

(2015) 10 GUJ CK 0014
In the Gujarat High Court
Case No : Criminal Appeal No. 66 of 2006

State of Gujarat

APPELLANT

Vs

Amra Bhana Harijan and Others

RESPONDENT

Date of Decision : 20-10-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Evidence Act, 1872 — Section 164
Penal Code, 1860 (IPC) — Section 120(B), 302, 34, 394

Citation : (2015) 10 GUJ CK 0014

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : C.M. Shah, Additional Public Prosecutor, for the Appellant; Pratik B. Barot, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Heard learned Additional Public Prosecutor Ms. C.M. Shah for the appellant - State and learned Advocates appearing for the respective respondents.

2. By way of this Appeal, the Appellant - State has felt aggrieved by the judgment and order of acquittal dated 06.10.2005 of the learned Sessions Judge, Junagadh in Sessions Case No. 101/1993 whereby the respondents herein were acquitted of the offences punishable under Sections 302 , 394 read with Section 34 and 120(B) of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. The case in brief and the incident which occurred on 27.04.1992 are as under:--

3.1. On the said day at about 17.30 hours, the respondents accused alongwith the original accused No. 3 and 4 (since deceased) entered into a conspiracy to loot cash, deities and other valuables of Patthar Chatti Temple situated at Girnar

and while executing the said conspiracy, it is alleged that the accused cause severe injuries to the priest of the temple and caused his death. It is alleged that the accused looted cash of Rs. 6,800/- deities and other ornaments of deities and while perpetrating the said offences, the accused aided and abetted each other.

3.2. On the above fact, an offence was registered with Junagadh Taluka Police Station. The police after investigation charge-sheeted the accused in the Court of learned Chief Judicial Magistrate, Junagadh, who committed the case to the Court of Sessions, as the offences were exclusively triable by the Court of Sessions. At the end of trial, the learned Sessions Judge, Junagadh acquitted the accused of all of the offences.

3.3. At the time of the trial, the prosecution examined the following witnesses:--

The prosecution also relied upon various documentary evidence, some of them are:--

4. Learned Additional Public Prosecutor Ms. C.M. Shah has submitted that the learned Judge ought to have believed the evidence of witness Nagin Harilal at Exhibit 67 as the evidence of this witness before the Magistrate is admissible under Section 164 of the Evidence Act. In addition, the muddamal "knife" had the blood stains of the deceased which was recovered at the instance of the accused. It is further submitted that the accused were arrested about 2 1/2 months from the date of incident and the accused had remained absconding for 2 1/2 months after the incident. It is further submitted that the silver anklets of the deity was given to one Koli Bavanji Gagji for safe keeping by the accused No. 1 and the same was recovered at the instance of accused No. 1 from the said Koli Bavanji Gagji. Hence, this connects the accused No. 1 with the crime. Considering the above, it is submitted that this is a fit case which requires interference of this Court and the judgment and order of the learned Judge be upturned.

5. Learned Advocate for the respondents accused have relied on the various judgments of the Hon"ble Supreme Court which are detailed hereinbelow and have taken this Court to the evidence of the complainant as also the medical evidence and it is submitted that this case would not attract the provisions of Section 302 of the Indian Penal Code and at the most, the act was that of culpable homicide. Considering the above, it is submitted that the judgment and order of the learned Sessions Judge requires no interference by this Court.

6. 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 judgment of acquittal, the High Court

should have borne in mind the well-settled principles of law that where two views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

7. 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, 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 emphasise 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."

8. 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.

9. Even in the case of *State of Goa Vs. Sanjay Thakran and Another*, 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. 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.

11. In the case of Lunaram Vs. Bhupat Singh and Others, , the Apex Court in para 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 running condition.

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."

12. Even in a recent decision of the Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, , 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 appellant 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 Vs. Sohan Lal and Others,]."

13. 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 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 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."

14. Similar principle has been laid down by the Apex Court in the case of Shivasharanappa and Others Vs. State of Karnataka, .

15. We have heard learned Advocates for the parties and perused the records of the case. It appears that some of the witnesses have turned hostile and the case is based on circumstantial evidence. The learned Sessions Judge has given cogent and convincing reasons to arrive at the acquittal of the accused and paragraphs 27 to 30 of the judgment clearly establish the same. The evidences of the witnesses and various documents have been considered in detail by the learned Sessions Judge. Hence, this Court is in full agreement with the reasons given and findings recorded by the Trial Court while acquitting the accused and adopting the said reasons as well as the reasons aforesaid, in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court.

16. The Appeal is devoid of merits and stands dismissed. The judgment and order of acquittal dated 06.10.2005 of the learned Sessions Judge, Junagadh in Sessions Case No. 101/1993 stands confirmed. Bail and bail bond, stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.