

Received on :
Registered on :
Decided on :
Duration :
Y. M. D.

Exh. No. : 108

**IN THE COURT OF 3RD ADDITIONAL SESSIONS JUDGE
AT RAJKOT**

SESSIONS CASE NO.108/2016

Complainant : State of Gujarat

V E R S U S

Accused : 1) Jayantibhai @ Jimmy Bhurabhai Solanki
Age : 31 Years
2) Dhaval Dhirenabhai Pujara
Age : 26 Years
3) Rajesh @ Bhoplo Kishorbhai Chavda
Age : 24 Years
4) Jaydeep @ Bhabho Kishorbhai Chavda
Age : 19 Years

All resident
Rajkot

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Appearance

Learned A.P.P. Ms. B. A. Ravesiya for the State
Learned Advocate Mr. V. H. Bhatt for the accused

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Charge : For the offences punishable under Section 307, 323,
504, 143, 147, 148, 149 of I.P.C. and under Section
135(1) of G.P. Act.

J U D G M E N T

1. The short facts of the prosecution case are that the complainant

Hiteshbhai Maganbhai Jadav, by caste Talpada Koli, aged 29 years, Occupation : Labour Work soil of washing, Resident : Chunarawad, between Street No.2/3, Anganwadi Street, Bhavnagar Road, Rajkot, had given complaint before "B" Division Police Station of Rajkot City on 31-03-2016, which was registered vide I-C.R. No.88/2016 by contending that he is residing at the above mentioned address with his younger brother and sister and doing doing labour work of soil washing and his parents are died and his elder brother Bharatbhai residing with his family adjoining to him. Further contended that on 30-03-2016 at about 10:30 p. m. he gone for taking pan-masala at Chamunda Pan Stall of Arvindbhai Raghubhai Koli situated at Lakhajiraj Road, Udhyognagar between Street No.3 and 4 and he was standing there. Further contended that at that time, Jimmy Bhurabhai residing in his area had come with motor cycle and standing near to him and he was uttering filthy language by angry upon him and telling that why you Koli having power and he had taken out dhariya from his bike during that time, other four persons had come on different two motor cycles, wherein Dhaval Lohana, Bhailo, Bhabho and one unknown person who all having iron pipes. Further contended that at that time, Jimmy had inflicted one blow of dhariya at his right side forehead and another blow at right side thigh due to that, he fell down and then all were beating him in discriminatory by pipe blows and he sustained camouflage injuries at right shoulder, left thigh as well as many parts of body. Further contended that when he was shouting then all were fled away upon their motor cycle and during that time, his elder brother Bharatbhai and aunt (mami) Nimuben Kalubhai, sister Jashuben had come and they had brought him for treatment by ambulance 108 to Govt. hospital where he was given preliminary treatment and then further treatment he was being taken to Gokul hospital, where his treatment was going on. Further contended that he having fracture injury at right side forehead, right shoulder and he is conscious condition. Further contended that accused had attempted to commit murder. Such type of complaint has been given against the accused.

2. The accused were arrested and subsequently they were released

on bail.

3. As per the complaint, the investigation was carried out by the Investigating Officer. During the course of investigation, the I.O. has prepared panchnama for place of incident, prepared recovery panchanama of cloths of injured, prepared arrest panchnama of accused, sent yadi to FSL officer to visit place of incident, yadi had been sent for recording D.D., yadi had been sent for preparing map of place of incident, yadi had been sent for taking blood sample of injured as well as accused, yadi had been written to obtain medical certificate from Gokul hospital, obtained medical certificate of injured from Gokul hospital, muddamal had been sent for examination to FSL with ravanginodh, obtained receipt from FSL, obtained FSL report and medical certificate of Govt. Hospital, obtained notifications of Police Commissioner, Rajkot, and recorded the statements of the witnesses under Section 161 of the Criminal Procedure Code (hereinafter referred as to "Cr. P. C."). After completion of investigation, the I.O. has submitted the charge-sheet under Section 307, 323, 504, 143, 147, 148, 149 of I.P.C. and 135(1) of G. P. Act before the Court of Chief Judicial Magistrate, Rajkot, on 28-06-2016, which came to be registered as Criminal Case No.7413/2016.

