

SUPREME COURT OF INDIA

Bharwad Navghanbhaj Jakshibhai & Ors.

Vs.

State of Gujarat

Crl.A.No.783-784 of 2016

(Dipak Misra and Uday Umesh Lalit, JJ.,)

29.08.2016

JUDGMENT

Uday Umesh Lalit, J.,

1. These appeals by special leave at the instance of original accused Nos.2 to 14, seek to challenge the common judgment and order dated 10.03.2016 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal Nos.947/2011 and 969 of 2011.

2. Fourteen accused including appellants 1 to 13 were convicted and sentenced by Sessions Judge, Patan in Sessions Case No.27 of 2008 as under:-

“1 to 14 u/s 147, 148 IPC Fine of Rs.1000/-, i/d no separate imprisonment. 1 and 7 u/s 326 r/w 149 IPC R.I. of 2 years + Rs.35,000/-(towards compensation) 2 to 6 and 8 to 14 u/s 326 r/w 149 IPC R.I. of 2 years+ Rs.500/-, i/d 10 days. 1 to 14 u/s 324 and 149 IPC Fine of Rs.2-000/-, i/d 15 days 1 to 14 u/s 325 r/w 149 IPC R.I. of 2 years 1 to 14 504, 506(2) r/w 149 IPC No separate sentence is passed as the accused are already convicted under Section 326 IPC”

3. All the convicted accused, being aggrieved preferred Criminal Appeal No.947 of 2011 while the State preferred Criminal Appeal No.969 of 2011 seeking enhancement of the sentence imposed by the Trial Court. During the pendency of the appeal original accused No.1 having passed away, the appeals stood abated qua him.

4. According to the prosecution 2 to 3 days prior to 10.10.2007, the tractor of one Ganeshbhai i.e. son of the complainant had dashed against the motor cycle of one Bhikhabhai Ratnabhai. Nursing a grudge on account thereof, on 10.10.2007 at about 1230 hrs. all the accused forming an unlawful assembly went to the place of said Ganeshbhai with weapons like tamancha, dharia and sticks. Accused No.1 was armed with a tamancha, accused No.7 was armed with dharia, and others were armed with sticks.

Since Ganeshbhai did not open the house, the accused proceeded to the house of Gelabhai. All the accused are stated to have attacked complainant Gelabhai who was sleeping in the courtyard and caused serious injuries to him.

5. Gelabhai was taken to Civil Hospital, Mehsana where he remained an indoor patient for more than 40 days and according to Dr. Setalwad who treated him and was later examined as PW10 in the trial, said Gelabhai had sustained following injuries:-

“1. CLW of about 5cm x 2cm x bone deep in size on the rt. Leg middle one third, anterior aspect compound fracture.

2. Incised wound of about 3cm x 1cm x skin deep inside on the forearm middle one third anterior aspect oblique in direction.

3. Incised wound of about 4cm x 1cm x skin deep in size on the ant aspect of the middle one third of it leg, upper part.

4. Incised wound of about 2cm x ^ cm X skin deep in size on the left leg below knee outer aspect.

5. Incised wound of about 1cm x ^ cm x skin deep in size on the upper 1/3rd left leg, anterior aspect.

6. Abrasion & contusion 10cm x 6cm in size, irregular in shape with D.T.S over the left forearm lower one third.

7. Incised wound of about 1cm x ^ cm x skin deep in size, on the Ft. arm lateral aspect.

8. D.T.S and fracture deformity Rt. Arm, middle part on which Redish contusion of about 8cm x 2.5 cm in size oblique in direction on the anterolateral aspect.

1. Fracture of shaft hummers (right)

2. Fracture on Left Tibia and Fibula

3. Fracture of Radius and Ulna.”

6. Statement of Gelabhai recorded by PW 13 Sub-Inspector Nathabhai led to registration of Crime No.164 of 2007 against all the accused. After due investigation, charge-sheet was filed against all the accused under Sections 307, 325, 324, 504, 506(2), 147, 148, 148(9) of the IPC and under Section 30(A) of the Arms Act. During trial, the prosecution examined 15 witnesses and also produced documentary evidence. The accused denied having committed any offence and submitted that they were falsely implicated in the case because of old

rivalry. At the conclusion of the trial, by judgment and order dated 08.06.2011 the Trial Court acquitted the accused of charges under Section 307 IPC and Section 30(A) of the Arms Act. Though there was no charge under Section 326 of the IPC, according to the Trial Court the material on record was sufficient to prove the case of the prosecution as against the accused under Section 326 read with Section 149 of the IPC. The Trial Court thus convicted and sentenced all the accused as stated hereinabove.

