

(2015) 10 GUJ CK 0111
In the Gujarat High Court

Case No : Criminal Appeal Nos. 1180, 1420 and 1424 of 2012

Mohit

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 188, 302, 304(II), 323, 325

Citation : (2015) 10 GUJ CK 0111

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

Bench : Division Bench

Advocate : Nishith P. Thakkar, for the Appellant; L.R. Pujari, APP, Advocates for the Respondent

Judgement

K.S. Jhaveri, J—Present appeals assail the judgment and order dated 15/05/2012 passed by the learned Sessions Judge, Rajkot in Sessions Case No. 129 of 2007, whereby, the learned trial Judge was pleased to acquit the accused for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity, "the IPC"), however, convicted the accused for the offence punishable under Section 304(II) of the IPC and sentenced to undergo rigorous imprisonment for two and a half years and a fine of Rs. 1,000/- and in default of payment of fine, to undergo, further simple imprisonment for 10 days. He was also convicted for the offence punishable under Section 325 of the IPC and sentenced to undergo rigorous imprisonment for two years. However, for the offence punishable under Section 504, no separate punishment was imposed. For the offence punishable under Section 135 of the Bombay Police Act, he was sentenced to undergo simple imprisonment for one month and a fine of Rs. 100/-. All the sentences were to run concurrently. Accordingly, Criminal Appeal No. 1180 of 2012 has been filed by the accused against conviction, whereas, Criminal Appeal Nos. 1420 of 2012 and 1424 of 2012 have been filed by the State for enhancement of sentence and against acquittal for the offence

punishable under Section 302 of the IPC, respectively.

2. Brief facts of the prosecution case are that on 13/08/2007 at about 10:30 hours, at the corner of street No. 11/1 in Lati Plot at Rajkot near the house of complainant - Dilip Chhaganbhai Makwana, the accused started quarreling with the complainant and his father keeping in mind the earlier dispute between them and assaulted the complainant with a wooden log and caused fracture on his right leg knee. He also assaulted the father of the complainant with wooden log on his head, who, ultimately succumbed to the injuries after 13 days. Thus, the accused alleged to have committed the offence for which, a complaint came to be lodged against him for the offence punishable under Sections 302, 325, 323, 504, 188 of the IPC.

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, Rajkot.

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 original accused, the prosecution has examined as many as 18 witnesses and also produced several documentary evidence.

2.4 At the end of the trial and after recording the Further Statement of the accused under Section 313 of Criminal Procedure Code, 1973 (for brevity, "the Code") and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge concluded, as aforesaid, by impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, present appeals have been filed.

3. We have heard Mr. Nishith Thakkar, learned advocate for the accused and Mr. Pujari, learned Additional Public Prosecutor for the State.

3.1 Mr. Thakkar, learned advocate for the accused, contended that there is no nexus between the death of the deceased and the alleged injuries caused to the deceased, inasmuch as the alleged incident had taken place on 13/08/2007, whereas, the deceased had died on 26/08/2007 and because of the medical negligence and the difference of medical opinion, the deceased has died. He took us to the evidence of PW-3 - Dr. Altafbhai Osmanbhai Dal, who is examined at exh. 37, who was the Medical Officer of Civil Hospital at Rajkot and had given treatment to the complainant and it was reported to him that Mohit and other four persons had made the assault. Therefore, the learned advocate for the accused contended that the prosecution has miserably failed to prove as to out of these five persons, who had inflicted which injury and as to whose blow proved to be the fatal to the deceased. Therefore, in his submission, the prosecution has

failed to prove beyond reasonable doubt that the alleged injury, caused to the deceased, was caused by the accused only. However,

Mr. Pujari, learned Additional Public Prosecutor contended that this witness, in his deposition, in para 3 has clearly stated that, while examining the deceased, it was found that, on the head, on parietal region, there was a cut wound of 4 cm. length and 0.5 cm. width and 0.5 cm. deep; moreover, on the forehead on left side, there was a sore wound; on going through the x-ray report of the head, there was a fracture; he was given discharge on 14/08/2007. Thus, he submitted that the prosecution has proved that because of the injury caused by the accused, the deceased has succumbed to the injury and he has died after 13 days.

4. The contention of the learned advocate for the accused that after 13 days of the incident in question had occurred, the deceased had died and it was due to medical negligence, in our opinion, is required to be viewed very seriously and accordingly, the appeal against acquittal for the offence punishable under Section 302 of the IPC cannot be entertained, more so when, the ingredients of the offence punishable under Section 302 of the IPC do not proved beyond reasonable doubt.

4.1 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."

4.2 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 emphasis 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."

4.3 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.

4.4 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."

4.5 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.

4.6 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."

4.7 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 re-appreciate 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]"

4.8 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."

4.9 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.

5. We have examined the matter carefully and gone through the evidence on record. We have 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, there appears nothing on record so as to make this Court 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 convicting the accused of the charge levelled against them are 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. However, keeping in mind the injury, the trial Court while discussing the injuries in para 16 has discussed the evidence

and the injury which are narrated in column Nos. 17 and 19 of the Post Mortem Report are sufficient for causing the death. The role played by the accused is proved beyond reasonable doubt in view of the evidence of the complainant and the other witnesses. The trial Court while considering the case, has come to the conclusion that the case falls for the offence punishable under Sections 304(II) and 325 of the IPC, however, while imposing the sentence, looking to the provisions of the statute and keeping in mind the injury caused, the sentence imposed upon the accused appears inadequate and we are of the considered opinion that the ends of justice would meet if the same is enhanced to five years for the offence punishable under Section 304(II) and four years for the offence punishable under Section 325 of the IPC.

6. In view of the aforesaid discussion, Criminal Appeal No. 1420 of 2012, filed by the State for enhancement of sentence, succeeds and the impugned judgment and order dated 15/05/2012 passed by the learned Sessions Judge, Rajkot in Sessions Case No. 129 of 2007 is modified to the aforesaid extent and it is held that for the offence punishable under Section 304(II) of the IPC, the original accused shall have to undergo five years" rigorous imprisonment instead of two and a half years" and for the offence punishable under Section 325 of the IPC, he has to undergo four years" rigorous imprisonment instead of two years, as has been imposed by the trial Court. The rest of the order shall remain unaltered. The sentences are to be run concurrently. The accused be given set off of the sentence he has undergone and will be given benefit of remission. Accordingly, the Criminal Appeal No. 1180 of 2012 filed by the accused against conviction and the Criminal Appeal No. 1424 of 2012 filed by the State against acquittal for the offence punishable under Section 302 of the IPC, fail and are dismissed. Registry to return the R&P, if any, to the trial Court forthwith.