

(2015) 12 GUJ CK 0057

In the Gujarat High Court

Case No : Criminal Appeal Nos. 68 and 303 of 1995

Pravinkumar Somrajji Mehta

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357
Penal Code, 1860 (IPC) — Section 302, 34, 498(A)

Citation : (2015) 12 GUJ CK 0057

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

Bench : Division Bench

Advocate : K.V. Shelat, Advocate, for the Appellant; Manish J. Patel, Advocate and C.M. Shah, Addl. Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—By way of these appeals, original accused No. 1 as well as the State have challenged the judgement and order dated 29.12.1994 passed by the learned Additional City Sessions Judge, Ahmedabad in Sessions Case No. 248 of 1991 whereby the trial court has convicted and sentenced original accused No. 1 for rigorous imprisonment for a period of one year and imposed fine of Rs. 1500/-, in default, to undergo rigorous imprisonment for four months under Section 498(A) of IPC. Criminal Appeal No. 68 of 1995 has been preferred by original accused No. 1 against the conviction whereas Criminal Appeal No. 303 of 1995 has been preferred by the State against the acquittal of original accused Nos. 1 & 2 recorded under Sections 302 r/w 34 of IPC and acquittal of original accused No. 2 under section 498(A) of IPC.

2. It is the case of the prosecution that the deceased Sarojben was meted out with physical and mental torture by accused No. 1 - husband of deceased. It is the case of the prosecution that the deceased was given some poisonous substance which caused her death. The accused were apprehended and after investigation charge sheet was submitted. The case was committed to the Court

of Sessions. The trial was initiated against the accused and during the course of trial the prosecution examined various witnesses whose evidences were read before us by learned advocates for both the sides. The prosecution also exhibited certain documents which have been perused by us during the course of hearing. At the end of the trial and after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Additional City Sessions Judge convicted/acquitted the accused as mentioned aforesaid. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the accused and the State have preferred the present appeals.

3. Mr. K.V. Shelat, learned advocate appearing for the accused has stated that considering the fact that considerable period of time has lapsed, this Court may take a considerate view in the matter. He submitted that the accused is remorseful and is ready and willing to pay appropriate amount as compensation to his daughter. He has drawn the attention of this Court to the affidavit-in-reply filed by the daughter of the accused No. 1 wherein she has stated that she has been taken care of by her father and that her marriage expenses have been taken care of by her father and maternal uncle.

4. Ms. CM Shah, learned APP appearing for the respondent State has supported the order of the trial court and has submitted that the trial court has gone into the evidence in detail and has come to the conclusion that the accused No. 1 is guilty of the offence so convicted of. She also submitted that the sentence imposed upon the accused is just and proper and does not deserve to be reduced or quashed.

4.1 Ms. Shah submitted that the judgement and order of the Sessions Court is against the provisions of law and that the Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present respondents. Learned APP has also taken this court through the oral as well as the entire documentary evidence.

5. The appeal preferred by the original accused is not pressed on the point of conviction but only for the period of sentence. The trial court has awarded sentence which meets the end of justice. However, considering the time of almost 25 years, the sentence imposed upon the accused may be reduced to the extent of having undergone. The accused is willing to pay compensation to his daughter which is agreeable to the daughter who has been married off and is settled with her family.

6. We have perused the affidavit tendered by Roshni - daughter of accused No. 1 wherein she has stated as under:

"...

(1) I am filing the present affidavit stating that the original complainant i.e. my

maternal uncle Ratn Chandji Natmalji Bansali since few years are having good relations and family ties with my father Pravinkumar Sonrajji Mehta. I state that even my marriage was arranged and celebrated by both my father and maternal uncle and family at Samdadi, a village in Rajasthan, Dist. Badmer. My father has all through out played an important role in my studies and development since I was born and brought up at Ahmedabad at my father's residence at 16/17 Mayuri Flats, Gheekanta, Ahmedabad. On attending majority I was issued identity card which is produced herewith and I also got driving license on 21/7/2010 which is also produced herewith for ready reference. I got married on 13/7/2013 in my community with Shri Arvindkumar Chajed, a businessman. And thereafter I have been given identity card from Election Commission of India from Guntur, Andhra Pradesh which is also produced herewith with my initial as self attestation.

