

(2016) 01 GUJ CK 0084

In the Gujarat High Court

Case No : Criminal Appeal Nos. 2134 of 2005 and 1624 of 2006

Pradipsinh Dholubha Zala

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, Section 304(I), Section 34

Citation : (2016) 01 GUJ CK 0084

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Ashish M. Dagli, Advocate, for the Appellant; C.M. Shah, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—1. Present appeals assail the judgment and order dated 09/09/2005 passed by the learned Additional Sessions Judge, Fast Track Court No. 1, Surendranagar in Sessions Case No. 41 of 1995, whereby, while acquitting the original accused Nos. 1, 2 and 4 of the charges levelled against them, the learned trial Judge was pleased to convict the appellant of Criminal Appeal No. 2134 of 2005 - original accused No. 3 for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity, "the IPC") and sentenced him to undergo life imprisonment and a fine of Rs. 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for two years. Accordingly, Criminal Appeal No. 2134 of 2005 has been filed by the original accused No. 3 against conviction whereas, Criminal Appeal No. 1624 of 2006 has been filed by the State against acquittal of original accused Nos. 1, 2 and 4.

2. Brief facts of the prosecution case are that on 01/03/1995 at about 9:30 a.m. when deceased Balvantsinh Jhala was at his field situated in the sim of village: Khandiya of Limdi taluka, at that time, the accused came there by a tractor bearing registration No. GRM-7219 having trolley attached bearing registration

No. GRX-9608. The accused No. 3 was driving the tractor, whereas, the accused Nos. 1, 2 and 4 were sitting in the trolley. The accused Nos. 1, 2 and 4, on seeing the deceased, told to kill the deceased by ramming over the tractor and hence, the accused No. 3, started the tractor and rammed over the deceased, due to which, the deceased sustained serious injuries and ultimately, succumbed to the injuries and for the said alleged offence, a complaint came to be lodged against the accused for the offence punishable under Sections 302 r/w. 34 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, Surendranagar.

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 following witnesses and also produced several documentary evidence, as under:

2.4 At the end of the trial, Further Statements of the accused under Section 313 of Code were recorded in which they pleaded not guilty and false implication. Thus, after recording above-referred Further Statements and hearing the arguments on behalf of prosecution and the defence, the learned Sessions Judge came to the aforesaid conclusion by the impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the original accused No. 3 as well as the State have preferred the present appeals, as aforesaid.

3. We have heard Mr. Ashish M. Dagli, learned advocate for the appellant - original accused No. 3 and Ms. C.M. Shah, learned Additional Public Prosecutor, for the State.

3.1 Mr. Dagli, the learned advocate for the appellant - original accused No. 3, contended that the learned trial Judge has committed an error in convicting the appellant - original accused No. 3. He submitted that the impugned judgment and order of the trial Court is against the provisions of law and contrary to the evidence on record. He took us to the evidence of the complainant - Vikramsinh Balvantsinh, exh. 31, witness Premaben Bhavabhai, exh. 43, Jagatsinh Balvantsinh Jhala, exh. 68, the evidence of other witnesses and the medical evidence and submitted that the complainant has improved the case contrary to the complaint and taking into consideration material improvements and the contradictions in the evidence of the prosecution witnesses, the present appellant - original accused No. 3 is required to be given the benefit of doubt, more particularly, in view of the fact that the injunction granted by the civil Court concerned as to the disputed land, was in favour of the appellant - accused and

the deceased had entered into the field of the accused. Moreover, there is nothing on record to connect the present appellant - original accused No. 3 with the crime in question and accordingly, the trial Court has committed a grave error in imposing conviction.

3.2 Mr. Dagli, the learned advocate for the appellant - original accused No. 3, invited our attention to the medical evidence i.e. evidence of Dr. Devjibhai kuberbhai Parmar, exh. 83, who had treated the deceased and also performed the post mortem of the deceased. He took us to the PM Note, exh. 94 and invited our attention to the injuries sustained by the deceased, as described in the same and the cause of death of the deceased. The injury, as mentioned in the column No. 17 of the PM Note is, "Abrasion on upper 1/3 of right thigh. Laterally about 2.5 cm wide and 5.0 long vertical" and the cause of death as mentioned in the same is, "Intra abdominal injuries (Rt kidney and bladder ruptured) with fracture pelvis". Showing the same, he submitted that, in any case, this is a case which falls under 304(I) of the IPC and without prejudice to the rights and contentions of the appellant, he submitted that, if the Court does not find any case in favour of the present appellant, in that case, in view of the fact that there was no clear motive on the part of the appellant herein and the medical evidence, to be precise, the injuries sustained by the deceased and the cause of death of the deceased, this Court may consider the case for the offence punishable under Section 304(I) of the IPC and imposed punishment accordingly.