4. The learned Judicial Magistrate, First Class (Main), Rajkot, after inquiry under Section 207 of Cr. P. C. regarding supply of free of cost copies of the police report and other documents to the accused persons as well as the accused have engaged their own advocate for the defence, has committed the case to the Court of Sessions by order dtd.15-07-2016, as the case is triable exclusively by the Sessions Court, as provided under Section 209 of the Cr. P. C. and committed the proceedings, which came to be registered as Sessions Case No.108/2016. After receipt of the committal papers the summon were issued to accused. The accused have engaged their own advocate for defence. After perusing the papers, there is presumption that the accused have committed offence, therefore, charge was framed under Section 228 of the Cr. P. C. vide Exh.28 on dt.13-04-2017 by my Learned Predecessor, it was read over to the accused. The accused-pleaded not guilty in their plea recorded vide

Ex.29 to Exh.32 respectively and claimed for trial.

5. Accordingly, the prosecution has produced oral as well as documentary evidence in support of its case. After closing evidence by the prosecution, further statements of the accused have been recorded under the provisions of Section 313 of the Cr. P. C. on 30-11-2018 below Exh.29 to Exh.32. The accused have denied the allegations / evidence produced against them and stated that they are innocent and false case had been filed against them.

6. As per the oral and documentary evidence, following points have been raised for my determination.

POINTS

1. Whether the prosecution proves beyond reasonable doubt that on 30-03-2016 at about 10:00 p. m. the complainant gone near Chamunda Pan Stall between Chunarawad Street No.3 and 4, the accused No.1 had given blow at the right side forehead as well as at thigh and the accused No.2 to No.4 as well as another accused Viky Ashokbhai had beaten by pipe at forehead, right shoulder and caused injuries like fracture and assaulted deadly weapon with a view to kill him by forming unlawful assembly against the notification of Police Commissioner, Rajkot, as such committed an offence punishable under Section 307, 323, 504, 143, 147, 148, 149 of I.P.C. and under Section 135(1) of G.P. Act ?
 2. What order ?
7. My findings on the above points are as under for the reasons recorded thereon:
- 1.
 2. As per final order.

REASONS

8. The prosecution has produced following oral as well as documentary evidence to prove the charges leveled against the accused.

ORAL EVIDENCE

Exh.33	P.W.1 Dr. Kaushikkumar Gopaldas Patel
Exh.36	P.W.2 Dr. Kalpeshkumar Vallabhbhai Bajaniya
Exh.37	P.W.3 Rameshbhai Mohanbhai Sitapara
Exh.40	P.W.4 Mansukhbhai Babubhai Fatepura
Exh.55	P.W.5 Hiteshbhai Maganbhai Jadav
Exh.59	P.W.6 Hinaben Maganbhai Jadav
Exh.63	P.W.7 Dipakbhai Harishbhai Bhatt
Exh.70	P.W.8 Mahendrasinh Bahadursinh Solanki
Exh.78	P.W.9 Sureshgiri S. Gosai

DOCUMENTARY EVIDENCE

Exh.34	Yadi for obtaining medical certificate from Gokul Hospital
Exh.35	Medical certificate of Hiteshbhai
Exh.38	Panchnama for the recovery of clothes of injured
Exh.39	Panch slip
Exh.43	Panchnama for place of incident
Exh.44	Arrest panchnama of accused
Exh.45	Arrest panchnama of accused
Exh.56	Complaint
Exh.64	FSL ravanginondh
Exh.65	Notification of Police Commissioner
Exh.66	Notification of Police Commissioner
Exh.67	FSL receipt
Exh.71	Yadi written by I.O. to FSL Officer to visit place of incident.
Exh.72	FSL report of the visit of place of incident
Exh.73	Yadi for preparing map of incident.
Exh.74	Yadi for taking blood sample of injured
Exh.75	Yadi for taking blood sample of accused
Exh.76	Yadi for taking blood sample of accused
Exh.79	Depute order
Exh.80	Depute order for investigation of station diary entry No.28/2016
Exh.81	Yadi written by I.O. to P.S.O. for registering offence.

