

(2016) 03 GUJ CK 0136
In the Gujarat High Court

Case No : Criminal Appeal Nos. 364 and 365 of 1998

State of Gujarat

APPELLANT

Vs

Bhalu Hothi Koli

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 302, Section 307, Section 326, Section 34

Citation : (2016) 03 GUJ CK 0136

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

Bench : Division Bench

Advocate : C.M. Shah, APP, for the Appellant; Hardik K. Raval, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. Both these appeals are preferred against the judgment and order dated 9.3.1998 passed by learned Additional Sessions Judge, Bhuj-Kutch, in Sessions Case No. 46 of 1997, whereby the accused has been convicted for the offence punishable under Section 326 of the Indian Penal Code (for short, "IPC") and ordered to undergo fifteen months' imprisonment and to pay fine of Rs. 11,000/-, and in default of payment of fine, accused was ordered to undergo further simple imprisonment for twelve months. On payment of fine, an amount of Rs. 10,000/- was ordered to be paid to the injured Bharat Bachu Koli. The accused was acquitted from the charges of offence punishable under Section 307 of IPC. Being aggrieved by the impugned judgment, Criminal Appeal No. 364 of 1998 is preferred by the State for enhancement of sentence imposed upon the accused, while Criminal Appeal No. 365 of 1998 is preferred against acquittal of accused from the charges of offence punishable under Sections 307 of IPC. Since both these appeals are arising out of one case and evidence is common in both the appeals, the same are taken up for hearing together and are being decided by this common judgment.

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

"2.1 It is the case of the prosecution that on 17.11.1996 between 10 and 11 a.m., in Mandvi Chawk, Village-Mundra, District-Kutch, the accused attacked the victim Bharat Bhachu Koli with a knife. It is alleged that the accused caused injuries on his chest, abdomen, back and other parts of the body with an intention to kill him. With these allegations, a complaint was lodged against the accused.

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. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals are preferred before this Court."

3. So far as Criminal Appeal No. 365 of 1998, which is preferred against acquittal of the accused is concerned, Ms. C.M. Shah, learned APP has taken us through the evidence and contended that the trial Court has committed an error in acquitting the accused inspite of voluminous evidence against him and contended that the trial Court ought not to have acquitted the accused for the offence punishable under Section 307 of IPC. She submitted that though the prosecution has examined 19 witnesses and also produced 14 documents in support of its case, the learned trial Judge has not properly appreciated them and acquitted the accused of the charge of offence punishable under Section 307 of IPC levelled against him. She submitted that the prosecution has successfully proved its case against the accused. She submitted that even the medical evidence supports the case of the prosecution. She further submitted that the accused had inflicted five blows of knife on the body of the victim and such blows were given on vital parts of the body. Therefore, looking to the injuries and medical evidence in this regard, it is clear that the intention of the accused was to kill Bharat Bhachu. Therefore, she submitted that the accused should not have been acquitted from the charge of offence under Section 307 of IPC. She submitted that the learned trial Judge has failed to appreciate the evidence on record in its proper perspective and, therefore, the impugned judgment is required to be quashed and set aside by allowing present appeal.

4. So far as Criminal Appeal No. 364 of 1998 preferred by State for enhancement of sentence imposed upon accused is concerned, Ms. C.M. Shah, learned APP has contended that the trial Court has committed an error in imposing lesser sentence upon the accused inspite of voluminous evidence against him and also contended that the trial Court ought not to have imposed such a lesser punishment. She submitted that without appreciating 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. She also submitted that though the accused is convicted by the trial Court for an offence punishable under Section 326 of IPC, the trial Court has committed an error in imposing punishment. She 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. She also submitted that the learned Judge ought to have imposed maximum sentence on the present accused as provided under Section 326 of IPC. Hence, impugned judgment and order passed by learned Judge in imposing the lesser sentence deserves to be modified by this Hon"ble Court and the sentence imposed on the accused deserves to be enhanced to maximum sentence as provided under Section 326 of IPC. She also submitted that the learned Judge has failed to appreciate the seriousness of the offence committed by the accused while imposing the sentence. The learned Judge also failed to appreciate that there is no sufficient and reasonable cause for the learned Judge to impose lesser punishment. She also submitted that the learned Judge failed to appreciate that there is no mitigating circumstance to impose less punishment and it is very clear from the facts and circumstances of the case and the material available on record that there are aggravating circumstances in which Hon"ble Judge ought to have imposed the maximum sentence as provided under the law. She, therefore, prayed to allow Criminal Appeal No. 364 of 1998.

