
(2010) 10 GUJ CK 0031
In the Gujarat High Court
Case No : Criminal Appeal No. 688 of 2007

Vanzara Hiraji Naraji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 307, 323, 324

Citation : (2010) 10 GUJ CK 0031

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

Bench : Single Bench

Advocate : Dipen S. Thakkar and Tushar Sheth, for the Appellant; R.C. Kodekar, Additional Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellant-original accused has filed this Appeal against the judgment and order of conviction and sentence dated 21st November, 2006 passed by the learned Additional Sessions Judge and Presiding Officer, Fast Track Court, Mahesana in Sessions case No. 75 of 2006, whereby the learned Additional Sessions Judge has held the Appellant-accused guilty for the offence punishable under Sections 307 and 324 of the Indian Penal Code and Section 135 of the Bombay Police Act and sentenced him to suffer rigorous imprisonment for a period of seven years and pay a fine of Rs. 2500/-, in default, further rigorous imprisonment for a period of three months. The learned Additional Sessions Judge has also held the Appellant-accused guilty for the offence u/s 324 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for a period of two years, and pay a fine of Rs. 500/-, in default, further rigorous imprisonment for a period of one months. The learned Additional Sessions Judge has also held the Appellant-accused guilty for the offence punishable u/s 135 of the Bombay Police Act and sentenced him to suffer rigorous imprisonment for a period of 3 months and pay a fine of Rs. 100/-, in default, further rigorous

imprisonment for a period of 10 days. All the sentences are ordered to run concurrently.

2. Brief facts of the prosecution case are that the complainant Bhalaji Kadvaji Thakor originally belonging to Visnagar Taluka is rendering his services in Asharamji Ashram situated on Kada road since last four months. On 2.5.2006 at about 2.00 p.m., when the complainant was engaged in the services of the Ashram, at that time at about 2.00 p.m., the accused had entered the Ashram from the main gate of the Ashram. At that time, the complainant heard cries of Prahladbhai and the complainant had informed Madhabhai Sadhu about this and both had gone towards the room of Prahladbhai. At that time, they saw that the accused was continuously stabbing with a knife to Prahladbhai in the bathroom. The complainant had rescued Prahladbhai from the attack of the accused and at that time, the accused had ran towards the complainant to beat him. At that time, the accused had given a knife blow on the waist of the complainant and thereafter, he had run away from the gate. However, inspite of search, he was not found. Prahladbhai was profusely bleeding on the spot. Police had reached on the spot within a short time. Prahladbhai had received various knife blows.

3. On the basis of this incident, complaint being I-Cr. No. 157 of 2006 came to be registered against the accused with Visnagar police station for the offence punishable under Sections 307 and 323 of the Indian Penal Code. Panchnama of place of clothes of the injured person, panchnama of the physical position of the accused, discovery panchnama of Muddamal weapon, medical certificate of the injured person were collected by the Investigating Agency and the statements of witnesses were also recorded and Muddamal was sent to Forensic Science Laboratory as per Ravangi note and then charge-sheet was filed before the learned Magistrate. Thereafter, as the case was exclusively triable by the Court of Sessions, the Magistrate had committed the case to the Court of Sessions.

4. Charge was framed at exh. 9 against the present Appellant-accused and the Appellant-accused has pleaded not guilty and claimed to be tried.

5. In order to bring home the charges levelled against the Appellant-accused, the prosecution has examined several witnesses and also produced documentary evidence before the trial court. The prosecution has examined the following witnesses.

1. Bhalaji Kadvaji Thakor-Complainant exh. 7.
2. Madhabhai Jethabhai Patel-eye witness exh. 22.
3. Prahladbhai Mulchandbhai Manglani-eye witness exh. 24.
4. Kamleshbhai Ishwarbhai Prajapati-Panch witness exh. 25.
5. Hareshbhai Narsinh Sadhu Panch witness exh. 25.
6. Mirza Abidahmed Najirahmed Panch witness exh. 30.

7. Panch witness of arrest panchnama of the accused.
8. Rohitkumar Dhuljibhai Baranda PI Exh. 13.
9. Ramjibhai Prabhudas Chaudhary-IO exh. 45.
10. Dr. Manishkumar Chimanlal Sutaria-Medical Officer exh.13.
11. Dr. Mansingbhai Laljibhai Chaudhary-Medical Officer, General Hospital exh. 17.

