

(2009) 10 GUJ CK 0101
In the Gujarat High Court
Case No : Criminal Appeal No. 540 of 1990

State of Gujarat	Vs	APPELLANT
Bharwad Natha Rukhad and Others		RESPONDENT

Date of Decision : 08-10-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 10 GUJ CK 0101

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

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; A.D. Shah, 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 of acquittal dated 5.4.1990 passed by the learned Sessions Judge, Bhavnagar in Sessions Case No. 12/1988 whereby the accused have been acquitted of the charges u/s 302 read with Section 34 of IPC and Section 135 of BP Act, leveled against them.

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

2.1 At Bhavnagar, there was enmity between the two groups, out of which, one is of Bharvad community and its head is accused No. 1 and second of Muslim community and its head is Khalidmiya. Deceased belonged to group of Khalidmiya. There were quarrel very often between the two groups. On 17.10.87, there was Ursh festival at Shihor, therefore, deceased had gone to Shihor on the scooter No. GTS 7860 belonging to Iqbal Amadbhai. On the next day, he was to return on scooter. Deceased returned to Bhavnagar from Ursh on 18.10.1987 early in the morning. The scooter was parked near "Asha Pan Ghar" situated at Ganga-Jaliya lake. Dineshbhai has opened his Pan Galla at 6.00am in the morning and at that time accused nos. 3 and 4 had come to Pan-Galla for

drinking Soda. Accused nos. 3 and 4 are doing business of milk. Accused No. 4 was armed with axe, which he placed near the Cabin of Asha Pan Ghar, and when they were drinking soda, he saw deceased coming from "Havmore Hotel, but on seeing accused No. 3 and 4, he changed his way and started to go towards the scooter. In the meantime, accused No. 4 ran behind the deceased and caught hold of the deceased and accused No. 3 came there and gave axe blows. At that time, nephew of deceased namely Abdulvahab Salambin was going for his work of selling crackers on his hand-lorry and he had seen the incident. At that time, the driver of City Bus, accused No. 1 came there in his city bus as there was bus stop, immediately he stepped down from the city bus with knife and inflicted knife blows on the abdomen of deceased. Accused No. 2 is plying rickshaw and he came in his rickshaw at the scene of offence and he took out the sword which was lying in the rickshaw and he also gave sword blows to the deceased. The deceased became unconscious and the accused persons went away in a rickshaw from the place of incident. The owner of Asha Pan Ghar also went away by closing his pan shop. Abdulvahab Salambinbhai also ran away leaving his hand-lorry on the way, to his house and informed his father Salambin Hamadbhai about the incident and also gave the names of the accused persons. Thereafter, Abdulvahab and Salambin went to the place of offence and there they found that Mesanbin has died and some people had gathered there.

2.2 Therefore, a complaint with respect to the aforesaid offence was filed against the respondents with the Ghogha Gate Police Chowky. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, charge-sheet was filed against him before the court of learned JMFC, Bhavnagar. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, which was numbered as Sessions Case No. 12/1988. The trial was initiated against the respondents.

2.3 To prove the case against the present accused, the prosecution has examined the following witnesses:

Salambin Ahmadbhai Ex. 30

Nakubhai Bhagwanbhai Ex. 32

Hasmukh Nanalal Ex. 33

Dr. Jitendra Mohanbhai Ex. 37

Iqbal Ahmadbhai Ex. 39

Abdulwahabdin Shalinbhai Ex. 40

Nazirmiya Yusufbhai Ex. 45

Dineshbhai Bhagwanbhai Ex. 46

Mehboob Rahimbhai Ex. 47

Pathubha Pragjibhai Parmar Ex. 49

Jujadsingh M. ramlavat Ex. 52

To prove the case against the accused, the prosecution has also produced the following documentary evidence.

Inquest panchnama Ex. 15

Report of PSI Ex. 16

Panchnama of scene of offence Ex. 17

Panchnama Ex. 18

Panchnama of clothes Ex. 19

Letter of C.A. Ex. 20

Letter of C.A. Ex. 21

Report of C.A. Ex. 22

Letter of PSI to C.A. Ex. 23

Letter of C.A. To PSI Ex. 24

Letter of PSI to CA Ex. 25

Report of C.A. Ex. 26

Letter of CA to PSI Ex. 27

Forwarding letter Ex. 28

Serological report Ex. 29

Complaint Ex. 31

Panchnama of rickshaw Ex. 34

PM Note Ex. 38

Map Ex. 42

Notification of Dist. Magistrate Ex. 43

Copy of Time Register Ex. 50

Copy of Duty Register Ex. 51

Panchnama Ex. 53

Panchnama Ex. 54

2.4 At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondent of all the charges leveled

against him by judgment and order dated 5.4.1990.

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

3. It was contended by learned APP 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. Learned APP has also taken this court through the oral as well as the entire documentary evidence.

4. 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 judgment 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.

4.1 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.

4.2 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.

4.3 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 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.

4.4 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 M.P.* reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

4.5 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.

4.6 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.

5. 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 APP for the appellant-State. The trial court while considering the oral as well as documentary evidence has clearly observed that time of offence is not proved. On close scrutiny of evidence of witnesses, it is born out that the accused have reached the scene of offence after 7.10am, whereas, the incident has taken place prior to that. On close scrutiny of documentary evidence, it is found that the documentary evidence are not supporting the oral version of the complainant and witnesses. In that view of the matter, the trial court has rightly given benefit of doubt in the favour of the respondents-accused. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

6. Mr. Kodekar 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.

6. 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.

7. 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.

8. 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. R & P to be sent back to the trial Court, forthwith. Bail bond, if any, stands cancelled.