

(2011) 09 GUJ CK 0123
In the Gujarat High Court

Case No : Criminal Revision Application No. 754 of 2005

Savjibhai Ambabhai

APPELLANT

Vs

State of Gujarat and 9

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 3, 397, 401

Citation : (2011) 09 GUJ CK 0123

Hon'ble Judges : MD Shah, J

Bench : Single Bench

Advocate : Satyen B Rawal, s 1, for the Appellant; LR Pujari, APP for Respondent(s) 1 and Mr Sandeep N Bhatt, for Respondent(s) 2 - 10, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice MD Shah

1. This Criminal Revision Application has been filed by the applicant-original complainant u/s 397 read with Section 401 of the Code of Criminal Procedure seeking to quash and set aside judgment and order dated 5-5-2005 passed in Sessions Case No. 13 of 1994 by the learned Addl. Sessions Judge, Morbi, District Rajkot, whereby the Respondent Nos. 2-10-original accused were acquitted of the charges levelled against them.

2. In pursuance of a trial being conducted against the Respondents-accused for the offences punishable under Sections 147, 148, 149, 307, 324, 323, 504, and 506(2) of Indian Penal Code and Section 135 of B.P. Act, the accused were acquitted by the learned Addl. Sessions Judge, Morbi vide judgment and order dated 5-5-2005 passed in Sessions Case No. 13 of 1994 which is a cross case of Sessions Case No. 47 of 2003.

3. Heard learned advocate, Mr. Satyen B. Raval for the applicant-original complainant, learned APP, Mr. L.R. Pujari for the Respondent No. 1-State and

learned advocate, Mr. Sandeep N. Bhatt for the Respondent Nos. 2 to 10. This Court has gone through the judgment and order passed by the Sessions Court.

4. It is submitted by Mr. Satyen Raval for the applicant-original complainant that the court below has not appreciated the evidence of the complainant, who is an injured eye witness in true perspective and hence, has recorded the judgment and order of acquittal. It is further submitted that inspite of there being a trustworthy evidence of the complainant, the court below erred in relying upon the so-called contradictions in his evidence. According to him, merely because some of the witnesses have not supported the case of the prosecution, the evidence of injured-complainant, who is an eye witness to the incident which otherwise inspiring confidence cannot be discarded. It is also submitted that the learned Judge did not appreciate the fact that this is a cross case wherein the complainant has been injured in the incident and the learned Judge by not relying upon the evidence of injured witness and medical evidence has gone contrary to the evidence on record and thereby committed a grave error in acquitting the accused. It is, therefore, requested that the judgment and order of acquittal may be quashed and set aside and accused be convicted by allowing this revision.

5. It is submitted by learned APP, Mr. L.R. Pujari for the Respondent No. 1-State and learned advocate, Mr. Sandeep Bhatt for the original accused that the prosecution has failed to prove the charges against the accused. It was rightly observed by the court below that there were contradictions in the testimony of injured eye witness, who is the original complainant and hence, the accused were rightly acquitted by the trial court.

6. This Court has gone through the oral as well as the documentary evidence shown to me by the learned advocates appearing for the respective parties together with the impugned judgment and order of the trial court.

7. It is to be noted that prosecution Witness No. 1, Jesing Versi Rabari, who has been examined at Ex. 15 and who is an injured witness, has not supported the case of the prosecution and has been declared as hostile. P.W. No. 2-Gandu Amba Rabari, Ex. 16, who is the complainant and who received serious injuries, has also did not support the case of the prosecution. In his cross-examination, he has admitted that he did not see who caused injuries to his brother. He also in uncertain terms has admitted that he could not see the incident from his factory. P.W. No. 9, Babulal Bhavanjibhai Vanand, Ex. 53, who is also an alleged eye witness has also did not support the case of the prosecution. The only witness Savjibhai Ambabhai, P.W. No. 8, Ex. 38, who is also an injured eye witness has identified the accused before the Court. However, there is major contradiction in his evidence in respect of injuries caused by the weapons with that of medical evidence. As per his evidence, all the injuries were caused by the accused with stick. However, as per the evidence of Dr. Narendrasinh Nathubhai Zala, P.W. 3, Ex. 17, injury No. 2 could be possible only with the sharp cutting instrument. It is, therefore, observed by the trial court that as far as evidence of this witness

Savjibhai is concerned, it is not probable and is not found to be trustworthy and hence cannot be believed. Except this witness, no other injured eye witnesses and panch witnesses have supported the case of the prosecution.

8. Thus, on an appreciation of the entire evidence available on record, oral as well as documentary, the trial court has rightly held that the prosecution has failed to prove its case against the accused beyond reasonable doubt and they were rightly acquitted. Said findings appear to be just, legal and proper and no perversity, irregularity or illegality has been committed by the court below in the said findings.

9. This Court is aware that this Court is empowered to exercise all powers conferred by virtue of provisions contained in Section 397 read with Section 401 of Code of Criminal Procedure. However, the power of this Court as a revisional court has to be exercised only when the findings recorded by the trial court are perverse or suffer from patent illegality resulting in miscarriage of justice. This Court also cannot reappreciate the evidence appearing on the record.

10. Reference is made to a decision of the Hon"ble Apex Court in the case of Sheetala Prasad and Others Vs. Sri Kant and Another, wherein it has been held para 12 as under:

12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant-

(1) where the trial Court has wrongly shut out evidence which the prosecution wished to produce,

(2) where the admissible evidence is wrongly brushed aside as inadmissible,

(3) where the trial Court has no jurisdiction to try the case and has still acquitted the accused,

(4) where the material evidence has been overlooked either by the trial Court or the appellate Court or the order is passed by considering irrelevant evidence and

(5) where the acquittal is based on the compounding of the offence which is invalid under the law.

11. In view of the principles laid down as aforesaid, since the case of the applicant-original complainant, is not falling in any of the five categories carved out by the Hon"ble Apex Court in the above reported judgment, this Criminal Revision Application requires to be dismissed.

12. This revision is dismissed. Rule is discharged.

13. Record and proceedings are ordered to be sent back forthwith.