(2) My maternal uncle Shri Ratanchandji Nagmalji Bansali's daughter Ms. Pinki got married somewhere in 2012 and at that time also both my father's family as well as my maternal uncle's family celebrated at Gadak, Dist. Dharwad, Karnataka. I state that my maternal uncle Ratanchandji Bansali filed affidavit which has been read by me and said affidavit states true facts and the affidavit of said Shri Ratanchandji Bansali is produced herewith since he could not come personally.

(3) I stated that the Criminal Complaint which was filed and the proceedings arising out of the death of my mother deceased Mrs. Saroja Pravinkumar Mehta is settled and there is no grievance or dispute with the families of my father and my maternal uncle having cordial relations which has resulted in compounding of the criminal case in question and I have also no objection if appropriate orders are passed by the Hon'ble Court in that regard I also state that it is also agreed between both the family that the ornaments purporting to be Stridhans of late Saroja, i.e. my mother be given to me Roshni @ Kavita.

(4) I had come to my parental home in view of my advance pregnancy and has delivered on 22/11/2015 a baby boy viz. Daksh and I am at present staying with father's family. I am annexing herewith the birth certificate of my son with self attestation done. I will be staying with my father's family about one more month at Ahmedabad and then will go to my matrimonial home at Guntur.

(5) In light of this facts the present criminal proceedings be disposed of as having compounded in the interest of justice and appropriate orders be passed by the Hon'ble High Court in this regard."

6.1 On the peculiar facts and circumstances of this case, we are of the considered opinion that the recent decision of the Apex Court in the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra, will squarely apply to the facts of the present case. In that view of the matter, we have felt it appropriate that when the Apex Court has shown concern that section 357 of Cr.P.C. be implemented in its proper perspective this is a fit case where we feel that the

same requires to be adopted.

7. So far as acquittal appeal is concerned, 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 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."

7.1 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, 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."

7.2 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.

7.3 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 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."

7.4 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 LRs. Vs. State of Madhya Pradesh, . Thus, the powers which this Court may exercise against an order of acquittal are well settled.

7.5 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement 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."

7.6 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. from the evidence itself it is established that the prosecution has not proved its case

beyond reasonable doubt. Ms. Shah, learned APP 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.

8. Considering the facts and circumstances of the case coupled with the ocular as well as the documentary evidence, and considering the fact that a considerable period of time has lapsed, we think it fit to pass the following order:

9. In the result, the impugned judgment and order of conviction and sentence dated 29.12.1994 passed by the Additional City Sessions Judge, Ahmedabad in Sessions Case No. 248 of 1991 is modified as under:

"(i) The conviction and sentence imposed upon the accused No. 1 under Section 498(A) is confirmed. The acquittal of original accused Nos. 1 & 2 under section 302 r/w 34 of IPC is also confirmed.

(ii) However, in the event the accused No. 1 pays an appropriate amount every month to Roshni for her expenses by the 18th of every month under sec. 357 of Cr.P.C. over and above the amount of fine imposed by the trial court, he shall not be required to undergo the remaining part of sentence and the sentence he has already undergone shall be considered sufficient to meet the ends of justice.

(iii) If the accused does not pay the monthly amount regularly, the sentence awarded hereinabove shall stand revived and it shall be open to the concerned authorities to take accused into custody and he shall be liable to serve the remaining part of the sentence.

(iv) The gold ornaments of the deceased shall be handed over to daughter Roshni.

(v) Bail bond shall stand cancelled.

(vi) Criminal Appeal No. 68 of 1995 is allowed to the aforesaid extent. Criminal Appeal No. 303 of 1995 stands dismissed accordingly.

(vii) R & P to be sent back to the trial court forthwith."