

(2016) 01 GUJ CK 0193
In the Gujarat High Court

Case No : Criminal Appeal Nos. 1659 of 2004, 45 and 39 of 2005

Ranabhai Keshabhai and Others

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 357

Penal Code, 1860 (IPC) — Section 149, Section 302, Section 307, Section 323, Section 34

Citation : (2016) 01 GUJ CK 0193

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

Bench : Division Bench

Advocate : Paresh H. Vaghela and Vaibhav A. Vyas, Advocates, for the Appellant; L.R. Pujari, APP, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. All these appeals are preferred against the judgment and order dated 14.9.2004 passed by learned Additional Sessions Judge, Rajkot in Sessions Case No. 198 of 2003, whereby accused Nos. 1 to 4 and 6 were convicted, while accused No. 5 was acquitted. By the impugned judgment, accused Nos. 1 and 6 were held guilty and for offence punishable under Section 307 of the Indian Penal Code (for short, "IPC") and they were ordered to undergo five years" rigorous imprisonment and to pay fine of Rs. 500/- and in default of payment of fine, accused Nos. 1 and 6 were ordered to undergo simple imprisonment for one month; for offence punishable under Section 323 read with Section 149, accused Nos. 1 and 6 were ordered to undergo six months" rigorous imprisonment and to pay fine of Rs. 200/- and in default of payment of fine, accused Nos. 1 and 6 were ordered to undergo simple imprisonment for 15 days. Accused No. 2 was held guilty for offence punishable under Sections 307 and 323 read with Section 149 of IPC and he was ordered to undergo one year"s rigorous imprisonment and to pay fine of Rs. 500/- and in default of payment of fine, accused No. 2 was ordered to undergo imprisonment for one month. Accused

Nos. 3 and 4 were held guilty for offence punishable under Section 307 read with Section 149 of IPC and ordered to undergo one year's rigorous imprisonment and to pay fine of Rs. 500/- and, in default of payment of fine, accused Nos. 3 and 4 were ordered to undergo simple imprisonment for one month; for offence punishable under Section 323 read with Section 149, accused Nos. 3 and 4 were ordered to undergo six months' rigorous imprisonment and to pay fine of Rs. 200/- and in default of payment of fine, accused Nos. 3 and 4 were ordered to undergo simple imprisonment for 15 days. Accused No. 5 was acquitted of the charges levelled against him. Feeling aggrieved by the impugned judgment, accused Nos. 1 to 4 and 6 have preferred Criminal Appeal No. 1659 of 2004, while Criminal Appeal No. 39 of 2005 is preferred by the State against acquittal of accused No. 5 and Criminal Appeal No. 45 of 2005 is preferred by the State for enhancement of sentence imposed upon accused Nos. 1 to 4 and 6.

2. The facts in brief giving rise to the filing of present appeal are as under:

"2.1 It is the case of the prosecution that on 29.6.2003, at about 15 hours, the accused in collusion went to the farm of the complainant, which is at Kalipat and have trespassed in the farm. It is also the case of the prosecution that the accused have attacked the complainant in group with axe, steel pipe and stick. It is further the case of the prosecution that the complainant had received the injuries on his head and had also a fracture. The prosecution witness Gangaben had received injuries in her legs. The prosecution witness, Kamlesh Bhanu has also received injuries in his legs and that the prosecution witnesses have received minor injuries. Kamlesh Bhanu is an injured person has driven the rickshaw and has taken the complainant and his group Rajkot Civil Hospital. They were treated there and Police Sub Inspector, Mr. Zala came to know about the incident and informed Rajkot Taluka Police Station on phone, which information was entered in station diary No. 16/2003 on 29.6.2003. Thereafter, the complaint from complainant Bhanubha Jivabha was recorded and sent to the Rajkot Police Station, which was registered as C.R. No. 284/2003.

2.2 On complaint being filed, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, the case was committed to Sessions Court and, ultimately, trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 During the trial, the prosecution had examined following witnesses:-

2.4 The prosecution had also produced and relied upon following documentary evidence:-

2.5 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order awarding the sentence, as aforesaid, and acquitting accused No. 5. Being aggrieved and dissatisfied with the impugned judgment of the trial

Court, present appeals are preferred before this Court."

3. At the time of hearing of these appeals, Mr. Vaibhav Vyas, learned advocate appearing for the appellants-original accused submitted that the dispute is settled between the parties and an affidavit in this regard is filed by the only surviving victim, Kamleshbhai Bhanubhai Chanpda, which is taken on record. In the said affidavit it is stated that original complainant and other injured persons, have passed away and their death certificates are produced on record. He submitted that accused Nos. 1 to 4 are close relatives of the victim, while accused No. 5 is his neighbour. It is stated in the affidavit that relation of the victim with the accused persons are cordial and they are living as members of one family. In view of this, it is prayed to compound the offence. Mr. Vyas also submitted that since the incident is of the year 2003 and in view of the fact that more than 12 years have elapsed from the date of the incident, in view of the decision of the Hon"ble Apex Court in "ANKUSH SHIVAJI GAIKWAD v. STATE OF MAHARASHTRA", , 2013 (6) SCALE 778, which is followed by this Court in a number of decisions, this Court may invoke the provisions of Section 357 of the Criminal Procedure Code and allow the appeal by enhancing the amount of fine.

4. On the other hand, Ms. L.R. Pujari, learned APP appearing for the State has submitted that the order of conviction recorded against the appellants-accused persons is just and proper and he has supported the conviction recorded by impugned judgment. Learned APP has contended that taking into consideration the medical evidence, evidence of the complainant, and other witnesses, the view taken by the trial Court is just and proper and no interference is called for. He also submitted that the learned trial Judge has not committed in convicting the accused persons and, therefore, no interference is called for in the present appeal.

5. So far as Criminal Appeal No. 45 of 2005 is concerned, which is preferred for enhancement of sentence imposed on accused persons, Mr. Pujari has taken us through the evidence and contended that the trial Court has committed an error in imposing lesser sentence upon the accused inspite of voluminous evidence against them and contended that the trial Court ought not to have imposed such a lesser punishment. He also submitted that without appreciating the documentary as well as oral evidence available on the record of the case in its proper perspective, learned Judge has erred in imposing lesser punishment. He further submitted that the learned Judge has also erred in not properly appreciating the gravity of the offence committed by the accused while imposing the sentence and thereby committed grave error by imposing lesser punishment. He has taken us through the medical evidence and submitted that it is a grievous hurt, therefore, sentence imposed upon the accused is required to be enhanced. He has taken us through the judgment and contended that since it is proved beyond reasonable doubt that the appellants-accused had caused injury, the sentence imposed upon them is not adequate and it is required to be enhanced. He also submitted that the trial Court has committed an error in not believing the

version of the complainant and other witnesses and considering the medical evidence, sentence imposed upon them is required to be enhanced. He also submitted that the learned trial Judge has committed an error in taking lenient view while imposing sentence on the accused persons and, therefore, the sentence imposed is required to be enhanced. He also submitted that looking to the facts of the present case, when the prosecution has proved the case beyond reasonable doubt and when the learned Judge has also convicted the respondents-accused, the learned Judge ought to have imposed appropriate sentence provided under the provision of IPC. Therefore, he submitted that Criminal Appeal No. 45 of 2005 may be allowed and the sentence imposed by the trial Court may be enhanced.

6. So far as Criminal Appeal No. 39 of 2005 is concerned, Mr. L.R. Pujari, learned APP appearing for the State has taken us through the evidence and contended that the trial Court has committed an error in acquitting accused No. 5 inspite of voluminous evidence against him and contended that the trial Court ought not to have acquitted the accused. He submitted that the prosecution has successfully proved its case through the evidence of witnesses. He also submitted that even the prosecution witnesses have supported the case of the prosecution against accused No. 5 and there was no reason to dis-believe their version. He, therefore, prays that both these appeals preferred by the State may be allowed.

7. On the other hand, learned counsel for the respondents-accused has contended that the trial Court has rightly appreciated the evidence on record and acquitted accused No. 5 of the charges levelled against him. It is also submitted that so far as acquittal appeals are concerned, the law is well settled and by taking us through the impugned judgment, he submitted that this Court may not interfere with the impugned judgment and the appeal may be dismissed.

8. We have heard Mr. Vaibhav Vyas, learned Senior Advocate for the appellants-original accused, and Mr. L.R. Pujari, learned APP for the State. We have also gone through the evidence on record. We have also perused the medical evidence. The incident in question took place on 29.6.2003, more than 12 years have passed and the circumstances have changed. The complainant has also remained present before us and we have seen his condition. He also requested us to allow the appeal filed by the accused as they are close relatives and relations between them are cordial. He has also filed an affidavit to this effect. Taking into consideration the affidavit filed by the sole surviving victim, we are taking a sympathetic view of the matter.

