

(2024) 10 GUJ CK 0025
In the Gujarat High Court

Case No : Criminal Appeal (For Enhancement) No.1483 of 2024

State Of Gujarat Versus

APPELLANT

Vs

Kuldipsinh Nirmalsinh Gohil

RESPONDENT

Date of Decision : 08-10-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164, 313, 377
Indian Penal Code, 1860 — Section 300, 302, 304
Indian Evidence Act, 1872 — Section 65-B(4)(c)

Citation : (2024) 10 GUJ CK 0025

Hon'ble Judges : Vimal K. Vyas, J

Bench : Single Bench

Advocate : Shruti Pathak

Final Decision : Dismissed

Judgement

Vimal K. Vyas, J

1. The present appeal has been preferred by the appellant – State under Section 377 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and is directed against the judgment and order of conviction and sentence dated 27.12.2023 passed by the learned Sessions Judge, Bhavnagar, in Sessions Case No.11 of 2023.

2. By the aforesaid judgment and order of conviction and sentence, the trial court, after appreciating the evidence on record, held the present respondent-accused guilty and convicted him for the commission of offence punishable under Section 304 Part-II of the Indian Penal Code instead of one under Section 302 of the Indian Penal Code, for which the respondent-accused was charged. Consequently, the trial court sentenced the respondent-accused to suffer rigorous imprisonment for seven years with a fine of Rs.20,000=00, and in default of payment of fine, to undergo further simple imprisonment for one year.

3. The case of the prosecution, in nutshell, is that, on 24.07.2022 at about 2:30

in the afternoon at Derasarvali Sheri Chowk, Nodhanvadar, the present respondent-accused, keeping a grudge over an earlier dispute where a rape case was filed against him by the daughter of the deceased, assaulted the deceased mother of the complainant, namely Manjuben, by giving fisticuffs and caused her death.

4. A complaint (Exh.27) in this regard came to be lodged by the complainant (PW-7) Ramdevbhai @ Ramo Dhudhabhai Gohil, who is the son of the deceased, and on the strength of the complaint, an FIR came to be registered against the present respondent-accused before the Palitana Rural Police Station, Palitana, vide I-CR No.11198041220285 of 2022 for the offence punishable under Section 302 of the Indian Penal Code.

5. Pursuant to the FIR, the investigation was carried out, and during the investigation, the necessary panchnamas were drawn and the statements of the witnesses conversant with the incident were recorded. After the completion of the investigation, charge-sheet came to be filed against the present respondent-accused for the offence punishable under Section 302 of the Indian Penal Code before the learned Chief Judicial Magistrate, Palitana. Thereafter, the case was committed before the Sessions Court, Bhavnagar, which was numbered as Sessions Case No.11 of 2023. The learned Sessions Judge framed the Charge vide Exh.7 against the respondent-accused, whereupon the respondent-accused pleaded innocent and claimed to be tried.

6. To bring home the charge, the prosecution has examined

15 witnesses and adduced 29 documentary evidence in support of their case, which are as follow :

WITNESSES

WITNESS

NAME

EXHIBIT

1.

Dr.Hemal Kamleshbhai Moga

10

2.

Pruthvibhai Pareshbhai Gohil - Panch

14

3.

Maheshbhai Ramjibhai Khimani - Panch

16

4.

Mehbubbhai Hasambhai Shaikh - Panch

18

5.

Prakashbhai Vallabhbhai Rathod - Panch

22

6.

Ajaybhai Jaisukhbhai Chauhan - Panch

25

7.

Ramdevbhai @ Ramo Ghughabhai Gohil - Complainant

26

8.

Ghughabhai Jadavbhai Gohil

29

9.

Vinubhai @ Munnabhai Savjibhai Gohil

31

10.

Jyotiben Ghughabhai Gohil

33

11.

Rajesh Savjibhai Kanojia

35

12.

Kiritbhai Jinabhai Boricha

37

13.

Hakabhai Hussainbhai Kureshi

39

DOCUMENTARY EVIDENCE

SR. NO.

DESCRIPTION OF THE DOCUMENT

EXHIBIT

1

Yadi for performing postmortem

11

2

Postmortem Note

12

3

Inquest Panchnama

13

4

Panchnama of the scene of offence

15

5

Arrest panchnama of the accused

17

6

Panchnama of recovery of the pendrive

19

7

Panch Slip

20

8

Panchnama of recovery of the muddamal

21

9

Discovery panchnama

23

10

Panch Slip

24

11

Complaint

27

12

Statement under Section 164 of the Cr.P.C. of the Witness Ghughabhai

30

13

Statement under Section 164 of the Cr.P.C. of the Witness Vinubhai

32

14

F.I.R.

34

15

Map and Panch Rojkam of the scene of offence

36

16

Certificate as per Section 65-B(4)(c) of the Indian Evidence Act

40

17

Videography and Pendrive Bills

41

18

Yadi for registering the offence

44

19

Spot inspection report of the F.S.L.

45

20

Xerox copy of the R.C. Book

46

21

Yadi for allotting two employees as panch witnesses

47

22

Yadi for preparing a map of the place of offence

48

23

Yadi for taking statement under Section 164 of the Cr.P.C.

49

24

Yadi for obtaining the call details

50

25

Wardi for conducting investigation

51

26

Yadi for inviting to fill up the Inquest

52

27

Postmortem report

53

28

Yadi for performing postmortem

54

29

7. On completion of the evidence, the learned Sessions Judge explained the incriminating circumstances to the respondent-accused appearing against him, and the respondent-accused, in his further statement recorded under Section 313 of the Cr.P.C., submitted that he is innocent and falsely implicated in the alleged offence.

