

(2024) 10 GUJ CK 0007
In the Gujarat High Court
Case No : Criminal Appeal No. 1192 of 2004

State of Gujarat Versus

APPELLANT

Vs

Dafer Khamisha Shahu & Ors.

RESPONDENT

Date of Decision : 03-10-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 377
Indian Penal Code, 1860 — Section 399, 400

Citation : (2024) 10 GUJ CK 0007

Hon'ble Judges : Ilesh J. Vora, J; S.V. Pinto, J

Bench : Division Bench

Advocate : L B Dabhi

Final Decision : Dismissed

Judgement

Ilesh J. Vora, J

1. This enhancement appeal of Gujarat under Section 377 Procedure, 1973 against the is being filed by the State of the Code of Criminal judgment and order of conviction and sentence dated 24.05.2004 passed by the learned Additional Sessions Judge, Fast Track Court, Surendranagar in Sessions Case no. 6 of 2004, wherein, the respondents - original accused came to be tried for offences punishable under Sections 399 and 400 of the Indian Penal Code, 1860 ('IPC', for short). The trial Court, after appreciation of the evidence, convicted the respondents for the offences punishable under Sections 399 and 400 of IPC and sentenced them for the period already undergone in jail.

2. Facts and circumstances, giving rise to file this appeal are that, the respondents-accused were arrested on 15.05.2003 at about 00:15 a.m. at midnight by the Surendranagar Police in connection with the offence of making preparation for committing dacoity. As per the prosecution case, the complainant PSI Mr. K.J. Jadhav and his team were on patrolling on the day of incident and while patrolling, they received information that, the respondents-accused

assembled with deadly weapons to commit an offence of dacoity and they were roaming nearby Hotel Alankar, National Highway, Chotila. The police officials reached at the place and saw that one of the accused by wearing Sari, was making indecent proposal to the passerby vehicles so that, they can execute the dacoity. On seeing the accused, the police restrained them and upon search, they found that, the respondent-accused was having deadly weapons like knives, torch, wrist watch, cash amount of Rs.5,000/- and more. The police called the independent panchas and in their presence, they made the search in person and accordingly, the weapons which they hold, have been recovered and seized from them. On further inquiry, it was found that, the respondents-accused assembled for purpose of committing dacoity. The PSI lodged an FIR against the respondents-accused under Section 399 and 400 of the Indian Penal Code. At the end of investigation, they were chargesheeted and case was committed to the Court of Sessions at Surendranagar. Charges were framed at Exh.2.

3. In order to prove the case against the respondents, prosecution has examined 11 witnesses and exhibited 5 documents as per the following table:

Oral evidence

PW 1 – Exh.18

Karshanbhai Jivanbhai Jadav, PSI, complainant

PW 2 – Exh.20

Maheshkumar Gokalbhai Baar, police constable

PW 3 – Exh.21

Maheshdan Samardan Gadhvi, police constable

PW 4 – Exh.22

Prabhatbhai Ratnabhai Ramani, head constable

PW 5 – Exh.23

Dilipsinh Hamirsinh Zala, head constable

PW 6 – Exh.24

Jayendrasinh Gumansinh Zala, head constable

PW 7 – Exh.25

Udesinh Andubha Zala, Asst. Sub-Inspector

PW 8 – Exh.26

Abdulbhai Gulabbhai Juneja, head constable

PW 9 – Exh.28

Narendrabhai Bhimabhai Koli, panch witness

PW 10 – Exh.30

Kaniyalal Arvindbhai Ninama, Dy.SP

PW 11 – Exh.32

Shivbhadrasinh Ghanshyamsinh Rana, investigating officer

Documentary evidence

Exh. 19

Complaint and FIR

Exh. 27

Extract of Station Diary

Exh. 29

Arrest and seizure panchanama

Exh. 31

Report to register FIR

Exh. 33

Letter for ascertaining ownership of seized motorcycle

4. The learned Sessions Court recorded a further statement of the accused under Section 313 of the Cr.P.C., 1973 (old) with regard to incriminating circumstances made against them in the evidence, rendered by the prosecution and they denied it and had not led any evidence in defence.

5. Since 15.05.2003, the respondents-accused no.1 to 6 were in judicial custody, whereas accused no.7 was on bail, but he could not released from the jail because of other offence.

6. The trial was proceeded and on appreciation of evidence, the learned trial court believed and accepted the oral evidence of the police officials and hold guilty the respondents-accused for the offences with which they were charged. The learned trial court while awarding the sentence, by reasoned order sentenced them for the period already undergone as under-trial prisoner.

7. Being aggrieved and dissatisfied with the quantum of sentence awarded by the learned Sessions Court, the State has preferred this appeal for enhancement of sentence.

8. Mr. L.B. Dabhi, learned Additional Public Prosecutor assailing the impugned judgment, has submitted that, the offence alleged is serious one and when the court has convicted the respondents-accused, the punishment should be

proportionate to the gravity of the offence. The maximum punishment for the offence punishable under Section 399 is up to 10 years with fine. In the circumstances, the learned Sessions Judge has without any adequate and special reasons, awarded inadequate sentence. The learned trial court while awarding the sentence, did not consider the nature of offence and its impact on the society and therefore, to allow the accused with meager punishment will result in travesty of the justice.

9. In view of aforesaid contention, learned Additional Public Prosecutor Mr. Dabhi has prayed that, the sentence awarded to the accused may be modified be extended to the maximum punishment.

10. On the other hand, the respondents-accused does not remain present.

11. We have perused the case records and findings on the sentence recorded by the trial court. The learned trial court awarded the sentence to the respondents-accused for the period already undergone by them as under-trial prisoner. On perusal of case records, it emerges that, the respondents-accused arrested from the place as mentioned in the panchnama of place of incident and at relevant time, they were armed with knives etc. As per the testimony of the police officials, the accused assembled for committing the offence of dacoity and after seeing the police officials, they tried to ran away, however, ultimately they were nabbed by the police. Since the date of FIR i.e. 15.05.2003, the accused were in jail and the judgment came to be pronounced on 24.05.2004. At the time of conviction, they had completed more than one year in the jail. The learned trial court while sentencing the accused, recorded sufficient reasons and also taken into consideration that the accused having no any past history of like nature and finally, they have been convicted and sentenced as recorded above.

12. It is settled legal position of law that in the matter of enhancement, there should not be interference when the court has imposed substantial punishment and in that view of the matter, the sentence imposed by the trial court should not be lightly interfered with and should not be enhanced unless the Appellate Court comes to conclusion on entire evidence that the sentence is inadequate. In case of *Bed Raj Vs. State of U.P.*, AIR 1955 SC 778, it was observed that, a question of sentence is a matter of discretion and it is well settled that, when the discretion has been properly exercised along accepted judicial lines, an Appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment and interference is only called for when it is manifestly inadequate.

13. In light of the settled principle of law and applying the same to the facts of the present case, the sentence as awarded by the trial court cannot be termed as inadequate and the discretion being exercised arbitrarily in violation of settled principle of sentencing policy. In the circumstances, we do not find any substance warranting interference with the order of sentence recorded by the trial court. Accordingly, this enhancement appeal lacks merits and deserves to be dismissed

and is hereby dismissed.