
(2013) 09 GUJ CK 0019

In the Gujarat High Court

Case No : Criminal Appeal Nos. 1404 and 2142 of 2009

Palabhai Vasrambhai Harijan (Parmar)

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 1 GLR 390

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.J. Thaker, J.—Criminal Appeal No. 1404 of 2009 under Sec. 374(2) of the Code of Criminal Procedure, has been preferred by the appellant-original accused No. 3 against the judgment and order of Conviction and sentence dated 28-7-2009 passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Deesa, Camp at Deodar in Sessions Case No. 142 of 2007, whereby, the learned trial Judge has convicted the present appellant-original accused No. 3 under Sec. 302 of I.P.C. and sentenced to undergo R.I. for life and to pay a fine of Rs. 25,000/-, in default, to undergo further R.I. for two years. Criminal Appeal No. 2142 of 2009 has been preferred by the State under Sec. 378 of the Code of Criminal Procedure, against the judgment and order dated 28-7-2009 passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Deesa, Camp at Deodar in Sessions Case No. 142 of 2007, whereby, the learned trial Judge has acquitted the respondents-original accused No. 1 and 2 of the charges levelled against them. Since, both the appeals arise from common judgment and order of the trial Court, they are heard and decided by this common judgment.

1.1. The brief facts of the prosecution case is that complainant is residing at village Gangol and he was having four sons. Kunvarbhai and Chelabhai were living with the complainant and other two sons were living separately. Chelabhai having one son namely Prakashbhai. That before about 11 years of the complaint, Harijan Jagmalbhai Vasrambhai (brother of the accused) was dead. In

the said incident, complainant and other persons were arrested and in the said case, they were acquitted by the Court. Therefore, the accused persons wanted to take revenge and threatened them to kill one person of his family. On 15-6-2007, at about 2-30 p.m., the complainant was present at his Roadwala Farm, at that time, he heard shout, hence, the complainant and his sons went towards the road, and saw that one jeep dashed with motor-cycle of Jayantibhai Kalabhai, and fell it down, so the complainant and his sons went near the Jeep. The accused persons were present in the jeep and talking that their work was done. And they ran away from the place of offence leaving the Jeep there. Prakash, the grandson of the complainant fell down on the road with bleeding condition and blood was oozing from his chest and head and one Shravanbhai Thakore was also seriously injured. Thereafter, son of complainant had taken Prakash and Shravanbhai to the hospital for treatment in the jeep, but on the way, Prakash was died. Therefore, the complaint was filed by the complainant against the accused persons for committing murder of Prakash.

1.2. The accused came to be arraigned for committing the murder. After the investigation, was complete, the charge-sheet was filed against the accused. Thereafter, as the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, which was given number as Sessions Case No. 142 of 2007.

1.3. Thereafter, the Sessions Court framed the charge below Exh. 6 against the accused for commission of the offence under Sec. 302 of I.P.C. The accused have pleaded not guilty and claimed to be tried.

1.4. To prove the case against the accused, the prosecution has examined the following witnesses:

1. P.W. 1 Dr. Sureshchandra Morlal Gupta Exh. 14
2. P.W. 2 Devasibhai Rupabhai Patel Exh. 21
3. P.W. 3 Jayantibhai Kalabhai Patel Exh. 23
4. P.W. 4 Shravanji Shankarji Exh. 25
5. P.W. 5 Chelabhai Devshibhai Exh. 34
6. P.W. 6 Amaratbhai Hirabhai Chaudhary Exh. 35
7. P.W. 7 Rajendrakumar Chelaram Sharma Exh. 45
8. P.W. 8 Nanjibhai Paragbhai Exh. 50
9. P.W. 9 Dr. Rakeshbhai Pravinbhai Patva Exh. 54

1.5. The prosecution also relied upon the following documentary evidences so as to bring home the charges against the accused:

