

(2009) 05 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 5 of 2009

State of Gujarat

APPELLANT

Vs

Arjanbhai Mangabhai Makwana

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 378
Penal Code, 1860 (IPC) — Section 114, 201, 302

Citation : (2009) 05 GUJ CK 0030

Hon'ble Judges : Z.K. Saiyed, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : Public Prosecutor 1, for the Appellant; None for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973 is directed against the judgment and order dated 15th October 2008, passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Veraval Camp at Una in the Sessions Case No. 36 of 2006, whereby, the accused was acquitted of the charge leveled against him.

2. The brief facts of the prosecution case is as under:

That during the period of 27th January 2006 at 22.00 hrs. to 1st February at 16.15 hrs. at any time, accused with the help of co-accused minor Maheshbhai Balubhai Vadher on bank of river Rupen, killed one Rudiben W/o. Virabhai Punabhai and to remove evidence, dead body was lashed with stone and thrown into the river. Therefore, complaint was given by mother of deceased Sonaben W/o. Bhimabhai Koli before the Una Police Station being CR No. I.24/2006 for the offences punishable Under Sections 302, 201, 114 of the Indian Penal Code. After completion of the investigation, charge-sheet was filed against the accused before the Judicial Magistrate First Class, Una. However, as the case was exclusively triable by the Sessions Court, the learned Judicial Magistrate First

Class, Una committed the said case to the Court of Sessions u/s 209 of the Code of Criminal Procedure. The charge was framed against the accused for the offences punishable u/s 302, 201, 114 of the Indian Penal Code. The accused was not pleaded guilty to the charges and claimed to be tried.

2.1 To prove the guilt against the accused, the prosecution has examined the following witnesses:

- i) Lakhabhai Bhimabhai Bamaniya (PW-1, Exh. 37).
- ii) Hamirbhai Parbatbhai (PW-2, Exh. 42).
- iii) Nagabhai Jodhabhai (PW-3, Exh. 46).
- iv) Dr. Jitendra Samatbhai Rathod (PW-4, Exh. 49).
- v) Shamjibhai Govindbhai (PW-5, Exh. 55).
- vi) Sanjaykumar Harilal Vyas (PW-6, Exh. 56).
- vii) Sonaben W/o. Bhimabhai (Complainant) (PW-7, Exh. 59).
- viii) Geetaben Virabhia (PW-8, Exh. 63).
- ix) Laxmiben Bachubhai (PW-9, Exh. 64).
- x) Mohd. Arif Mohd. Kazi (Police witness) (PW-10, Exh. 67).
- xi) Nitinkumar Dayashankar Mehta (PW-11, Exh. 72).
- xii) Maganbhai Chanabhai Patel (PW-12, Exh. 77).

2.2 In order to support the case, the prosecution has produced on record in all 30 documentary evidence. Six documents have been exhibited with the consent of the parties.

2.3 At the end of trial, after recording the statement of the accused u/s 313 of the Code of Criminal Procedure and hearing the arguments of behalf of the prosecution and the defence, the learned Sessions Judge, Veraval camp at Una acquitted the respondent of all the charges leveled against him by judgment and order dated 15th October 2008.

3. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant State has preferred the present appeal.

4. Learned APP contended that the judgment and order of the Sessions Court is against the provisions of law. 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 respondent. The learned APP has also taken this Court through the oral as well as the entire documentary evidence.

5. At the outset 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.

6. 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. 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.

8. Even in a recent decision of the Apex Court in the case of *State of Goa v. Sanjay Thakran and 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.

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

10. 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 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.

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.

12. We have gone through the judgment and order passed by the trial court. We

have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant.

13. The Court has found serious contradiction in the evidence of the complainant Sonaben, mother of the victim and PW-8 Geetaben Virabhai, daughter. The daughter has not supported the evidence of any of the independent witnesses and except her statement that the accused has taken Rudiben on the motor vehicle no independent witness has supported her version. In the evidence of PW-9, Laxmiben Bachubhai, the Court has observed that the version of this witness is not reliable and there are serious contradictions in the evidence of the exh. 47 Panchnama. The recovery at exh. 47 is doubtful. Apart from that the Court has observed that Palabhai, who has seen the accused going to the place of deceased and Kadviben has not been examined, which is also a serious lapse on the part of the prosecution.

14. While concluding the evidence of the Investigating Officer in Para 38 and other evidence in Para 37 of the judgment, the trial Court has observed that the prosecution has miserably failed to prove the case against the accused.

15. We have also gone through the entire evidence as discussed by the trial court. Considering the evidence emerging from the record we are of the considered opinion that the prosecution has failed to prove the case against the accused. There are serious omissions on the part of the prosecution.

16. In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him. We find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed.