

Ramanlal Baldevdas Shah

Vs

State of Gujarat

Criminal Appeals Nos. 28 to 31 of 1981 with 303 of 1981

(S. R. Pandian, R. M. Sahai JJ)

05.08.1992

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. Since all the five appeals arise out of a common judgment rendered by the High Court of Gujarat in Criminal Appeal No. 994 of 1977 and as the facts of the case are common, we pass the following common judgment in all the above appeals.

2. These six appeals are directed by the respective appellants who were arrayed as Accused Nos. 15, 17, 1, 3, 4 and 21 respectively before the trial Court. These six appellants along with 21 other accused took their trial before the Additional Sessions Judge, Ahmedabad at Chaloda in Sessions Case Nos. 41 of 1976 and 7 of 1977 for the offences punishable under various provisions of Indian Penal Code as explicitly mentioned in the respective 29 charges. All the accused before the trial Court were acquitted of all the charges. From the judgment of the trial Court, it is understood that the learned Special Prosecutor before the trial Court had conceded that the prosecution has no evidence worthy against the accused except the accused Nos. 1, 3, 4, 6, 13, 15, 17 and 21. It transpires from the judgment of the trial Court that though the prosecutor had pressed the case against the above said accused Nos. 1, 3, 4, 6, 13, 15, 17 and 21, the trial Court for the reasons assigned in its judgment .has acquitted these accused along with others.

3. Being aggrieved by the judgment of the trial Court, the respondent-State of Gujarat preferred an appeal before the High Court only as against the accused Nos. 1, 3, 4, 15, 17 and 21 and leaving the rest of the accused - especially accused Nos. 6 and 13. The High Court after analysing and evaluating the evidence found these appellants guilty of certain charges and consequently convicted them and sentenced as hereunder :

The appellant , in Criminal Appeal No. 30/81 (accused No. 1 before the trial Court) was convicted under Sections 406, 477A and 420 read with S. 120-B, I.P.C. and sentenced him to suffer rigorous imprisonment for a period of 2 years and to pay a fine of Rs. 25,000/- in default of payment of fine to further undergo rigorous imprisonment for six months for the conviction under Section 406 read with S. 120-B, I.P.C. No separate sentence has been awarded for other convictions.

4. The appellant in Criminal Appeal No. 28 / 81 (accused No. 15 before the trial Court) was convicted under Section 406 read with S. 120-B, I.P.C. and also under Section 420 read with S. 120-

B, I.P.C. and was sentenced to undergo rigorous imprisonment for a period of 9 months for the conviction under Section 406 and no separate sentence for other conviction has been imposed.

5. The appellants 1 and 2 in Criminal Appeal No. 30/81 (accused Nos. 3 and 4 before the trial Court) are convicted under Section 406 read with Section 120-B, I.P.C. and each of them has been sentenced to undergo rigorous imprisonment for a period of 18 months and in addition to pay a fine of Rs. 12,500/-, in default to suffer 4 months each. The appellants in Criminal Appeals Nos. 29/81 and 303/81 (accused Nos. 17 and 21 respectively before the trial Court) are convicted under Section 406 read with S. 120B, I.P.C. The appellant in Criminal Appeal No. 29/81 (accused No. 17) is sentenced to suffer rigorous imprisonment for a period of one year and the appellant in Criminal Appeal No. 303 / 81 (accused No. 21) is sentenced to undergo simple imprisonment for a period of 3 months on the ground that this appellant was 77 years old as on the date of the conviction recorded by the High Court.

Criminal Appeal No. 303 / 81

6. Learned counsel appearing for the appellant (accused No. 21) states that this appellant is no more and hence the appeal abates. Hence this appeal is disposed of as having become abated.

7. The next criminal appeal we would like to dispose of before coming to the other criminal appeals is Criminal Appeal No. 29/ 81. Mr. T. U. Mehta, learned counsel appearing for the appellant (accused No. 17) after drawing the attention of this Court to the evidence of PW 65 and to the vouchers 171 to 174 strenuously contended that simply because this appellant has identified the thumb impression of the appellant in Crl. A. No. 303/81, he cannot be fastened with the criminality of any of the offences charged. The trial Court in para 31 of its judgment has elaborately discussed the evidence appearing against this appellant and ultimately found that there is no question of any of the offences having been made out with which this appellant stood charged. After deep analysis of the evidence, we feel that the High Court was not justified in recording the conviction as against this appellant (accused No. 17). The evidence against this appellant is very flimsy, unreasonable and does not firmly establish the guilt of this appellant. In the result, we are unable to agree with the finding of the High Court and consequently we set aside the conviction and the sentence, recorded as against this appellant (in Criminal Appeal No. 29/81).

8. Now let us examine the Criminal Appeals Nos. 28, 30 and 31 filed by the appellants (Accused Nos. 15, 1, 3 & 4 respectively). Learned counsel appearing for the appellants though at the threshold strenuously contended that the prosecution has not satisfactorily established the charges against their clients, ultimately confined their submissions on the question of sentence. We in fact heard learned counsel appearing for these appeals as well as Mr. S. K. Dholakia, learned senior counsel appearing for the respondents in extenso and found that the prosecution has made out the case against these four appellants by impeaching circumstantial evidence, the totality and cumulative effect of which establish their guilt beyond all reasonable doubt. Therefore, we confirm the conviction as recorded by the High Court of all these four appellants who were accused Nos. 1, 3 ' 4 and 15 before the trial Court. Coming to the question of sentence, all the counsel after stating that the occurrence took place in the year 1972 and that these appellants have undergone the proceedings for a period of two decades, fervently pleaded for mercy.

9. Having regard to the above submission, we while confirming the convictions as recorded by the High Court reduce the sentence of all these four appellants to the period already undergone but retain the sentence of fine with the default clause as imposed by the High Court.

10. In the result, Criminal Appeal No.29/81 filed by the appellant (accused No. 17) is allowed. Criminal Appeal No. 303 / 81 filed by the appellant (accused No. 21 before the trial Court) abates and the Criminal Appeals Nos. 28/ 81, 30/ 81 and 31/ 81 are dismissed subject to the modification of sentence as indicated above. Order accordingly.

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