

(2016) 01 GUJ CK 0168
In the Gujarat High Court
Case No : Criminal Appeal No. 40 of 2005

The State of Gujarat

APPELLANT

Vs

Surajsinh Devisinh Chauhan and Others

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 377
Penal Code, 1860 (IPC) — Section 34, Section 394

Citation : (2016) 01 GUJ CK 0168

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

Bench : Division Bench

Advocate : L.R. Pujari, APP, for the Appellant; Dharmendra Rajput, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—1. This appeal under Section 377 of the Code of Criminal Procedure, 1973 is preferred for enhancement of sentence imposed by judgment and order dated 10.9.2004 passed by learned Assistant Sessions Judge, Jamnagar, in Sessions Case No. 32 of 2004, whereby the respondents-original accused were convicted for the offence punishable under Section 394 read with Section 34 of the Indian Penal Code (for short, "IPC") and sentenced to suffer rigorous imprisonment for one year and ordered to pay fine of Rs. 1,000/- each and, in default of payment of fine, the accused were ordered to undergo further imprisonment of two months. Being aggrieved by imposition of sentence, the State has preferred this enhancement appeal.

2. The facts in brief giving rise to the filing of present appeal are as under:-

2.1 As per the case of the prosecution, on 12.1.2004 when the complainant and her both children were in their house and her husband had gone for attending duty, somebody had knocked the door from outside, which was closed. The complainant was under an impression that her husband would have come for dinner and, therefore, she opened the door. She witnessed that two persons

were standing near the door and the complainant asked them as to why they have come, and in reply thereto they stated that her husband asked them to do so and they entered the house. One person pushed the complainant and taken her into the kitchen while the other had attempted to snatch the gold chain of the complainant on the point of knife. The complainant shouted, therefore, the residents of the locality came and, the accused tried to run away. However, the accused were caught red handed. Accordingly, the complaint was filed with Jamnagar City "B" Division Police Station.

2.2 On complaint being filed, investigation was carried out and the accused were arrested in connection with the said offence. After completion of investigation, the charge sheet was filed against the accused in the Court of learned Magistrate. However, as the case was exclusively triable by the Court of Sessions, the same committed to Sessions Court. Thereafter, charge was framed against the accused. The accused pleaded not guilty and claimed to be tried.

2.3 During the trial, the prosecution had examined following witnesses:-

2.4 The prosecution had also produced and relied upon following documentary evidence:-

2.5 At the end of trial, the Court below recorded further statement of accused under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order of conviction, which has led to the filing of present appeal.

3. Learned APP, Mr. L.R. Pujari appearing for the appellant-State has taken us through the oral as well as documentary evidence and contended that the trial Court has committed an error in imposing lesser sentence upon the accused inspite of voluminous evidence against them and also contended that the trial Court ought not to have imposed such a lesser punishment. He submitted that the prosecution has examined 13 witnesses in support of its case. The prosecution has also produced 10 documentary evidences on the record of the case. However, without appreciating those documentary as well as oral evidence available on the record of the case in their proper perspective, learned Judge has erred in imposing lesser punishment. He also submitted that though the accused are convicted by the trial Court for an offence punishable under Section 394 of IPC, the trial Court has committed an error in imposing punishment. He also submitted that the accused were caught red handed while committing the offence, therefore, no leniency should have been showed to them. He, therefore, submitted that the learned trial Judge has rightly convicted the accused, however, lesser sentence is imposed upon the accused. He further submitted that the learned Judge has also erred in not properly appreciating the gravity of the offence committed by the accused while imposing the sentence and thereby committed grave error by imposing lesser punishment. He also submitted that the learned Judge ought to have imposed maximum sentence on the present accused as provided under Section 394 of IPC. Hence, impugned judgment and order passed by learned Judge in imposing the lesser sentence deserves to be

modified by this Hon"ble Court and the sentence imposed to the accused deserves to be enhanced to maximum sentence as provided under the aforesaid section. He also submitted that the learned Judge has failed to appreciate the seriousness of the offence committed by the accused while imposing the sentence. The learned Judge also failed to appreciate that there is no sufficient and reasonable cause for the learned Judge to impose lesser punishment. He also submitted that the learned Judge failed to appreciate that there is no any mitigating circumstance to impose less punishment and it is very clear from the facts and circumstances of the case and the material available on record of the case that there is aggravating circumstances in which Hon"ble Judge ought to have imposed the maximum sentence as provided under the law.

4. On the other hand, Mr. Barod, learned counsel for the respondents-accused has contended that the accused were caught at the time of attempting to commit the offence and they have been properly punished by the trial Court. He also submitted that the accused are not involved in any similar type of offence, therefore, the learned trial Judge has not committed any error in imposing less punishment upon the accused persons. He, therefore, submitted that the sentence imposed upon the accused persons by the impugned order may not be enhanced and prayed that this appeal may be dismissed.

5. We have heard learned APP for the appellant and learned advocate for the respondents-accused. We have also perused the record and gone through the impugned judgment. In the present case, it has come on record that the accused were caught red handed at the time of committing the offence. It is also proved that the accused had entered the house of the complainant with an intention to commit robbery. Therefore, the trial Court has rightly found the accused guilty of the offence under Section 394 of IPC, however, the sentence imposed by the trial Court seems to be on lower side and it is required to be enhanced.

5.1 Moreover, recently, it has been held by the Hon"ble Apex Court in the decision in the case of Raj Bala v. State of Haryana and Others etc. etc. in Criminal Appeal Nos. 1049 to 1050 of 2015, decided on 18/08/2015, in para 1 and 2 as under:

"1. In Gopal Singh v. State of Uttarakhand, while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

"Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to

become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect -propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

[Emphasis added]

2. Seven years prior to that, in *Shailesh Jasvantbhai v. State of Gujarat*, it has been held that:-

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: "State of criminal law continues to be-as it should be-a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more

harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.*"

[Emphasis supplied]

And again:-

"The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society"s cry for justice against the criminal".

5.2 Thus, in our opinion, the ends of justice would meet if the sentence imposed upon the accused is enhanced and if the accused are ordered to undergo imprisonment for three years instead of one year. Accordingly, this appeal preferred for enhancement of punishment is required to be allowed.

6. For the foregoing reasons, this appeal is partly allowed. The impugned judgment and order dated 10.9.2004 passed by learned Assistant Sessions Judge, Jamnagar, in Sessions Case No. 32 of 2004 is modified and the sentence imposed by the impugned judgment for offence punishable under Section 394 read with Section 34 of IPC is enhanced from one year"s rigorous imprisonment to three years" rigorous imprisonment. Remaining part of the impugned judgment shall remain unaltered. The period of imprisonment already undergone by the accused persons shall be given set off. The accused shall surrender before the jail authorities within a period of twelve weeks from today to serve the remaining period of sentence. Bail bond, if any, of the accused stands cancelled. Record and Proceedings, if lying here, be sent back to the concerned trial Court forthwith.