
(2015) 09 GUJ CK 0063
In the Gujarat High Court
Case No : Criminal Appeal No. 774 of 2012

State of Gujarat	Vs	APPELLANT
Sanjaybhai Savsibhai Solanki		RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 357(2), 428
Penal Code, 1860 (IPC) — Section 307

Citation : (2015) 09 GUJ CK 0063

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

Bench : Division Bench

Advocate : C.M. Shah, A.P.P., for the Appellant

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J—Heard learned Additional Public Prosecutor Ms. C.M. Shah for the appellant - State.

2. By way of this Appeal, the State has felt aggrieved by the judgment and order dated 12.04.2012 of the learned Additional Sessions Judge, Amreli in Sessions Case No. 20/2011 whereby the respondent herein was convicted and sentenced as under:-

Under Section 307 of the Indian Penal Code Rigorous imprisonment for five years and fine of Rs. 60,000/- in default, rigorous imprisonment for one year.

The Court had also ordered amount of Rs. 50,000/- to be paid to the victim in the form of compensation u/s. 357(2) of Cr.P.C.

The accused was given the benefit of set of u/s. 428 of Cr.P.C.

3. The case in brief and the incident which is alleged to have occurred on 23.12.2010 is as under:-

3.1. The complainant Sajidbhai @ Muno Mahmadbhai Musiya, Mouje Devaliya,

Tal. Babra was earning his livelihood doing the business of driving. On the said day, at about 6.30 pm in the evening, he alongwith his friend Pravin Shambhubhai had gone for answering nature's call in the jungle situated behind his house. At that moment, the complainant saw his niece Sharifa going alone for answering the nature's call. Then he heard some shouts. While returning back, the complainant saw Sharifa lying in an unconscious condition and blood was oozing from her head. Other persons from the village had also come and they took Sharifa in a goods vehicle to the village. Thereafter, the injured Sharifa was taken to Devaliya Hospital from where she was taken in 108 Ambulance Van for further treatment to Babra Hospital, Amreli and thereafter she was shifted to Rajkot Hospital.

3.2. Thus, it is alleged that while Sharifa had gone for answering nature's call, some unknown person had attacked her with sharp and deadly weapon. In this regard, a complaint was filed with Babra Rural Police Station which was registered as I-C.R. No. 125/2010. On filing of this complaint, the investigation was entrusted to PSI - M.M. Vaagh who started investigating the case and recorded statements of relevant witnesses and drew the necessary Panchnamas.

3.3. Since the police found ample evidence and sufficient materials against the respondent accused, at the end of investigation, chargesheet was prepared and submitted before the learned Judicial Magistrate First Class, Babra who followed the procedures prescribed as per Section 207 of Cr.P.C. for verifying whether the accused had been given necessary papers or not or whether the accused wanted to have a private advocate or not?

3.4. Since the case was exclusively sessions triable, the learned Judicial Magistrate First Class, Babra committed the case to the Court of Sessions, wherein charges were framed against the accused vide Exhibit 3 which was read over and explained to the accused. Thereafter, plea of the accused was recorded vide Exhibit 4 wherein the accused denied his involvement and pleaded to be tried.

3.5. After filing closing pursis from the prosecution, further statement of the accused was recorded as per Section 313 of Code of Criminal Procedure wherein the accused again denied his involvement. After hearing both the parties, the learned Additional Sessions Judge, Amreli vide his judgment and order passed the above sentence.

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

The prosecution also relied upon various documentary evidences, some of them are:-

4. Learned Additional Public Prosecutor Ms. C.M. Shah has submitted that the State has preferred this Appeal for enhancement of the sentence and the learned Sessions Judge ought to have appreciated the overall circumstances that the accused is said to have committed the offence punishable under Section 307 of

the Indian Penal Code and hence, the sentence imposed by the learned Sessions Judge is inadequate and insufficient and requires to be enhanced in view of the evidence laid down by the prosecution.

Learned Additional Public Prosecutor has taken this Court to Section 307 of the Indian Penal Code which reads as under:-

"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."

Further, it is submitted that the learned Judge ought not to have given much emphasis to the contradictions and/or omission appearing in the offence of the prosecution witness, if any. Considering the above, it is submitted that this is a fit case which requires the interference of this Court and hence, the sentence qua the respondent accused be enhanced.

5. We have heard learned Additional Public Prosecutor for the State Ms. C.M. Shah and perused the records of the case. It is not in dispute that the accused had caused injuries on the victim as stated above. Besides, the learned Additional Sessions Judge has given very cogent and convincing reasons for arriving at the sentence imposed qua the accused. The accused was identified by the victim as well as other witnesses and the axe used in the alleged commission of crime was also recovered. The latter paragraphs of the judgment and order of the learned Sessions Judge has detailed the circumstances and the various findings arrived at. Besides, the learned Judge had also ordered amount of Rs. 50,000/- to be paid to the victim in the form of compensation u/s. 357(2) of Cr.P.C.

6. Hence, this Court is in full 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.

7. In the aforesaid circumstances, the judgement and order dated 12.04.2012 of the learned Additional Sessions Judge, Amreli in Sessions Case No. 20/2011 is confirmed.

8. The Appeal is 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.