The prosecution has produced the following documentary evidence.

1. Depute Order Exh. 33.
2. Complaint of Bhalaji Kadvaji Thakor exh. 21.11.2006.
3. Panchnama of the place of offence Exh. 26.
4. Panchnama of seizure of blood stained clothes of the injured and the Soti produced by Patel Madhavdas Jethidas in presence of panchas. Exh.34.
5. Panchnama of the physical position of the accused exh. 34.
6. Discovery panchnama of Muddamal knife and clothes of the accused Exh. 31.
7. Medical Certificate of the injured Prahladbhai from Civil Hospital, Visnagar Exh. 18.
8. Medical certificate of the injured complainant from Civil Hospital, Visnagar exh. 19.
9. Office copy of Muddamal Ravangi note exh.35.
10. Receipt of FSL of having received Muddamal Exh.36
11. Copy of the notification of Prohibition of weapons from the District Magistrate Exh. 37.
12. Copy of the FSL. Exh. 46.
13. Analysis report from FSL Exh. 47.
14. Serological Analysis report of FSL Exh. 48.
15. Report of Physiology Department of FSL exh. 49.

6. Thereafter, after examining witnesses, further statement of the accused u/s 313 of the Code of Criminal Procedure was recorded in which the Appellant-accused has denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the learned advocates for the parties, the learned trial Judge has passed the judgment and order of conviction and sentence as stated above.

8. Being aggrieved by the said judgment and order of conviction and sentence of the trial court, the Appellant-original accused has preferred the present Appeal.

9. Heard Mr. Dipen S. Thakkar, learned advocate for the Appellant. He has read charge as well as evidence of the injured witnesses and also read the contents of the discovery panchnama and argued that the prosecution has not proved its case beyond reasonable doubt. He has also read the cross-examination of the witnesses and contended that the prosecution has failed to prove its case beyond reasonable doubt. He has also read Section 27 of the Evidence Act and argued from the contents of the discovery panchnama exh. 31 that as per the provisions of Section 27 of the Evidence Act that as per the provisions of Section 27 of the Evidence Act, that the said information was with the police and in connection with the information, two panchas were called by the Investigating Agency and so the main ingredients of Section 27 of the Evidence Act cannot be proved beyond reasonable doubt. He has also contended that from the FSL report also, the prosecution has not proved its case but during submissions he has fairly admitted that he is not arguing this case on merits, but he is arguing the case on the quantum of punishment.

He has submitted from the jail remarks that the Appellant accused has already undergone sentence of over four years. So, he has prayed that the sentence awarded by the learned trial Judge may be reduced to an extent that the sentence which the Appellant has already undergone may be treated as sentence.

10. As against this, learned Additional Public Prosecutor Mr. Kodekar has fairly admitted that he has no objection if the undergone period of sentence is considered as the sentence.

11. I have considered the submissions made by learned advocates for both the sides and also perused oral as well as documentary evidence produced on record. I am of the opinion that looking to the judgment and order passed by the trial Court, the sentence awarded to the Appellant-accused by the trial court is very harsh as compared to the injury caused to the injured person. Therefore, the said sentence of 4 years and 30 days already undergone by the Appellant-accused is sufficient. I am not in full agreement with the reasons given by the learned trial Judge for the sentence awarded to the Appellant-accused. The Appeal therefore, requires to be partly allowed so far as it relates to sentence awarded to the Appellant-accused.

12. For the foregoing reasons and discussion, the Appeal is partly allowed. The judgment and order of conviction dated 21.11.2006 in Sessions case No. 75 of 2006 passed by the learned Additional Sessions Judge and Presiding Officer (Fast Track Judge), Mahesana, convicting the Appellant-accused for the offence punishable under Sections 307 and 324 of the Indian Penal Code and Section 135 of the Bombay Police Act is hereby confirmed. However, the sentence awarded by the learned Additional Sessions Judge vide impugned judgment is reduced to the extent that the period of sentence which the Appellant-accused has already undergone till date, shall be treated as sentence awarded to the Appellant-accused and the Appellant-accused shall be set at liberty forthwith if he is not required in any other case. Rest of the judgment and order passed by

the learned Additional Sessions Judge is confirmed. Record and proceedings be sent back to the trial court immediately.