
(2010) 10 GUJ CK 0114
In the Gujarat High Court
Case No : Criminal Appeal No. 869 of 2007

Surendraprasad @ Bhola Ramdutt Yadav and Others APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 395

Citation : (2010) 10 GUJ CK 0114

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Mukesh B. Dave, for the Appellant; H.H. Parikh, Ld. Addl. Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellants have preferred this Appeal against the judgment and order of conviction and sentence dated 25th April 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 3rd Fast Track Court, Vyara, in Sessions Case No. 29 of 2006, whereby the learned Judge has been pleased to convict the present Appellants-accused u/s 395 of the Indian Penal Code.

2. It is the case of the prosecution that while the complainant along with son of his brother-in-law viz. Yash on his way from Surat to Bardoli on his Scooter bearing No. GJ5-MM-4897, in the sim of Village Panada, Kadod Road, Bardoli, at about 10:00 p.m., some one raised a rope and since the scooter got stuck up in the rope, the complainant and Yash had fallen down. Because of the incident, complainant and Yash got injured. It is further the case of the prosecution that at that point of time, three to four persons rushed to the complainant and quickly they pulled the complainant in the field of Sugarcane and inflicted the complainant with stick blows. Because of this, the complainant got injury on head, both the hands and legs. These unknown persons looted golden chain of 10 gms. worth Rs. 04,000/-, golden ring of 05 gms. worth Rs. 02,500/-, two

Pendants worth Rs. 04,000/-, Rs. 01,500/- cash and Nokia Mobile worth Rs. 03,000/- from the complainant. These unknown persons had put knife on throat of the complainant so that the complainant cannot shout. Thereafter, these persons had done the same with two persons came on motorcycle. When the village people of Panada came to know about the incident, they immediately rushed on the road and hospitalised the complainant and other two persons.

3. Therefore, a complaint to the said effect was registered by the complainant on 09th November 2004 with Bardoli Police Station. The said complaint was registered by the Police Inspector of Bardoli Police Station in Sardar Smarak Hospital. Thereafter, complaint was registered as CR No. I-179 of 2005 u/s 395 of the Indian Penal Code and u/s 135 Bombay Police Act. Thereafter statements of witnesses were recorded and Panchnama of the seen of offence was also drawn. Thereafter, the accused persons were caught in another case, Test Identification Parade was held. The accused persons had shown the place of offence and therefore, detailed Panchnama was drawn of the seen of offence. The accused persons had pleaded guilty and therefore, they were charge-sheeted on 27th December 2005 and supplementary charge-sheet was filed on 05th April 2006.

4. As the case against the Appellants-accused was sessions triable, same was transferred to the Court of Additional Sessions Judge, Vyara for further adjudication and disposal.

5. Thereafter the trial was conducted before the learned Judge. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence.

6. After hearing both the sides, the learned Additional Sessions Judge and Presiding Officer, 3rd Fast Track Court, Vyara, by his judgment and order of conviction dated 25th April 2007 passed in Sessions Case No. 29 of 2006, convicted the Appellant for the offence punishable u/s 395 of the Indian Penal Code and ordered to suffer rigorous imprisonment for a period of six years and fine of Rs. 03,000/-, and in default of payment of fine, ordered to undergo rigorous imprisonment for a further period of six months to each of the Appellants-accused. However, it was clarified that the period, which the Appellants have spent in judicial custody, shall be given as a set off.

7. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 25th April 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 3rd Fast Track Court, Vyara, the Appellants hereinabove have preferred the present Criminal Appeal before this Hon'ble Court.

8. I have heard Mr. Mukesh Dave, learned Counsel for the Appellant appointed through Legal Aid and Mr. H.H. Parikh, learned Additional Public Prosecutor, appearing on behalf of the respondent-State.

9. Mr. Dave has taken me through the evidence of prosecution witnesses and the

documentary evidence and submitted that from the evidence produced on record it is established that the prosecution has failed to prove its case beyond reasonable doubt. He has also contended that the Test Identification Parade is not carried out as per the guidelines issued by the Hon"ble Supreme Court of India. He has also contended that prosecution has failed to prove the Panchnama of Section 27 at Exhibit 39 and 40. He has also contended that the present Appellants are poor persons and they have wrongly booked by the police in the instance case. He has further contended that looking to the facts of the case as well as evidence produced on record, conviction imposed upon the Appellants is very harsh. He has also contended that the Appellants are behind the bars for sufficient period, lenient view is required to be taken in the matter and therefore, the Appellants are required to be set at liberty by reducing the sentence imposed upon them.

10. Heard Mr. H.H. Parikh, learned Additional Public Prosecutor for the respondent-State. He has supported the judgment and order of conviction passed by the learned Judge. He has contended that looking to the charge framed against the Appellants, order passed by the learned Judge is absolutely just and proper. He has also read the documentary evidence produced on record and contended that learned Judge has not committed any error in convicting the Appellants-accused. He has also contended that the Appellants are involved in the serious offence and they are dangerous to the society. He, therefore, contended that the present appeal is required to be dismissed.

11. I have gone through papers produced before me and the judgment and order passed by the learned trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned Counsel for the parties.

12. Looking to the facts and circumstances of the case and looking to the fact that the Appellants are behind the bars for the last about five years, if the sentence already undergone by the Appellants-convicts may be treated as sentence, same would meet with the ends of justice. Even looking to the submissions advanced by the learned Counsel for the Appellants and circumstances of the case, sentence imposed upon the Appellants is required to be reduced and modified on the ground of sympathy also.

13. Hence, in view of the foregoing reasons, present appeal is partly allowed. The judgment and order of conviction dated 25th April 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 3rd Fast Track Court, Vyara, in Sessions Case No. 29 of 2006, is hereby confirmed. However, the judgment and order of conviction dated 25th April 2007 passed by the learned Additional Sessions Judge and Presiding Officer, 3rd Fast Track Court, Vyara, in Sessions Case No. 29 of 2006 is hereby reduced and modified to the extent of sentence which the Appellants have already undergone. The Appellants shall be set at liberty forthwith, if they are not required to be detained in any other case. The rest of the judgment and order of conviction dated 25th April 2007 shall

remain unaltered. Bail bond, if any, shall stand discharged. Record and Proceedings, if any, be sent back to the trial Court, forthwith.