5. On the other hand, Mr. Hardik Raval, learned counsel for the respondent-accused submitted that there is no infirmity in the impugned order. He submitted that the lower Court has rightly appreciated the evidence on record and acquitted the respondent from the charge of offence punishable under Section 307 of IPC. He further submitted that the prosecution could not prove its case beyond reasonable doubt. He also submitted that the incident in question is of 1996 and the accused has already undergone the sentence imposed upon him by the trial Court. He further submitted that considering the fact that 20 years have passed since commission of offence and the accused has settled in life, this Court should take sympathetic view in the matter and the sentence imposed by the trial Court may not be enhanced. So far as acquittal appeal is concerned, he has contended that the law is well settled in this regard and when two views are possible the appellate Court should not interfere with the finding of acquittal recorded by the Court below. He, therefore, submitted that this Court may not interfere with the impugned judgment and both these appeals may be dismissed.

6. We have heard Ms. C.M. Shah, learned APP for the appellant-State and Mr.

Hardik Raval, learned advocate for the respondent-accused. We have also perused the record and gone through the impugned judgment. We have also gone through the evidence on record. We find that the trial Court has given cogent reasons for coming to the conclusion as recorded in the impugned judgment. We have gone through the evidence of Dr. Jakhubhai Dhruv, PW-7, Exh.16. This witness has deposed that the injured had narrated the history of the incident before him and also deposed that there were five injuries on the body of the injured. This witness has deposed that first three injuries were grievous in nature, while other two injuries were simple. First injury was on the rib of the injured, however, there was no fracture in the rib. Second injury was on the abdomen and this is stated to be serious in nature. Third injury was on the back of the injured. It is also deposed by this witness that if timely treatment is not given, these injuries could have caused death, however, it is not stated by the doctor that these injuries are sufficient to cause death of the victim. It has also come in evidence that the victim was discharged from the hospital after 11 days from the date of incident. Not only that, neither the injured nor the accused was the resident of Mundra-Village and it can be said that the incident has happened in the spur of the moment. The motive for the incident is that the girl with whom engagement of the accused was to take place had married with the victim. The trial Court has rightly found that there was no intention of the accused to commit murder of the victim and the incident has happened in the spur of the moment. Since the injuries caused to the victim were serious in nature, the accused is rightly held guilty for the offence punishable under Section 326 of IPC and we would have imposed the sentence of five years upon the accused. However, considering the fact that the incident in question is of 1996, the accused has already undergone the sentence and he has also settled in life, the sentence imposed by the trial Court upon the accused is not enhanced and Criminal Appeal No. 364 of 1998 is required to be dismissed.

7. So far as Criminal Appeal No. 365 of 1998 is concerned, since we have discussed the evidence earlier, we do not deem it necessary to discuss it again. So far as appeal against acquittal of the accused 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 Vs. 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 views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

7.1 Further, in the case of Chandrappa Vs. 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."

7.2 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.

7.3 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."

7.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh & Ors, , 2007 A.I.R. S.C.W. 5553 and in Girja Prasad (Dead) by LRs Vs. State of M.P. 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.

7.5 In the case of Luna Ram Vs. 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 strangulated. 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."

7.6 Even in a recent decision of the Apex Court in the case of Mookiah and Anr. Vs. 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 vs. Sohan Lal and Others, , (2004) 5 SCC 573]"

7.7 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 Vs. 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."

8. 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 for the offence punishable under Section 307 of IPC. 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. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondent-accused for the offence punishable under Section 307 of IPC. 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 Criminal Appeal No. 365 of 1998 and this appeal is required to be dismissed.

9. For the foregoing reasons, both these Criminal Appeals are dismissed. The impugned judgment and order dated 9.3.1998 passed by learned Additional Sessions Judge, Bhuj-Kutch, in Sessions Case No. 46 of 1997 is hereby confirmed. Since it is reported that the accused has already undergone the period of sentence imposed by the impugned judgment, he need not surrender before the jail authorities. Bail bond, if any, stands cancelled. Record and proceedings be sent to the Court below forthwith.