9. Considering the evidence on record, it is rightly found by the learned trial Judge that the accused had attacked the victim and thereby caused the injuries and, therefore, accused are rightly convicted by the trial Court and we do not find any reason to interfere with the impugned judgment. However, taking into consideration the fact that the incident is of 2003 and more than 12 years have passed, and considering the decision of the Apex Court in "ANKUSH SHIVAJI GAIKWAD v. STATE OF MAHARASHTRA", , 2013 (6) SCALE 778 and decision of

this Court in Criminal Appeal No. 1552 of 2004, we find it proper to award compensation to the victim in lieu of sentence as per sub-section (3) of section 357 of Cr.P.C. Therefore, looking to the special circumstances and the principles enunciated in the case of ANKUSH SHIVAJI GAIKWAD v. STATE OF MAHARASHTRA, , 2013 (6) SCALE 778, since the accused have agreed to pay token amount of Rs. 5,001/- as compensation to the victim towards compensation and the victim has agreed to settle the dispute, if the accused persons pay such amount of compensation, they are not required to undergo the period of sentence imposed upon them. Accordingly, Criminal Appeal No. 1659 of 2004 is partly allowed. This view is taken considering the special circumstances and it may not be treated as a precedent. In view of this decision, Criminal Appeal No. 45 of 2005 preferred by the State for enhancement of sentence imposed upon the accused is not required to be entertained.

10. So far as Criminal Revision Application No. 39 of 2005 is concerned, we have gone through the evidence on record and the impugned judgment. 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 v. State of Kerala & Anr., , (2006) 6 S.C.C. 39, the Apex Court has narrated the powers of 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 view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

10.1 Further, in the case of Chandrappa v. State of Karnataka, , (2007) 4 S.C.C. 415, 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, 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."

10.2 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.

10.3 Even in the case of *State of Goa V. Sanjay Thakran & Another*, , (2007) 3 S.C.C. 75, the Apex 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."

10.4 Similar principle has been laid down by the Apex Court in the cases of *State of Uttar Pradesh v. Ram Veer Singh & Ors*, , 2007 A.I.R. S.C.W. 5553 and in *Girja Prasad (Dead) by LRs v. State of MP* reported in , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

10.5 In the case of *Luna Ram v. Bhupat Singh and Ors*, , (2009) SCC 749, 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 strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem 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."

10.6 Even in a recent decision of the Apex Court in the case of Mookkiah and Anr. v. State, rep. by the Inspector of Police, Tamil Nadu, , AIR 2013 SC 321, 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 in 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 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]"

10.7 It is also a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite 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 v. Hemareddy, , AIR 1981, SC 1417, wherein it is held as under:

"...This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary , (1967) 1 SCR 93:(AIR 1967 SC 1124) that it is not the duty of the Appellate 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."

11. 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. Therefore, we find that the accused are rightly acquitted by the learned trial Judge from the charges of offence alleged against them. Moreover, learned APP is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude 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 material evidence while acquitting the accused. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondents-accused from the charge of offences alleged against them. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the impugned judgment and, therefore, find no reasons to entertain appeal of the State and this appeal is also required to be dismissed.

12. For the foregoing reasons, following final order is passed.

13. Criminal Appeal No. 1659 of 2004 is partly allowed. The impugned judgment and order dated 14.9.2004 passed by learned Additional Sessions Judge, Rajkot in Sessions Case No. 198 of 2003 convicting the accused Nos. 1 to 4 and 6 is confirmed. However, looking to the fact that the incident in question is of 2003 and the dispute is amicably settled between the parties and an affidavit is filed to that effect by the victim, as well as considering the principles enunciated in the case of ANKUSH SHIVAJI GAIKWAD v. STATE OF M AHARASHTRA, , 2013 (6) SCALE 778, the appellants herein are directed to pay token amount of Rs. 5,001/- as compensation to the victim and such additional amount of compensation be paid within a period of three months from today. If the accused persons pay such amount of compensation, they are not required to undergo the period of sentence imposed upon them. Upon deposit of Rs. 5,001/- by the accused persons towards compensation, as aforesaid, the same shall be paid to the victim. If the accused persons fail to pay the amount of compensation within three months from today, they shall surrender before the jail authorities to undergo the sentence as awarded by the impugned judgment.

14. In view of above order passed in Criminal Appeal No. 1659 of 2004, Criminal Appeal No. 45 of 2005 preferred by the State is dismissed.

15. Criminal Appeal No. 39 of 2005 is also dismissed. The impugned judgment and order dated 14.9.2004 passed by learned Additional Sessions Judge, Rajkot in Sessions Case No. 198 of 2003 acquitting the respondent-accused No. 5 is hereby confirmed.

16. Bail bond, if any, of the accused stands cancelled. Record and Proceedings be sent back to the trial Court concerned forthwith.