7. While dealing with the challenge by the appellants to the judgment and order passed by the Trial Court, the High Court affirmed their conviction and dismissed Criminal Appeal No.947 of 2011. As regards the plea for enhancement of sentence by the State, the High Court found that the sentence of 2 years as imposed by the Trial Court for the offence under Section 326 of the IPC was not commensurate with the gravity of the offence and as such while partly allowing the appeal preferred by the State, it enhanced the sentence from 2 years to 5 years rigorous imprisonment for the offence under Section 326 read with Section 149 of the IPC.

8. These appeals by appellants seek to challenge the correctness of the decision of the High Court. Mr. Huzefa Ahmadi, learned Senior Advocate appearing in support of the appeals submitted inter alia that though there were 8 injuries on the body of the injured, 14 persons were arrayed as accused suggesting clear case of over-implication, that the injured person had not suffered any serious injuries and that the High Court was not justified in enhancing the sentence. It was further submitted that at this length of time the ends of justice would be met if the actual sentence was reduced while enhancing the amount of fine as imposed by the Courts below. Ms. Hemantika Wahi, learned Advocate appearing for the State and Mr. Purvish Jitendra Malkan, learned Advocate appearing for the complainant supported the judgments of conviction by the Courts below but were agreeable to the submission that the actual imprisonment could be reduced while enhancing the amount of fine.

9. We have gone through the record and considered rival submissions. As regards the findings of conviction by the Courts below, we do not find anything on record warranting any different view. The conclusion arrived at by the High Court rightly sums up the matter in following words:

“So far as the submission on behalf of the original accused that only 8 injuries were found and as per the case of prosecution 13 persons caused the injuries and, therefore, there is exaggeration and/or over-implication is concerned, it is required to be noted that all the accused were members of unlawful assembly with a common object. All of them attacked the original complainant-injured eye witness at his place. All of them were charged for the offence under Section 149 of the IPC also and they are in fact convicted with the aid of Section 149 of the IPC. As per catena of decisions of the Hon’ ble Supreme Court as well as this Court, to attract the provisions of section 149 of the IPC, once membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the

acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to be committed.”

10. The medical evidence on record through the testimony of PW10 Dr. Setalwad shows that injuries 2 to 5 and 7 though inflicted by sharp cutting weapons were deep upto the skin and were classified as injuries of general type. Injury No.1 according to the prosecution was attributed to accused No.1 who died during the pendency of the appeal. Injuries 6 to 8 are bruises and swellings which could be attributed to sticks. Though the injured Gelabhai was about 80 years of age on the date of incident, he did not suffer any serious or permanent injury and is still alive. At this length of time when 9 years have gone by, in our considered view, ends of justice would be met if the amount of compensation is increased while restoring the sentence imposed by the Trial Court. The Trial Court had directed payment of compensation to the tune of Rs.35,000/- each to be paid by original accused Nos.1 and 7. The record indicates that amount of Rs. 70,000/- has accordingly been deposited with the Trial Court.

11. In the circumstances we deem it appropriate to maintain the order of conviction and sentence as imposed by the Trial Court subject to the modification that each of the appellants shall pay Rs.55,000/- by way of compensation to the injured Gelabhai. Such compensation shall be deposited by each of the appellant with the Trial Court within two months from today and the deposited amount shall be made over to the complainant. The amount of Rs.70,000/- deposited by original accused Nos.1 and 7 shall also be made over to the complainant. Original accused No.7 who had already deposited Rs.35,000/- shall now deposit the balance sum of Rs.20,000/-. In case of any failure to deposit the compensation as directed above, the appellants shall have to undergo sentence in default for a further period of one year.

12. The appellants who were exempted from surrendering as a result of the order passed by the learned Chamber Judge of this Court shall surrender to custody within one month from the date of this order and shall undergo the sentence as imposed by the Trial Court subject to the modification in payment of compensation as stated above. In case of any default, the appellants shall undergo further sentence of one year.

13. The appeals are thus allowed and the order of sentence passed by the High Court stands modified to the extent as stated above.