

(2016) 01 GUJ CK 0136
In the Gujarat High Court

Case No : Criminal Appeal No. 801 of 2005 and Criminal Revision Application No. 317 of 2005

Thakor Shivaji Shankerji and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 147, Section 148, Section 149,
Section 313, Section 357
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 307, Section 323, Section 325

Citation : (2016) 01 GUJ CK 0136

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Mehul Sharad Shah, Advocate, for the Appellant; Umesh A. Trivedi, Advocate and C.M. Shah, Additional Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

K.S. Jhaveri, J.—1. Qua appellant No. 4, 9 and 10, the Appeal abates.

2. Qua the original complainant, learned Advocate Mr. Umesh A. Trivedi will file his appearance during the course of the day.

3. By way of this Appeal, the Appellants - accused have felt aggrieved by the judgment and order of conviction and sentence dated 16.04.2005 of the learned Additional Sessions Judge, Joint District Court, Patan in Sessions Case No. 145/2002 whereby the accused were sentenced to undergo under Section 323 of the Indian Penal Code - fine of Rs. 500/- and in default simple imprisonment for one month, under Section 325 of the Indian Penal Code - rigorous imprisonment for two years, under Sections 147 and 148 of the Indian Penal Code - rigorous imprisonment for one year and fine of Rs. 1,000/- and in default simple imprisonment for three months. The accused were acquitted for the offences

punishable under Sections 307 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

4. The case in brief and the incident which occurred on 27.06.1996 are as under:-

5.1 It is the case of the prosecution that the complainant - Dalpatsinh resides at Ahmedabad and has a business of running a tea stall. The complainant's son Arjunsinh is married the daughter of the injured - Manaji Bhikhaji Thakore. Prior to four days of the date of the incident, Manaji had visited the house of Dalpatsinh. Later on 27.06.1996, the complainant had visited the house of Manaji at about 9.00 pm. Both them were seated on a cot outside the house. At that juncture, Manaji's brother and the brother's son (the accused herein) on seeing Manaji and the complainant with an intention of killing Manaji starting beating him with sticks. The accused - Shivaji Shankarji is alleged to have stick blows on the head of Manaji, another accused - Gandaji is alleged to have inflicted stick blows on the hand of Manaji, which resulted into fractures and another accused - Babuji is alleged to have inflicted stick blows on the toes of Manaji. The complainant intervened but he was also given stick blows by the accused - Kanaji Bhikhaji, Ajmalji Sardarji and another accused - Revaji Sardarji is alleged to have inflicted stick blows on the head of the complainant. The wife of Manaji, Amrutaben also tried to intervene and she received stick blows on her head. The other accused - Keshaji and Shankarji inflicted stick blows on the legs and another accused - Manaji Bhikhaji inflicted stick blows on the body of Manaji. Both the complainant and the injured Manaji fell down on the ground and the accused ran away from the scene of incident. Because of the injuries received, Manaji was not in a position to speak. The police arrived and all the injured were taken to the hospital at Siddhpur. Since Manaji then was also not in a position to speak, for further treatment, he was shifted to Mehsana Civil Hospital.

5.2 The genesis of the entire incident is the acquisition of land by Manaji under the Ganot Act. Manaji's brother and his son were also asking for a share of the above land but since Manaji refused to grant any share, with an intention to cause murder of Manaji, the accused are alleged to have caused the above injuries. A complaint in this respect was filed before the Siddhpur Police Station and the investigation commenced. The charge sheet was led before the learned Magistrate and the case was committed to the Sessions Court, being Sessions triable case. The accused pleaded not guilty to the charges levelled against them. On completion of the evidence of prosecution, further statement of the accused under Section 313 of the Code of Criminal Procedure were recorded.

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

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

5.4 At the end of the trial, the learned Judge passed the above judgment and order of conviction and sentence.

5. Learned Advocate for the appellants Mr. Mehul Sharad Shah has submitted that the incident is of the year 1996 and a considerable time period has elapsed. It is further submitted that the appellants and the parties concerned have arrived at a settlement and the compensation has already been given to the original complainant. It is also submitted that this Court may grant the benefit of considering the principle rendered by the Apex Court in Ankush Shivaji Gaikwad v. State of Maharashtra reported in , 2013 (6) SCALE 778.

Learned Advocate for the appellants places this Court an affidavit on behalf of the original complainant which reads as under:-

"I, Dalpatsinh Abhesinh Solanki, Age 65 years, original first informant do hereby state on solemn affirmation as under:-

1. That I have filed F.I.R. against present appellant under Section 307, 323, 325, 147, 148, 149 of I.P.C. with Sidhpur Police Station for the alleged incident dated 27/06/1996. Thereafter Sessions Case No. 145/2002 was registered.

2. Thereafter all the appellants have been convicted for the offence punishable under S. 325 of I.P.C.

3. I came to know that appellant Nos. 4, 9, 10 are expired during pendency of petition.

4. I say and submit that now matter is settled between the parties. All the appellants are brother and/or nephews of one Manaji Thakor who is father in law of my son.

5. I say that incident was of year 1996. Now all the family members are staying in the village peacefully and no untoward incident has taken place after year 1996 and due to amicable settlement if appellants are acquitted than I have no objection. I humbly pray that looking to family relation and looking to passage of time and amicable settlement between the parties, the Hon"ble Court may kindly accept the settlement and acquit the accused in the interest of justice.

6. I am filing this affidavit on my own volition and free will. I have been explained the contents of this affidavit I Gujarati by advocate."

The above Affidavit is ordered to be taken on record.

6. We have heard learned Advocates appearing for the respective parties and perused the records of the case. It is reported before this Court that the appellants and the parties have arrived at a settlement and also that the compensation has already been given to the original complainant. Considering the above, it is requested that this Court may grant the benefit to the appellants considering the principle rendered by the Apex Court in Ankush Shivaji Gaikwad v. State of Maharashtra reported in , 2013 (6) SCALE 778. Considering the facts and circumstances of the case, we are of the view that the interest of justice would be met by considering the principle in the case of Ankush Shivaji Gaikwad (supra). Hence, we are inclined to grant the benefit of the provision of Section

357 of Cr.P.C. to the appellants. Accordingly, while granting benefit of judgment rendered in Ankush Shivaji Gaikwad's case to the appellants, the appellants are not required to undergo the remainder part of their sentence as awarded by the judgment and order of conviction and sentence dated 16.04.2005 passed by the learned Additional Sessions Judge, Joint District Court, Patan in Sessions Case No. 145/2002.

In view of the above order passed in Criminal Appeal No. 801/2005, the Criminal Revision Application also stands dismissed. Bail and bail bond, if any, stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.