1. Yadi for post-mortem Exh. 15

2. Post-mortem Note Exh. 16
3. Complaint Exh. 22
4. Inquest panchnama Exh. 26
5. Panchnama of scene of offence place Exh. 27
6. Visit report of Mobile F.S.L. Exh. 28
7. Panchnama of clothes of deceased Exh. 29
8. Panchnama Exh. 30
9. Panchnama of Jeep Exh. 31
10. Panchnama of person of accused Exh. 32
11. Panchnama of person of accused Exh. 33
12. Death form Exh. 36
13. Letter to R.T.O. Exh. 37
14. Report of R.T.O. Exh. 38
15. R.T.O. report about motor-cycle Exh. 39
16. Copy of Station diary Exh. 41
17. F.S.L. report about vehicle Exh. 43
18. F.S.L. report Exh. 48
19. Serological report Exh. 49
20. Copy of Station diary Exh. 51
21. Special report about serious offence Exh. 53
22. Medical certificate Exh. 55
23. Copy of F.I.R. being No. 1-146 of 1995 of Deodar Exh. 59

2. Thereafter, after examining the witnesses, further statement of the accused under Sec. 313 of Cr.P.C. was recorded in which the accused have denied the case of the prosecution.

3. After considering the oral as well as documentary evidence and after hearing the parties, learned trial Judge vide impugned judgment and order dated 28-7-2009 held the present appellant-original accused No. 3 guilty of the charge levelled against him under Sec. 302 of I.P.C. and convicted and sentenced the appellant-accused No. 3, as stated above.

4. We have heard learned Advocate Mr. S.L. Vaishya for the appellant in Criminal Appeal No. 1404 of 2009 and Ms. C.M. Shah learned A.P.P. for the respondent-

State and for appellant-State in Criminal Appeal No. 2142 of 2009.

5. The learned Advocate for the present appellant has contended that the trial Court has committed an error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective, and hence, the present appellant deserves to be given the benefit of doubt and be acquitted.

6. On the other hand, learned A.P.P. has strongly opposed the contentions raised by the learned Advocate for the present appellant and has submitted that the trial Court has passed the impugned judgment and order after taking into consideration the facts and circumstances of the case as well as the material, in the form of oral and documentary evidence, produced before it, and hence, no interference is called for and the appeal deserves to be dismissed.

7. Having considered minutely the evidence on record, oral as well as documentary evidence, which we have appreciated, re-appreciated and reconsidered in light of the latest decision of the Apex Court. The theory put forward by the learned Advocate Mr. Vaishya cannot be accepted as the injuries caused to deceased were very serious in nature, which are as under:

1. Contused lacerated wound which is about 4 cm. x 1 1/2 cm. x fractured bone and brain seen inverted margin reddish black blooded clots present at the right frontal region of forehead.

2. Contused lacerated wound which is about 1 1/2 cm. x 1 1/2 cm. x bone seen at the right side of mandibular area 1 cm. below the right angle of mouth. Reddish black bleeding present.

