

(2015) 08 GUJ CK 0051
In the Gujarat High Court

Case No : Criminal Appeal Nos. 2282, 2731, 2893 and 2894 of 2008

Alpeshbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 201

Citation : (2015) 08 GUJ CK 0051

Hon'ble Judges : K.S. Jhaveri, J;G.B. Shah, J

Bench : Division Bench

Advocate : Pratik B. Barot, for the Appellant; C.M. Shah, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J—These Criminal Appeals have been directed against the judgment and order dated 07/07/2008 passed by the learned Additional Sessions Judge, Fast Track Court No. 4, Jamnagar in Sessions Case No. 89 of 2006 whereby, the learned Sessions Judge was pleased to convict the accused Nos. 6 and 7 for the offence punishable under Sections 302, 201 and 34 of the Indian Penal Code, 1860 ("the IPC" for brevity) and awarded life imprisonment and fine of Rs. 1,000/- each and in default, further simple imprisonment for 03 years for the offence punishable under Sections 302 and 34 of the IPC and 07 (seven) years" rigorous imprisonment and fine of Rs. 1,000/- each and in default, further simple imprisonment for one year for the offence punishable under Sections 201 and 34 of the IPC and acquitted the accused Nos. 1 to 4 for the offence punishable under Sections 302, 395, 396, 397, 143, 147, 148, 149 and 34 of the IPC; the accused No. 5 was acquitted of the offence punishable under Section 412 of the IPC and accused Nos. 6 and 7 were acquitted of the offence punishable under Sections 395, 397, 143, 147, 148, 149 and 34 of the IPC. Accordingly, Criminal Appeal Nos. 2282 of 2008 and 2731 of 2008 have been filed by the appellants -

original accused Nos. 6 and 7 respectively, against conviction whereas, Criminal Appeal Nos. 2893 of 2008 and 2894 of 2008 have been filed by the State respectively against acquittal and for enhancement of sentence awarded against the original accused Nos. 6 and 7.

2. Brief facts of the prosecution case are that on 24/04/2006 in the midnight at Udyognagar in Jamnagar deceased - Ramesh Bahadur Gurkha was serving as watchman in a factory known as Yogi Cast (Foundry), at that time, the accused Nos. 1 to 4, in abetment of accused Nos. 6 and 7, with a view to commit robbery, entered into the premises and on being challenged by the deceased, they assaulted the deceased with Gupti and caused multiple injuries and looted 600 kg. Brass and though, it was allegedly known to accused No. 5 that the muddamal article was obtained by way theft, he purchased the same and thereby, the accused persons committed the offence charged against them and for the said alleged offence, complaint came to be lodged against them.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Sessions Court, Jamnagar.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 In order to bring home the charge against the accused, the prosecution has examined as many as 40 witnesses and also produced several documentary evidence.

2.4 At the end of the trial and after recording Further Statements of the accused under Section 313 of Criminal Procedure Code, 1973 ("the Code" for brevity) and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the accused Nos. 1 to 5 of the charges levelled against them whereas, convicted accused Nos. 6 and 7 for the offence punishable under Sections 302 and 34 of the IPC as well as under Sections 201 and 34 of the IPC, as aforesaid, by impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant - State as well as the accused Nos. 6 and 7 have preferred the present appeals.

3. Mr. Barot, the learned advocate for the appellants - original accused Nos. 6 and 7 submitted that the case is based on the circumstantial evidence and except discovery of clothes and weapons under Section 27 of the Evidence Act and blood stains found on the clothes of the accused and mobile details and history before the doctor by the accused No. 6, there is nothing on record to show that the accused were involved in the crime in question. He took us mainly to the evidence of following witnesses:

3.1 Mr. Barot, the learned advocate for the appellants - original accused Nos. 6

and 7 further submitted that the case is based on the circumstantial evidence as stated above and therefore, conviction of life for the offence punishable under Sections 302 and 34 of the IPC was unwarranted and is required to be set aside.

