

[2011] 11 S.C.R. 627

NASIB HUSSAIN SIDDI AND ORS.

v.

STATE OF GUJARAT
(Criminal Appeal No. 1879 of 2011)

SEPTEMBER 28, 2011

[CYRIAC JOSEPH AND T.S. THAKUR, JJ.]

Penal Code, 1860:

ss.325, 506(2), 333, 342 and 114 – Conviction under – Quarrel between appellant no.1 and another person – Constable-complainant ordered them to accompany him to police station – Appellant no.1 caught hold of complainant and pushed him – Appellant 2 and 3, the mother and wife of appellant no.1 joined appellant no.1, exchanged hot words with complainant and prevented him from taking appellant no.1 to police station – Conviction of appellants – High Court affirmed the conviction, however, reduced sentence to 1½ years – On appeal, held: Two of the appellants were females and had not physically assaulted the complainant – Even appellant no.1 was not alleged to have used any force against the complainant in the incident – The incident took place nearly ten years back – Keeping in view all the circumstances and the fact that appellant no.1 who was mainly responsible for the grievous injury caused to the complainant has already served the sentence awarded to him, interest of justice would be sufficiently served if the sentence awarded to the appellants is modified and reduced to the sentence already undergone by them.

CRIMINAL APPELLATE JURISDICATION : Criminal Appeal No. 1879 of 2011.

From the Judgment and Order dated 13.04.2011 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 315 of 2007.

A D.N. Ray, Lokesh K. Choudhary and Sumita Ray for the Appellants.

Hemantika Wahi and Jesal for the Appellant.

B The order of the Court was delivered by

O R D E R

T.S. THAKUR, J. 1. Leave granted.

C 2. This appeal arises out of an order passed by the High Court of Gujarat at Ahmedabad whereby conviction of the appellants for offences punishable under Sections 325, 506(2), 333, 342 and 114 IPC has been affirmed and the sentence reduced to imprisonment for a period of 1½ years.

D 3. When the special leave petition came up for admission, this Court by its order dated 1st August, 2011 issued notice to the respondents only on the question of sentence. We are not, therefore, examining the validity of the order of conviction which both the Courts below have passed on a proper appreciation of the evidence on record. The only question on which we have heard learned counsel for the parties is whether the sentence awarded to the appellants needs to be reduced and, if so, to what extent.

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F 4. The genesis of the case of the appellants lies in an incident that took place on 7th September, 2003 at village Chitrod in the District of Kutch, State of Gujarat. The complainant in the case was, during the relevant period, a Constable posted at Chitrod outpost of Police Station Bhimasar. The prosecution case is that at about 10.30 a.m. on 7th September, 2003 when the complainant was on patrol duty, he found one Babubhai quarrelling in public place with one Hussain Ibrahim Siddi, accused no.1. The constable appears to have accosted the quarrelling duo and asked them as to why they were disturbing peace and ordered them to accompany

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him to the police station. This appears to have infuriated Hussain Ibrahim Siddi who caught hold of the Constable from his collar and pushed him. In the meantime the son, wife and mother of Hussain Ibrahim Siddi also appear to have joined Hussain Ibrahim Siddi, exchanged hot words with constable and prevented him from taking Hussain Ibrahim Siddi to the Police Station. It was on those allegations that Hussain Ibrahim and the appellants were tried together for the offences mentioned earlier.

5. At the trial the prosecution examined as many as 13 witnesses to support its case. The depositions of these witnesses were found reliable by the Trial Court resulting in the conviction of Hussain Ibrahim for the offence punishable under Section 325 and sentence of five years RI besides a fine of Rs.500/-. In default he was directed to undergo a further sentence of six months. He was also convicted under Section 506(2) of the IPC and sentenced to undergo imprisonment for a period of five years and a fine of Rs.500/- and in default to undergo further imprisonment for a period of six months. Hussain Ibrahim was in addition convicted and sentenced to imprisonment for five years and a fine of Rs.500/- under Section 333 and in default to undergo further imprisonment of six months. Imprisonment for a period of one year and a fine of Rs.100/- was awarded to him under Section 342 of the IPC and in default to undergo further imprisonment for a period of one month.

6. In so far as the appellants Hussain Siddi, Malubai wife of Ibrahim Siddi and Hawabai wife of Hussain Ibrahim are concerned, the Trial Court found them also to be guilty of offences punishable under Sections 333 of the IPC and sentenced them to undergo simple imprisonment for a period of three years and a fine of Rs.200/-. Malubai accused no.3 and appellant before us was also in addition convicted and sentenced to undergo imprisonment for a period of three years under Section 506(2) IPC apart from a fine of Rs.500/-. In

A default of payment of fine she was sentenced to undergo six months further imprisonment.

B 7. Aggrieved by the orders of conviction and sentence the appellants preferred an appeal before the High Court of Gujarat at Ahmedabad who has while upholding the conviction of the appellants reduced the sentence awarded to all of them to 1½ years instead of three years.

C 8. It is common ground that the appellants, two of whom happen to be females had not physically assaulted the constable. Even appellant no.1 is not alleged to have used any force against the constable in the incident in question. The incident itself is nearly ten years old by now. Keeping in view all these circumstances and the fact that Hussain Ibrahim Siddi accused no.1 who was mainly responsible for the grievous injury caused to the constable has already served the sentence awarded to him, we are of the opinion that interest of justice would be sufficiently served if the sentence awarded to the appellants is modified and reduced to the sentence already undergone by them.

E 9. We order accordingly. The appellants shall be set at liberty forthwith unless required in any other case. The appeal is allowed to the above extent.

D.G.

Appeal allowed.