9. The learned A.P.P. has tendered closing pursis vide Exh.82 by

stating that the prosecution does not want to lead more evidence, therefore evidence closed by this pursis.

10. The learned A.P.P. on behalf of the State has argued that the prosecution has examined nine witnesses and produced documentary evidence to prove the case. She has requested to convict the accused. The learned Advocate of the accused has argued that there is no evidence against the accused that they had caused injury to injured. He has argued that the prosecution has failed to prove its case by oral and documentary evidence against the accused persons. Therefore, it has not been proved that injury has been caused by the accused. He has argued that prosecution has failed to prove its case beyond reasonable doubt, therefore, request to acquit the accused.

11. The prosecution has examined Dr. Kaushikkumar Gopaldas Patel vide Exh.33. He has deposed that on 31-03-2016 at 2:00 O'clock midnight, patient Hiteshbhai Maganbhai Jadav admitted for further treatment after taking preliminary treatment at Civil Hospital, Rajkot. He has deposed that his brother Bharatbhai Jadav has given history that patient was being beaten by unknown person by unidentified weapon on 30-03-2016 at 10:30 p. m. at Chunaravad area. He has deposed that patient having complaint of headache and bleeding etc. He has deposed that patient was in conscious and his retina was properly working. He has deposed that patient having six to seven stitches on right side forehead and there was brushes at right side rib, abrasion at stomach etc. were injuries. He has deposed as per medical certificate. He has deposed that frontal bone of right side head was injured and there were other injuries. He has deposed that patient was admitted from 31-03-2016 04-04-2016 and as per his request, he was discharged. During his deposition yadi for obtaining medical certificate is produced vide Exh.34 and medical certificate of Hiteshbhai is produced vide Exh.35. He has deposed that the injury can be caused by pipe and dhariya shown to him.

This witness was cross-examined by the learned advocate for the accused, wherein admitted that patient had come from civil hospital without

any papers. He has also admitted that when the patient had come he having stitches on forehead. He has also admitted that if the person fall upon the sharp iron sheet then the injury of head can be caused. He has also admitted that the other injury can be possible clashing with wall. He has also admitted that in his certificate, he has mentioned that injury was occurred by unidentified weapon. He has also admitted that history was given by the brother of patient. He has also admitted that when patient came to his hospital for treatment at that time, he was conscious and able to speak.

11.1. The prosecution has examined Dr. Kalpeshkumar Vallabhbhai Bajaniya vide Exh.36. He has deposed that on 31-03-2016 at 2:00 O'clock midnight, patient Hiteshbhai Maganbhai Jadav admitted for further treatment after taking preliminary treatment at Civil Hospital, Rajkot. He has deposed that his brother Bharatbhai Jadav has given history that patient was being beaten by unknown person by unidentified weapon on 30-03-2016 at 10:30 p. m. at Chunaravad area. He has deposed that patient having complaint of headache and bleeding etc. He has deposed that patient was in conscious and his ratina was properly working. He has deposed that patient having six to seven stitches on right side forehead and there was brushes at right side rib, abrasion at stomach etc. were injuries. He has deposed as per medical certificate. He has deposed that frontal bone of right side head was injured and there were other injuries. He has deposed that patient was admitted from 31-03-2016 04-04-2016 and as per his request, he was discharged. He has identified his signature upon medical certificate Exh.35 with Dr. Kaushik Patel. He has deposed that the injury can be caused by pipe and dhariya shown to him.

This witness was cross-examined by the learned advocate for the accused, wherein admitted that if the person fall upon the hard and blunt substance then such type of injury can be caused.

