2012) 6 JT 404 : (2013) 1 RCR(Criminal) 770 : (2012) 6 SCALE 381 : (2012) 7 SCC 646 , more particularly, para 80, 81 and 82, which read as under:

"80. It is equally correct that the Cr.P.C. does not oblige the investigating agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions. Reference can be made to Munshi Singh Gautam v. State of M.P. and Sheo Shankar Singh v. State of Jharkhand.

81. Identification Parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that persons named accused in the case are actually the culprits. The Identification Parade primarily belongs to the stage of investigation by the police. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court. Thus, it is only a relevant consideration which may be examined by the court in view of other attendant circumstances and corroborative evidence with reference to the facts of a given case.

82. In the present case, certainly Shyamal Ghosh, accused was not identified at the time of Test Identification Parade held on 28th November, 2003. However, Sadhu alias Satyajit Das was identified. PW-14 is the learned Judicial Magistrate who had recorded the statement of Manik Das under Section 164, Cr.P.C. as well as held the Identification Parade on 28th November, 2003. Other accused were neither subjected to Identification Parade nor could the question of identifying them arise. The mere fact that Shyamal Ghosh accused was not identified by Manik Das is not of great relevancy in the present case. Firstly, for the reason that Manik Das was never examined as a witness in the court and even his statement under Section 164, Cr. P.C. has not been relied upon by any court while convicting the accused. Secondly, not only one, but all the witnesses i.e.

PW-7, PW-8, PW-9, PW-11, PW-17 and PW-19, duly identified the accused in Court and they did so without any demur or hesitation. Manik Das was a person who himself was under a threat and was asked to take the gunny bags for their disposal near the Barrackpore Dum Dum Highway. Thus, we are of the considered view that non-identification of Shyamal Ghosh by Manik Das is inconsequential in the present case."

3.2 Making above submissions, she contended that in view of the evidence on record, the learned trial Court ought to have convicted the accused at least for the offence punishable under Sections 325 and 332 of the IPC and accordingly, she requested to allow the present appeal in the interest of justice.

4. On the other hand, Mr. Lakhani, learned advocate for the respondent - accused, supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that the prosecution has miserably failed to prove that the incident had occurred at 6:30 a.m. and also, failed to prove the case against the respondent beyond reasonable doubt and the learned trial Judge, after taking into consideration all the aspects of the matter, more particularly, in view of the observations made in para 41 of the impugned judgment and order, has come to such a conclusion, which is just and proper and giving benefit of doubt in favour of the accused, has rightly been acquitted and hence, he requested that this Court should not interfere in appeal.

5. We have examined the matter carefully and gone through the evidence on record. We have re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon'ble Apex Court. Moreover, we have also gone through the order below exh. 9 passed by the learned Sessions Judge under Discharge Application preferred by the respondent - original accused, wherein, while rejecting the said application, the learned trial Judge has discussed the documentary evidence in detail. Further, taking into consideration the evidence of the victim as well as of the complainant, the presence of the accused is established beyond reasonable doubt. The victim was working in the G.G. Hospital, whose security work was assigned to one Nobel Detective and Security Service Pvt. Ltd. in which, the accused was serving as the Security Guard, is not in dispute; the said work contract was discontinued and the accused was relieved on the previous day of the incident in question had occurred, is also not in dispute and thereafter, the incident had happened outside the hospital where the victim had gone for duty. Thus, in our opinion, the trial Court has committed an error in not believing the evidence of PW-4, the complainant and the evidence of PW-3, the doctor, by which, the injuries inflicted to the victim, were clearly established besides, hospitalization of more than six days is not in dispute. Taking into consideration the evidence of the Investigating Officer and the other witnesses, merely because some prosecution witnesses have turned hostile, the entire prosecution story could not be discarded and disbelieved. We are conscious of the fact that this is an appeal against acquittal and the Court while

sitting in appeal, should be very slow and should not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and therefore, the decision is to be characterized as perverse, and while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record. However, considering the material on record, we are of the considered opinion that this is a fit case where the trial Court has committed an error in appreciating the evidence on record, more particularly, of the complainant and the victim and therefore, the case may not fall under offence punishable under Section 307 of the IPC, however, it certainly falls under offence punishable under Section 325 of the IPC, however, no case is made out for the offence punishable under Section 332 of the IPC and accordingly, present appeal deserves to be allowed to that extent and the accused being held to be guilty for the offence punishable under Section 325 of the IPC, requires to be inflicted sentence and the impugned judgment and order requires to be quashed and set aside, accordingly.

6. In view of the aforesaid discussion, present appeal succeeds and the impugned judgment and order dated 19/07/2006 passed by the learned Sessions Judge, Jamnagar in Sessions Case No. 122 of 2003 is quashed and set aside and the respondent - original accused is held guilty for the offence punishable under Section 325 of the IPC and sentenced to undergo rigorous imprisonment for four years with fine of Rs. 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months. He shall be given set off for the period he has already undergone in jail. Accordingly, he is directed to surrender before the concerned jail authority within 10 weeks from today. Bail bond, if any, shall stand cancelled. Registry to return the R & P, if any, to the trial Court forthwith.