

(2016) 01 GUJ CK 0173

In the Gujarat High Court

Case No : Criminal Appeal Nos. 2150 and 2314 of 2008

Rasikbhai Jelabhai Koli

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 302, Section 304, Section 307, Section 323, Section 324, Section 506(2)

Citation : (2016) 01 GUJ CK 0173

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

Bench : Division Bench

Advocate : Ashish M. Dagli, Advocate, for the Appellant; L.R. Poojari, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—1. Criminal Appeal No. 2150 of 2008 under section 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction dated 27.6.2008 passed by the learned Additional District Judge, Fast Track Court No. 1, Surendranagar in Sessions Case No. 88 of 2007, whereby the appellant - original accused No. 3 has been convicted of the charges leveled against him u/s. 302 and 307 of the Indian Penal Code. The accused is ordered to undergo life imprisonment for offence u/s. 302 of Indian Penal Code and fine of Rs. 5000/- in default, to undergo rigorous imprisonment for six months and life imprisonment for offence u/s. 307 of Indian Penal Code and fine of Rs. 5000/- in default, to undergo rigorous imprisonment for six months. The learned Judge directed both the sentences to run concurrently.

Criminal Appeal No. 2314 of 2008 is filed by the State against the order of acquittal of original accused Nos. 1, 2 and 4 to 8 recorded under Sections 147, 148, 149, 302, 307, 323, 324 and 506(2) of the Indian Penal Code.

2. It is the case of the prosecution that on 29.9.2007 at about 8:30 hrs. in the

night, the accused of village Mulchand has attacked the complainant and other injured witnesses near Talav and with the common intention, they were armed with sticks, axe, wooden log and they were charged with Sections 147, 148, 149, 302, 307, 323, 324 and 506(2) of the Indian Penal Code. On the same date, place and time, when deceased Bharat was passing through, accused Nos. 1 to 5 keeping in mind the grudge of election of panchayat and work of water shed, quarreled with the deceased and gave foul abuses and thereafter, gave stick blows and axe blows on the body of the deceased and at that time, the complainant and his father and brother have intervened and they also received injuries from the accused. In between the accused Nos. 6 to 8 armed with sticks came there and started beating the complainant and other witnesses and thus, they have committed the offences under Sections 302, 307, 323 and 324 of the Indian Penal Code.

3. To prove the case against the present appellants, following witnesses and documents are relied upon by the prosecution.

4. At the end of trial, after recording the statement of the accused and hearing arguments on behalf of prosecution and the defence, the trial court convicted original accused No. 3 - Rasikbhai Jelabhai under Sections 302 and 307 of Indian Penal Code by the impugned judgment and order. The trial court acquitted accused Nos. 1, 2 and 4 to 8 for the offence punishable under Sections 147, 148, 149, 302, 307, 323, 324 and 506(2) of the Indian Penal Code.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the accused as well as State have preferred the present appeals.

6. Counsel for the appellants Mr. Dagli has taken us to the evidence of PW 4, 5, 27 and 30. He pointed out that all the injured, namely, the deceased as well as Dipak were first treated and following injuries were found in the postmortem report.

"Surgkal sutused wound with black coloured sutused material & interrupted stitches present 13 cm proximal to nasion on mid of parietal region of scalp, 5 cm x 0.75 cm and horizontal. On opening of the stitches, margins of wound are sharp and regular and scalp tissue deep."

7. Pursuant to evidence of PW 5, the injury Nos. 2 and 3 were only abrasion and therefore, the case falls under section 304(Part II) of the Indian Penal Code. Counsel for the appellant has also taken us to the evidence of doctor, who treated injured Dipak, where following injuries were found.

"(Illegible) site, presence of (Illegible) air noted. (1) localized, Minimal subdural hemorrhage in left parietal CT SCAN OF BRAIN region (2) pneumocephalus (presence of (Illegible) air) (3) comminuted, depressed, (Illegible) in left parietal bone."

8. Mr. Dagli, learned advocate appearing on behalf of the appellants has fairly

conceded about the conviction of the appellant. He has concentrated on the sentence awarded to the appellant. He has submitted that the sentence awarded by the court below is on the higher side and the same may be reduced.

9. Mr. Poojari, learned APP has supported the order of the trial court and has submitted that considering the facts and circumstances of the case, the conviction and sentence imposed upon the appellant is just and proper.

10. 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 v. State of Kerala & Anr*, reported in , (2006)6 SCC, 39, 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."

10.1 Further, in the case of *Chandrappa v. State of Karnataka*, reported in , (2007)4 SCC 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, 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."

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 a recent decision of the 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 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."

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, 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.

10.5 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 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."

10.6 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. Mr. Poojari, 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 so far as the acquittal of original accused Nos. 1, 2 and 4 to 8 is concerned.

11. In the premises aforesaid, Criminal Appeal No. 2314 of 2008 filed by the State against acquittal is dismissed and the judgment and order of acquittal dated 27.6.2008 passed by the learned Additional District Judge, Fast Track Court No. 1, Surendranagar in Sessions Case No. 88 of 2007 of original accused Nos. 1, 2 and 4 to 8, is confirmed. So far as Criminal Appeal No. 2150 of 2008 filed by the original accused No. 3 is concerned, the same is partly allowed and conviction imposed upon original accused No. 3 - Rasikbhai Jelabhai Koli for the offences punishable under Sections 302 and 307 of Indian Penal Code vide aforesaid judgment and order, the same is altered to conviction under Section 304 (Part II) of Indian Penal Code. Accordingly, he is sentenced to undergo rigorous imprisonment for a period of five years for the offence punishable under section 304 (Part II) of Indian Penal Code, instead of life imprisonment as awarded by the trial court for the offence punishable under sections 302 and 307 of IPC. The amount of fine and sentence in default of fine is maintained. The judgment and order dated 27.6.2008 is modified accordingly. The period of sentence already undergone shall be considered for remission of sentence qua original accused No. 3. The accused No. 3 is reported to have been on bail and therefore, he is directed to surrender to custody within a period of twelve weeks from today before the concerned jail authorities, failing which, the concerned investigating agency shall be at liberty to take appropriate action in accordance with law. His bail bond shall stand cancelled. R & P to be sent back to the trial court forthwith.