12. The prosecution has examined panch witness for the recovery of clothes of injured Rameshbhai Mohanbhai Sitapara vide Exh.37. He has deposed that on 31-03-2016 at 5:30 p. m. police had obtained his signature upon ready made panchnama. During his deposition, panchnama is produced

vide Exh.38. He has deposed that he does not know anything about panchnama. During his deposition, panch slip is produced vide Exh.39. He has deposed that he cannot identify the clothes because it has not been recovered in his presence. This witness has not supported to the prosecution case, therefore, he was declared hostile by the court at the request of learned A.P.P. Even during cross-examination at length by learned A.P.P., he has not supported to the prosecution case.

This witness was not cross-examined by the learned advocate by the accused.

12.1. The prosecution has another examined panch witness for the recovery of clothes of injured Mansukhbhai Babubhai Fatepara vide Exh.40. He has deposed that on 31-03-2016 at 5:30 p. m. police had obtained his signature upon ready made panchnama. He has identified his signature as panch No.2 upon panchnama produced vide Exh.38 and panch slip vide Exh.39. He has deposed that he does not know anything about panchnama. He has deposed that he cannot identify the clothes because it has not been recovered in his presence. This witness has not supported to the prosecution case, therefore, he was declared hostile by the court at the request of learned A.P.P. Even during cross-examination at length by learned A.P.P., he has not supported to the prosecution case.

This witness was not cross-examined by the learned advocate by the accused.

13. The prosecution has examined complainant - Hiteshbhai Maganbhai Jadav vide Exh.55. He has deposed that on 30-03-2016 at about 10:30 p. m. he gone for taking pan masala at Chamunda pan stall situated between street No.2/3, Udhyognagar of shop of Arvindbhai Raghubhai at that time, there was quarrel with him with unidentified person. He has deposed that those four unknown persons had beaten him by pipe and dhariya at his head and forehead and leg. He has deposed that due to beaten him, he fell down and there was shouting due to that, those people fled away on motor cycle and he was admitted to Gokul Hospital by his relative by calling ambulance 108. He

has deposed that he having fracture at right side forehead and there was fracture at right shoulder. During his deposition, complaint given by him is produced vide Exh.56. He has deposed that he has not given the name of the accused in the complaint. He has deposed that he do not know the accused. He has also deposed that he cannot identify the weapon shown to him.

This witness was cross-examined by the learned advocate for the accused, wherein admitted that police had obtained his signature upon ready made complaint. He has also admitted that police had not read over to him what has been written in the complaint. He has admitted that he as not given any statement or facts either before Doctor or Mamlatdar. He has admitted that he does not know who had beaten him.

13.1. The prosecution has examined witness - Hinaben Maganbhai Jadav vide Exh.59. He has deposed that they are seven brothers and sisters and she residing with her brother Hitesh and Kanji. Further deposed that her parents are died. Further deposed that on 31-03-2016 she herself, her brother Kanji and Jashuben were at her house at that time, Hitesh sustained injuries. Further deposed that there after she had made call to her brother Kanjibhai and Kanjibhai had come then his brother was being taken to Civil Hospital by ambulance 108 and then Gokul hospital for treatment. She has deposed that it has not happened that Dhaval, Jimmy etc. had given blows of dhariya to her brother. She has deposed that she does not know the accused. This witness has not supported to the prosecution case, therefore, she was declared hostile by the court at the request of learned A.P.P. Even during cross-examination at length by learned A.P.P., she has not supported to the prosecution case.

This witness was cross-examined by the learned advocate by the accused. Wherein, she has admitted that police had asked only her name and address, except these, she does not know anything. She further deposed that she does not know how her brother sustained injuries.

14. The prosecution has examined I. O. - Dipakbhai Harishbhai Bhatt vide Exh.63. He has deposed that he is serving at Gandhinagar and on 24-06-2016 he was serving as P. I. at "B" Division Police Station at that time, the

investigation of this case was given to him. During his deposition, ravangi nondh for sending muddamal is produced vide Exh.64 and notification of Police Commissioner is produced vide Exh.65 and Exh.66 and FSL receipt is produced vide Exh.67. He has deposed that after obtaining sufficient evidence, he has filed the charge sheet.