8. On completion of the trial, the learned Sessions Judge held the present respondent-accused guilty and convicted him for the commission of offence punishable under Section 304 Part-II of the Indian Penal Code instead of one under Section 302 of the Indian Penal Code, for which the respondent-accused was charged, and consequently, the learned Sessions Judge sentenced the respondent-accused to suffer rigorous imprisonment for seven years along with a fine of Rs.20,000=00 and in default of payment of fine, to undergo further simple imprisonment for one year.

9. Being aggrieved and dissatisfied with the quantum of sentence imposed by the trial court, the appellant-State has preferred the present appeal for enhancement of the sentence mainly on the grounds that the sentence awarded by the trial court is highly inadequate and disproportionate to the offence committed by the respondent-accused and the trial court has committed an error in taking a lenient view while imposing a lesser sentence.

10. Though served, none entered appearance on behalf of the respondent-accused.

SUBMISSION ON BEHALF OF THE APPELLANT-STATE.

11. Learned APP Ms.Shruti Pathak appearing for the appellant-State has submitted that the trial court has, without assigning adequate and special reasons, imposed inappropriate sentence. The trial court has directed the respondent-accused to suffer a fixed period of sentence, i.e. rigorous imprisonment for seven years, instead of imposing atleast ten years of sentence. The law in this regard is well-settled that while awarding the punishment, the court should take into consideration the nature of the offence, the circumstances under which it was committed and the degree of deliberation shown by the offender. Thus, the measure of punishment should be proportionate to the gravity of the offence. In the facts of the present case, despite the overwhelming evidence against the accused person, the trial court awarded lesser sentence which, ultimately, will result into travesty of justice and also spread a wrong message to the society. The trial court ought to have taken a deterrent view while imposing the sentence in such a serious offence. Learned APP Ms.Pathak has lastly submitted that taking into consideration the aforesaid circumstances as well as the seriousness and gravamen of the offence committed by the respondent-accused, the appeal is required to be admitted & allowed and the

sentence awarded by the trial court may be enhanced to the maximum punishment for the offence with which the respondent-accused has been charged.

ANALYSIS AND FINDINGS :

12. From the evidence on record, it appears that the trial court has acquitted the respondent-accused for the offence punishable under Section 302 of the Indian Penal Code and convicted him for the offence punishable under Section 304 Part-II of the Indian Penal Code. Further, it appears that the trial court has sentenced and directed the respondent-accused to suffer rigorous imprisonment for a fixed period of seven years with a fine of Rs.20,000=00. It is noteworthy that the State has not challenged the acquittal of the respondent-accused under Section 302 of the Indian Penal Code.

13. The punishment for the offence under Section 304 of the Indian Penal Code is imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section 304 of IPC reads thus :

“304. Punishment for culpable homicide not amounting to murder.— Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

14. On the overall appreciation and reanalysis of the entire evidence, it appears that the trial court, after taking into consideration the nature of the incident as well as the circumstances and the manner in which it was occurred, was of the view that the offence falls under Exception IV of Section 300 of the Indian Penal Code since there was no premeditation and the respondent-accused assaulted the deceased with fisticuffs in a sudden fight in the heat of passion upon a sudden quarrel and that the accused had not taken undue advantage or acted in a cruel or unusual manner. Therefore, the trial court arrived at the conclusion that the act of the accused was not intentional but he had the knowledge that if fisticuffs injury is caused to the elderly deceased lady, then it may cause her death. Therefore, considering the fact that the act of the accused was not intentional as well as considering the manner in which the incident had occurred, the trial court imposed the minimum sentence upon the respondent-accused to suffer rigorous imprisonment for seven years with a fine of Rs.20,000=00, which cannot be said to be perverse or illegal since the trial court has exercised its discretion to impose minimum sentence. Therefore, this Court does not find any infirmity in the order passed by the trial court since, while exercising the judicial discretion, the trial court has recorded sufficient and adequate reasons. This

Court is satisfied with the reasoning assigned by the trial court on the aspect of sentence and, therefore, no interference is required to be made with the discretion exercised by the trial court. It is settled position of law that the question of sentence is a matter of discretion and if sufficient reasons are recorded by the trial court, then the High Court should not interfere with the decision of the trial court on the issue of sentence. This Court deems it fit to refer to the principles, as laid down by the Supreme Court in the case of *Bed Raj vs. State of U.P.*, reported in AIR 1955 SC 778, governing the exercise of power by the High Court while enhancing the sentence imposed by the trial court, which reads thus :

"A question of a sentence is a matter of discretion and it is well settled that when 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; see for example the observations in -'Dalip Singh v/s. State of Punjab', and 'Nar Singh v/s. State of Uttar Pradesh'.

In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. In our opinion, these principles have not been observed. It is impossible to hold in the circumstances described that the Sessions Judge did not impose a substantial sentence, and no adequate reason has been assigned by the learned High Court Judges for considering the sentence manifestly inadequate.

In the circumstances, bearing all the considerations of this case in mind, we are of opinion that the appeal (which is limited to the question of sentence) should be allowed and that the sentence imposed by the High Court should be set aside and that of the Sessions Court restored."

15. Considering the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the findings recorded by the trial court do not suffer from any perversity or illegality. The findings recorded by the trial court are absolutely just and proper, and in recording the same, no illegality or infirmity has been committed by the trial court. Therefore, this Court does not find any ground warranting interference with the order of sentence passed by the trial court.

16. On the facts and in the circumstances of the case, this Court is in complete agreement with the findings, ultimate conclusion and the resultant order of sentence passed by the trial court, therefore, no interference is warranted. The appeal, therefore, fails and the same is hereby dismissed in limine. Records and proceedings be sent back to the concerned court.