4. Whereas, Ms. Shah, learned Additional Public Prosecutor, for the State, while supporting the impugned judgment and order so far as original accused No. 3 is concerned, contended that in view of the evidence of complainant - Vikramsinh Balvantsinh, exh. 31, Premaben Bhavabhai, exh. 43, Jagatsinh Balvantsinh Jhala, exh. 68 and other witnesses and in view of the medical evidence, it is clear that the intention of the accused was very clear and the deceased had succumbed to the injuries on the very same day i.e. the day on which the incident had occurred. She further submitted that in view of the findings recorded by the trial Court, use of vehicle in the crime, injuries sustained by the deceased which are mentioned in the Post Mortem Note, it is a culpable homicide amounting to murder and the learned trial Judge has come to the right conclusion and accordingly, no interference is called for at the hands of this Court.

4.1 So far as Criminal Appeal No. 1624 of 2006 filed by the State against acquittal of original accused Nos. 1, 2 and 4 is concerned, the learned Additional Public Prosecutor contended that the learned trial Judge has failed to appreciate the evidence on record and has committed error in acquitting them though sufficient evidence was there on record and the prosecution had successfully proved its case. She submitted that almost all the witnesses have supported the case of the prosecution, however, the learned trial Judge has committed error in not properly appreciating their evidence and thereby, acquitting them. Eventually, she requested to interfere in the appeal and allow the appeal filed by the State against acquittal.

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 have also gone through the impugned judgment and order and found that the learned trial Judge has dealt with each and every aspects of the matter minutely and for arriving such a conclusion, plausible reasons have been assigned. However, in view of the fact that the incident is of 01/03/1995 and taking into consideration the injuries sustained by the deceased, as described in column No. 17 of the Post Mortem Note and the cause of death of the deceased, though it is certainly a case of culpable homicide, however, in view of the facts and circumstances of the case and the evidence on record, we are of the opinion that the offence falls under 304(I) of the IPC and not under 302 of the IPC and accordingly, to that extent the impugned judgment and order is required to be modified.

5.1 Moreover, so far as Criminal Appeal No. 1624 of 2006, filed by the State against acquittal of original accused Nos. 1, 2 and 4 is concerned, looking to the evidence on record and the discussion made by the learned trial Judge in the impugned judgment and order, we are of the opinion that the learned trial Judge has rightly acquitted them. Further, the learned Additional Public Prosecutor is 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. Moreover, 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 v. State of Kerala & Anr.*, reported in , (2006) 6 SCC 39, 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 judgment 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 v. State of Karnataka*, reported in , (2007) 4 SCC 415 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, reappreciate 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."

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 V. Sanjay Thakran & Anr., reported in , (2007) 3 SCC 75, 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 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."

5.5 Similar principle has been laid down by the Hon''ble Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh & Ors., reported in , 2007 AIR SCW 5553 and in Girja Prasad (Dead) by LRs v. state of MP, reported in , 2007 AIR SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.6 In the case of Luna Ram v. Bhupat Singh and Ors., reported in , (2009) SCC 749, 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 strangled. 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 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."

5.7 Even in a recent decision of the Hon''ble Apex Court in the case of Mookiah and Anr. v. State rep. by the Inspector of Police, Tamil Nadu, reported in , AIR 2013 SC 321, 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 v. Sohan Lal and others, , (2004) 5 SCC 573 : (AIR 2004 SC 4520 : 2004 AIR SCW 4321)]"

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 v. Hemareddy, reported in , AIR 1981 SC 1417 wherein it is held as under:

"...This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary , (1967)1 SCR 93: (AIR 1967 SC 1124) 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. In that view of the matter, we are of the considered opinion that the Court below was completely justified in acquitting the original accused Nos. 1, 2 and 4 and so far as conviction of original accused No. 3 is concerned, the same, as discussed herein above, requires to be converted into Section 304(I) of the IPC and to that extent, the impugned judgment and order is required to be modified.

7. In view of the aforesaid discussion, Criminal Appeal No. 2134 of 2005, filed by the appellant - original accused No. 3 against conviction, succeeds in part and the impugned judgment and order dated 09/09/2005 passed by the learned Additional Sessions Judge, Fast Track Court No. 1, Surendranagar in Sessions Case No. 41 of 1995 is hereby modified to the aforesaid extent and the offence punishable under Section 302 of the IPC, for which the present appellant - original accused No. 3 was held guilty and sentenced to life imprisonment, is converted into offence punishable under Section 304(I) of the IPC and accordingly, he is directed to undergo rigorous imprisonment for ten years. The rest of the order shall remain unaltered. The appellant - original accused No. 3 is on bail. Accordingly, he is directed to surrender to custody within a period of 12 weeks from today to undergo the sentence imposed upon him and his bail bond shall stand cancelled and if he fails to do so, the concerned investigating authority will be at liberty to take appropriate actions, in accordance with law. The sentence already undergone by him shall be given set off. The Criminal Appeal No. 1624 of 2006, filed by the State against acquittal of original accused Nos. 1, 2 and 4, having found without any substance, fails and is dismissed and the impugned judgment and order, acquitting the original accused Nos. 1, 2 and 4, is hereby confirmed. Their bail bonds, if any, shall stand cancelled accordingly. Registry to return the R&P, if any, to the trial Court forthwith.