This witness was cross-examined by the learned advocate for the prosecution, wherein on asking he has denied that inspite of no evidence, with a view to show his superior officer, false charge sheet has been filed.

14.1. The prosecution has examined P. I. - Mahendrasinh Bahadursinh Solanki vide Exh.70. He has deposed that he is serving as Police Inspector in Traffic Branch at Rajkot. He has deposed that on 31-03-2016 he was in charge of P. I. of "B" Division Police Station at that time he was given investigation of this case and he had taken the same. He has deposed that Gosai had taken the complaint and registered the offence vide I-C.R.No.88/2016. He has deposed that he had prepared panchnam by calling two panch and seized blood stain clay and control sample. Further deposed that he had also seized maruti zen having blood stains. He has deposed that he had sent yadi to FSL officer to visit the place of incident. During his deposition, yadi for place of incident and report of visit of place of incident are produced vide Exh.71 and Exh.72 respectively. He has also deposed that he had sent yadi for preparing map of the place of incident and same is produced during his deposition vide Exh.73. He has deposed that he has also written yardi for recording dying declaration of injured. He has also deposed that he has seized the clothes of injured by panchnama. He has also deposed that he had arrested the accused and seized weapon and clothes worn at the time of incident by preparing panchnama in the presence of panch. He has also deposed that he has written yadi to hospital for taking blood samples of injured Hiteshbhai and same are produced vide Exh.74 and Exh.75. He has also deposed that the accused had produced weapon and clothes. Further deposed that he had written yadi for taking blood sample of accused Jaydeep and same is produced vide Exh.76. He has also deposed that doctor has produced the report of blood report of

injured vide Exh.34. He has deposed that he had recorded the statements of witnesses and then further investigation was handed over to Mr. D. H. Bhatt. He has identified the accused present before the Court and the other accused absent, for that, there was an application for no dispute of identity, therefore, it was conducted in his presence.

This witness was cross-examined by the learned advocate for the accused. On asking he has denied that he has written panchnama as well as statements of witnesses being sat in police station consisting with the complaint. On asking he has denied that no such type of muddamal was produced by the accused. On asking he has denied that accused were falsely arrested and identified.

14.2. The prosecution has examined PSO - Sureshgiri S. Gosai vide Exh.78. He has deposed that he is serving as ASI at "B" Division Police Station. He has deposed that on 31-03-2016, he was serving as Investigation A.S.I. at that time, he was being given investigation of this offence. During his deposition, the depute order of station diary entry No.28/2016 is produced vide Exh.79 and Exh.80. He has deposed that he has taken the complaint of complainant Hitenbhai Maganbhai as per his dictation and the same is produced on record vide Exh.56. He has deposed that after taking complaint, he had sent to PSO for registration and the same is produced vide Exh.81. He has deposed that after registering the offence, further investigation was given to Mr. M. D. Solanki.

This witness was cross-examined by the learned advocate for the accused. On asking he has denied that he has written the complaint of complainant at his own and obtained signature of complaint upon ready made complaint.

15. I have carefully gone through the oral as well as documentary evidence as discussed here in above. The prosecution has examined complainant-injured namely Hiteshbhai Maganbhai Jadav vide Exh.55. As per deposition of complainant, he has specifically deposed that four unidentified persons had beaten him by pipe and dhariya at his forehead, head and leg due