3. Contusion:--1 1/2 cm. x 1 mm. on the lateral side of neck which is reddish black colour.

4. Contusion:--1 1/2 cm. x 1/2 cm. at the medial of clavicle blackish red in colour.

5. Contusion:--1 1/2 cm. x 1/2 cm. blackish red in colour on the right chest 2 cm. below the right clavicle.

6. Contusion:--1 cm. x 1/4 cm. on the tip of the right shoulder, blackish red in colour.

7. Contusion:--1/2 cm. x 1/2 cm. on the right shoulder medial to the tip of right shoulder, blackish red colour.

8. Contusion:--4 cm. x 4 mm. on the lateral aspect of the right shoulder, blackish red colour.

9. Contusion:--7 cm. x 1/2 cm. blackish red colour, on the right side of arm extending to the right elbow.

10. Contusion:--1 cm. x 1/2 cm. on the middle of the right forearm.

11. Contusion:--vertical 2 cm. horizontal x 1/2 cm. width.
12. Contusion:--1/2 cm. x 1/2 cm. on the dorsum of the right hand below the right little finger blackish red in colour.
13. Multiple contusion on the dorsum of the right hand which are about 1 mm. x 1 mm. size blackish red in colour.
14. Contused lacerated wound : 2 mm. x 2 mm. at the right anterior, interior ilia spine region where part of bone is seen blackish red blood present.
15. Contusion : 3 cm. x 1/2 cm. along the upper margin of.
16. Contusion : 1/2 cm. x 1/2 cm. blackish red in colour on the (illegible) ligament.
17. Multiple contusion 2 mm. x 1 mm. blackish red colour at the right ilia fossa.
18. Contusion : Bluish colour over the right ilia fossa.
19. Contusion : 6 cm. x 1 mm. over the lower 1/3 of right thigh blackish red colour.
20. Contusion : 4 cm. x 1.1/2 cm. about the right knee joint blackish red colour.
21. Contusion : 2.2/1 cm. x 2.1/2 cm. along the lateral margin of right knee joint blackish red colour.
22. Contusion : 2.1/2 cm. x 2 cm. blackish red colour at medial side right thigh.
23. Multiple contusion on the medial aspect of right knee joint which are about 4 mm. x 2 mm. in size, blackish red colour.
24. Multiple contusion on the medial aspect of right leg at calf area, blackish red colour.
25. Contusion on the medial side right leg at the calf area which is about 5 cm. x 1/2 cm. in size, blackish red in colour.
26. Contused lacerated wound:--1 cm. x 1 cm. on the middle of medial aspect of right leg, part of bone and muscle seen.
27. Contusion : 3 cm. x 1/2 cm. in size at the medial side of lower 1/3 of right leg.
28. Contusion : about 2 cm. x 1/2 cm. on the dorsum of the right foot.
29. Multiple contusion : multiple contusion of about 2 mm. x 1 mm. on the dorsum of the right foot.
30. Abrasion which is about 3 cm. x 1/2 cm. on the lower 1/3 of the left leg. (anterior aspect) (repetition) present on palpation.
31. Contusion about 3 cm. x 1/2 cm. on the dorsum of the right hand which

blackish red in colour.

32. Contusion about 3 cm. x 1/2 cm. on the dorsum of the right wrist joint, of blackish red colour, medial aspect side.

33. Contusion : 2 cm. x 1/2 cm. on the dorsum of the right wrist joint lateral aspect, lateral side of joint, blackish red colour.

34. Contusion : right eye and infra orbital area and maxillary area, rt. eye closed.

8. The injuries were so gruesome that we are unable to accept the submission of learned Advocate Mr. Vaishya that it was an accidental death. It is his contention that it was scooterist which came and dashed with the jeep. Looking to the evidence of P.W. 1 and P.W. 4, the submission of learned Advocate Mr. Vaishya is fanciful and would not weigh with us. It was an accident and homicidal death. The charge-sheet led before the learned Magistrate cannot be found fault with. It was not an accidental death, but it was an intentional and knowledgeable murder. We are in complete agreement with the reasonings given by the learned trial Judge. On appreciation and re-appreciation of the evidence, we came to this conclusion that author of the crime was the present appellant and appellant alone, and therefore, this appeal deserves to be dismissed, however, an endeavour is made that this Court being the highest Court of the State should show some leniency and inflict punishment lesser than life. We fail to understand how can lesser punishment be awarded when we held that the act was an act of murder, and therefore, that submission of learned Advocate for the appellant is not accepted.

9. P.W. 1-Dr. Sureshchandra Morlal Gupta Exh. 14, was on duty as Medical Officer at Deodar Referral Hospital. In his evidence, this witness has mentioned that he has carried out the post-mortem of deceased Prakash and as per post-mortem report, all the injuries were ante-mortem in nature. P.W. 2-Devasibhai Rupabhai Patel Exh. 21, in his evidence has deposed that the accused have threatened him to take revenge because the witness and others have been acquitted from criminal case. On the day of incident, he was at his field and on hearing the noise, he and his two sons ran towards the road, where he saw the motor-cycle in such a condition that it was dashed by the jeep and he also saw the accused persons seating in the jeep and after the incident, they ran away from the place of incident. P.W. 3 Jayantibhai Kalabhai Patel Exh. 23, in his evidence has deposed that on the day of incident, he was talking with deceased Prakash with one Thakore whose name is not known to him. This witness further mentioned that when they were talking, all of sudden a jeep came towards them and he turned in side and the said Jeep dashed with deceased Prakash and Thakore. Thereafter, witness had shouted and on hearing shouts, Patel Devasibhai and other people came there and taken Prakash to the hospital, and thereafter, the witness had went away to Raiya village. This witness also mentioned that three persons were sitting in the Jeep. P.W. 4-Shravanji Shankarji Exh. 25, in his evidence has mentioned that on the day of incident he was with

deceased Prakash. When they were walking on the road, friend of deceased Prakash had come from opposite side on motor-cycle and on seeing deceased Prakash, he stopped his motor-cycle there and talking with Prakash. The witness further deposed that when they were talking, all of sudden a jeep car came towards them and dashed with them due to which Prakash fell down on the road and he also fell down. He saw three persons sitting in the jeep. The witness had also sustained injuries on head and abdomen and due to which after sometime he became unconscious. The witness also identified the accused persons in the Court.