4. Per contra, Ms. Shah, learned Additional Public Prosecutor appearing for the State, took us to the evidence on record and contended that in view of the Panchnama and more particularly, the evidence of P.W. Nos. 7, 8, 9, 13 and 17, it is clear that the conduct of accused No. 7 - Mahesh immediately on the dead-body being found in the premises and P.W. No. 16, who found the dead-body in the factory premises in the morning and shouted at that time, the accused No. 7 was present and vomited and ran away from the factory speaks a volume. Apart from that, she further contended that the articles which were seized being muddamal article Nos. A to I clearly show that all the accused ought to have been convicted. She took us to the judgment and order of the trial Court where the trial Court, after discussing the evidence of each of the witnesses and the documentary evidence, has completely described the evidence and circumstances, which are against the accused Nos. 6 and 7 and accordingly, convicted them, whereas, wrongly acquitted the other accused by giving benefit of doubt though there was ample evidence available on record against them also.

5. We have heard the learned advocates for the respective parties.

5.1 At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Hon'ble Apex Court in catena of decisions. In the case of *M.S. Narayana Menon @ Mani Vs. State of Kerala and Another*, AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6 CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp : (2006) AIRSCW 4652 : (2006) 5 Supreme 547, the Hon'ble Apex Court has narrated about the powers of the High Court in appeal against the order of acquittal. In para 54 of the decision, the Hon'ble Apex Court has observed as under:

"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgement of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below."

5.2 Further, in the case of *Chandrappa and Others Vs. State of Karnataka*, (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630 the Hon'ble Apex Court has laid down the following principles:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

[1] An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

[4] An appellate court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

[5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

5.3 Thus, it is a settled principle that while exercising appellate powers, even if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

5.4 Even in a recent decision of the Hon'ble Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgement delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the

material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

5.5 Similar principle has been laid down by the Hon"ble Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.6 In the case of Lunaram Vs. Bhupat Singh and Others, (2009) CriLJ 1899 : (2009) 3 JT 155 : (2009) 3 SCALE 363 : (2009) 3 SCC 749 : (2009) 3 SCR 706 : (2010) AIRSCW 298 : (2009) 7 Supreme 103 , the Hon"ble Apex Court in paras 10 and 11 has held as under:

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so-called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post-mortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in a running condition.

11. Considering the parameters of appeal against the judgement of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

5.7 Even in a recent decision of the Hon"ble Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1 Supreme 88 , the Hon"ble Apex Court in para 4 has held as under:

"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges levelled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal

against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan Vs. Sohan Lal and Others, (2004) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480 Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404 J"]

5.8 It is also a settled legal position that in acquittal appeal, the appellate Court is not required to re-write the judgment or to give fresh reasonings when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Hon"ble Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981) 2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 wherein it is held as under:

"...This court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, AIR 1967 SC 1124 : (1967) 1 SCR 93 that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

5.9 Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

6. We have examined the matter carefully and gone through the evidence on record. We have appreciated, re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon"ble Apex Court. We find that the trial Court while considering the evidence on record, has very elaborately discussed the evidence adduced before it. Further, the learned advocates for the appellants in these appeals are not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In that view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order. We are, therefore, of the considered opinion that the findings recorded by the trial Court in passing the impugned judgment and order which is absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are in complete agreement with the reasonings given and the findings arrived at by the trial

Court. No interference is warranted with the judgment and order of the trial Court.

7. In view of the aforesaid discussion and observations, the Criminal Appeal Nos. 2282 of 2008 and 2731 of 2008 filed by the appellants - original accused Nos. 6 and 7 respectively against conviction as well as Criminal Appeal No. 2893 of 2008 filed against acquittal and Criminal Appeal No. 2894 of 2008 filed for enhancement of sentence by the State, having found without any substance, fail and are dismissed. It is reported that the accused Nos. 6 and 7 are at large on bail and hence, they are directed to surrender before the concerned jail authority to undergo the sentence imposed upon them as aforesaid, within a period of 06 (six) weeks from today. Their bail bonds shall stand cancelled. Registry to return the record and proceedings to the trial Court forthwith.