to quarrel with them. The complainant being injured has specifically deposed that he does not know to accused as well as weapons. It is important to note that as per prosecution case, the incident was occurred at 10:30 p. m. i. e. at night. It is also important to note that another witness namely Hinaben, who is sister of complainant-injured, has also not supported to the prosecution case. Therefore, considering this fact, it has not come on record that the present accused had caused the injury to injured Hiteshbhai Maganlal. The most material thing, which is required to be decided by the court is, whether the accused had committed the offence as alleged against them. The complainant Hiteshbhai has deposed vide Exh.55 as narrated above. The Dr. Kaushikkumar G. Patel has deposed vide Exh.33 that the person fallen upon the sharp edge iron sheet then injury of forehead can be occurred and other injury can be occurred by clashing the wall. It is important to note that as per his deposition, the patient have stitches at forehead and preliminary treatment was taken at civil hospital. It is important to note that complainant-injured had given complaint at Gokul Hospital and as per the deposition of doctor, the history was given by the brother of complainant. Therefore, it is important to note that history was not given by the injured himself. It is important to note that complainant has specifically deposed that police has prepared complaint and obtained his signature upon ready made complaint, which itself shows and suggests that complaint was not given by the complainant himself and as per deposition of doctor, the history was given by his brother. Therefore, considering the evidence of complainant and witnesses that they have not deposed that the accused had caused injury to injured. Therefore, the prosecution has not proved that the injuries were caused by the accused. It is important to note that the medical evidence and FSL reports are to be used for the purpose of corroborative piece of evidence. It is important to note that the FSL report and preliminary treatment certificate of complainant has not been produced on record. It is important to note that if it is produced on record even though, looking to the deposition of complainant recorded vide Exh.55 that incident was occurred by 10:30 p. m. and he was being beaten by four

unidentified persons by pipe and dhariya and he does not know the accused as well as weapon. It is important to note that in absence of cogent and reliable ocular evidence no conviction can be recorded. It is also important to note that all the panch witnesses, as discussed above, have also not supported to the prosecution case and deposed that their signatures were obtained upon the ready made panchnama and no panchnama had been drawn in their presence. Therefore, considering the entire oral and documentary evidence produced on record, the witnesses have not given any iota of evidence against accused for the charges leveled against them. The prosecution has not produced cogent evidence regarding at which point of time notifications regarding not to possess the weapons were issued by the Police Commissioner as well as at which particular and at which point of time it were published and person has knowledge the same. Therefore, evidence produced by the complainant and witness does not indicate about accused had caused injuries by dhariya and pipe. Therefore, considering the entire evidence minutely, there is no evidence produced by the prosecution to show and establish that the accused had caused injuries. As per the evidence place on record, it is prime duty of the Court to decide, whether the accused have caused injuries? Therefore, considering the entire oral and documentary evidence produced by the prosecution does not suggest that the accused had assaulted on the injured-complainant. As per the prosecution case, the complaint and witness have not given evidence against accused in their depositions and there is no substantive evidence on part of the prosecution to connect and clinching evidence for charges leveled against the accused. There is neither substantive evidence produced by the complainant nor other witnesses to support the prosecution case. It is prime duty of the prosecution to prove its case beyond reasonable doubt to bring home the charges. Therefore, the evidence produced on record does not show and suggest that the accused had caused injuries as alleged against them. Therefore, the benefit of doubt is required to be extended to the accused. Therefore, considering the facts, the prosecution has failed to prove the charges leveled against the accused. Hence, I decide point No.1 in the

negative. Hence, I pass following final order.

ORDER

The accused **(1) Jayantibhai @ Jimmy Bhurabhai Solanki, (2) Dhaval Dhirenabhai Pujara, (3) Rajesh @ Bhoplo Kishorbhai Chavda (4) Jaydeep @ Bhabho Kishorbhai Chavda** are ordered to be acquitted under Section 235(1) of the Cr. P. C. for the charges leveled against them under Section 307, 323, 504, 143, 147, 148, 149 of I.P.C. and under Section 135(1) of G.P. Act.

As per amended provision of Section 437A(1), the accused are hereby ordered and directed to execute bail bond with surety for the sum of Rs.5,000/- (Five Thousand Only) for a period of six months for their appearance in case of appeal is filed against this judgment before the Higher Court.

The muddamal articles, if any, be destroyed after appeal period is over.

Pronounced in the Open Court today on 1st day of December, 2018.

Place : Rajkot
Date : 01-12-2018

[Dilipkumar Dhirajlal Thakkar]
GJ00405
3rd Additional Sessions Judge
Rajkot.