10. The evidence of P.W. 3-Jayantibhai Kalabhai Patel Exh. 23 and the theory put forward by the learned Advocate for the appellant that the motor-cycle was coming at an excessive speed and the boy was on wrong side is not borne out from the map of the scene of offence place and the force with which the jeep dashed with the motor-cycle, it cannot be said that the jeep was stationed and motor-cycle dashed with it the reason is that jeep turned turtled. Had it been stationed, the impact of the motorcycle coming and dashing would not be such that it would turn turtled. Had it been the accidental death, the injuries on the P.W. 4 would not have been so much as is found in the medical report. The post-mortem report, complaint and the panchnamas all points towards the guilt of the accused. Hence, this appeal deserves to be dismissed.

11. We are in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence and the appeal being Criminal Appeal No. 1404 of 2009 requires to be dismissed.

12. So far as the acquittal appeal being Criminal Appeal No. 2142 of 2009 is concerned, 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 Apex Court in a catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , the 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 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 judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below.

13. Further, in the case of Chandrappa and Others Vs. State of Karnataka, , the

Apex Court 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, re-appreciate 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, re-affirmed 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.

14. Thus, it is a settled principle that while exercising appellate power, 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.

15. Even in a recent decision of the Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, , 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 characterised as perverse. Merely because two views are possible, the Court of

appeal would not take the view which would upset the judgment 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.

16. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, and in Girja Prasad (Dead) by L.Rs. v. State of M.P., reported in 2007 AIR SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

17. 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 Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, , wherein, it is held as under:

...This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, 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.

18. In the case of Lunaram Vs. Bhupat Singh and Others, , the 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 running condition.

11. Considering the parameters of appeal against the judgment 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.

19. Even in a recent decision of the Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, , the 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 by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High

Court, by impugned order, reversed the said decision and convicted the accused under Sec. 302 read with Sec. 34 of I.P.C. and awarded R.I. for life. Since, Counsel for the appellants very much emphasised that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyse 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 the acquittal. [Vide State of Rajasthan Vs. Sohan Lal and Others,]

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

21. It is contended by the learned A.P.P. Ms. Shah that the trial Court has committed an error in acquitting the present respondents as their presence in the Jeep is found and they should have been convicted under Sec. 302 read with Sec. 34 of I.P.C. and under Secs. 117 and 184 of the M.V. Act.

22. We have gone through the judgment and order of acquittal passed by the trial Court. We have also perused the oral as well as documentary evidence led by the trial Court and also considered the submissions made by learned A.P.P. for the appellant-State. Having considered the totality of the evidence on record, it cannot be said that invocation of Sec. 34 of I.P.C. was necessary. There was no overt act on the part of the respondents, and therefore, it cannot be said that there was any common object to do away with the deceased, and therefore, the acquittal recorded by the learned trial Judge cannot be interfered with. The trial Court while considering the oral as well as documentary evidence has clearly observed that there is no any evidence to convict the respondents. The prosecution has miserably failed to prove the case against the accused beyond any reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

23. Ms. C.M. Shah learned A.P.P. is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial Court is vitiated by some manifest illegality or that the decision is perverse or that the trial Court has ignored the material evidence on record.

24. In the above view of the matter, we are of the considered opinion that the

trial Court was completely justified in acquitting the respondents of the charges levelled against them. We find that the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the Court below, and hence, find no reasons to interfere with the same. Hence, the appeal requires to be dismissed.

25. In the result, Criminal Appeal No. 1404 of 2009 is dismissed. The impugned judgment and order of conviction and sentence dated 28-7-2009 passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Deesa, Camp at Deodar in Sessions Case No. 142 of 2007, is confirmed. Fine is maintained, but default sentence is reduced to one year instead of two years. However, it is clarified that life would not mean till the last breath and his case may be considered by the State Government after 14 years and shall be entitled to give remission as admissible.

26. Criminal Appeal No. 2142 of 2009 is dismissed. The impugned judgment and order of acquittal dated 28-7-2009 passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Deesa, Camp at Deodar in Sessions Case No. 142 of 2007, is confirmed. Bail and bail-bonds are discharged. R. & P. to be sent back to the trial Court, forthwith.