

(2009) 03 GUJ CK 0052
In the Gujarat High Court
Case No : Criminal Appeal No. 616 of 1993

State of Gujarat

APPELLANT

Vs

Bhaylubhai Naranbhai Koli

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 320, 326, 447

Citation : (2009) 03 GUJ CK 0052

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : MR Mengdey, app, for the Appellant; Roopal R. Patel, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The challenge in this appeal is to the judgment and order rendered by learned Judicial Magistrate, First Class, Lathi - Babra on 12.3.1993 in Criminal Case No. 185 of 1986. The learned Magistrate acquitted the respondent herein, who was original accused in the aforesaid Criminal Case of the charge of commission of offences punishable under Sections 326, 447 of the Indian Penal Code. Aggrieved by the acquittal order recorded by the learned Magistrate, the appellant - State preferred this appeal.

2. The prosecution case is that the incident occurred at about 5 p.m., on 3.6.1986, in the field of injured witness Tapubhai Gagji, situated in outskirts of Babra. It is alleged that the field of respondent - accused is situated adjoining to the field of said Tapubhai Gagji. There was some dispute about the hedge in between the two fields, and on account of said dispute, the respondent inflicted initially a blow with kharapiya (an agricultural instrument, used for mowing crops), then two successive blows with knife on the abdomen and on right arm of injured witness Tapubhai. Son of injured witness Tapubhai, named, Chimانبhai Tapubhai lodged the first information report in Babra police station and the

offence came to be registered. The police investigation was commenced. After the conclusion of the police investigation, charge-sheet came to be filed in the Court of learned Magistrate and Criminal Case No. 185 of 1986 came to be registered.

3. Learned Magistrate framed charge at Exh.5, to which the respondent did not plead guilty and claimed to be tried. Therefore, prosecution examined witnesses and adduced oral and documentary evidence. After the conclusion of the oral evidence adduced by the prosecution, the learned Magistrate recorded the further statement of the respondent u/s 313 of the Code of Criminal Procedure and the respondent denied generally all the allegations levelled against him by the prosecution and stated that he was falsely implicated in this case. After appreciating the evidence on record and the submissions made on behalf of both the sides, the learned Magistrate recorded acquittal of the respondent. Hence, this appeal.

4. Learned APP Mr. Mengdey for the appellant - State submitted that the prosecution examined injured witness Tapubhai Gagji and the learned Magistrate erred in not properly appreciating the evidence of injured eye-witness. The involvement of the respondent in the incident is duly established. The evidence of injured eye-witness is supported by the evidence of first informant Chimanbhai Tapubhai and Shardaben Tapubhai, who are eye-witnesses to the incident. The ocular evidence is supported by medical evidence. Therefore, it is submitted that the appeal may be allowed.

5. None appeared for the respondent.

6. I have examined the record and proceedings in context with the submissions made by learned APP Mr. Mengdey for the appellant.

7. Before considering the evidence on record, it is required to be considered that this is an appeal preferred by the State u/s 378 of the Cr.P.C. In connection with acquittal appeals preferred u/s 378 of the Cr.P.C., Honourable Apex Court in the case of Chandrappa and Others Vs. State of Karnataka, , it is held that:

An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

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.

Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "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.

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.

If two reasonable views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not be disturbed by the appellate court.

8. Keeping in mind the principles laid down by Honourable the Apex Court and considering the evidence on record, it transpires that the evidence of three witnesses is required to be considered. They are Tapubhai Gagji, PW-2, first informant Chimanlal Tapubhai, PW-1 and Shardaben Tapubhai, PW-3. First of all considering the evidence adduced by first informant Chimanbhai Tapubhai, PW-1, it clearly transpires that at the time of the incident, he was doing agricultural work in a different field than the field in which the incident occurred. According to him, the field in which he was doing agricultural work, was approximately 500 ft. away from the field in which the incident occurred. He stated that, hearing the shout of his father, he rushed to the spot. He stated that after hearing the shout, it took 10 to 15 minutes for him to reach to the spot. He categorically admitted that he does not know about the incident. When he reached near his father, the injured witness Tapubhai had already sustained the injury. He stated that, when he was doing the agricultural work in a different field, at that time his sister (Shardaben Tapubhai, PW-3) was with him. Deposition of PW-3 Shardaben Tapubhai is in the same line of the deposition of PW-1 - first informant, Chimanbhai Tapubhai. Shardaben also admitted in her deposition that at the time of the incident, she was doing the agricultural work in a different field along with his brother - first informant Chimanbhai. However, in her deposition she went to the extent of saying that her father - injured witness Tapubhai snatched away the knife from the respondent - accused. Nothing whatsoever was stated by the first informant Chimanbhai Tapubhai in this regard, either in his evidence or in his FIR, Exh.17. However, the fact is apparent that neither the first informant Chimanbhai nor PW-3 Shardaben can be said to be the witness, who had seen the incident.

9. From the evidence of PW-2 Tapubhai Gagji, if considered, it transpires that his evidence is full of material contradictions. However, he admitted that at the time of incident, his son Chimanbhai and daughter Shardaben were doing agricultural work in different fields situated at the distance of about 400 ft. If his examination-in-chief is considered, he narrated multiple blows inflicted by the respondent. As per the medical evidence on record and as deposed by Doctor Nooruddin Rajabali (PW-10) and the medical certificates, Exhs.35 and 36, the external injuries were four in number, located on right lower abdomen, right

upper arm and head, whereas as per the evidence of injured Tapubhai, more number of injuries than shown in the medical evidence were caused to him by the respondent. Over and above this, he admitted that, he did not say anything to his son Chimanbhai about the incident, though he admitted that his son, first informant Chimanbhai, came only after hearing his shout and after he had sustained injuries. Despite this, in the FIR, Exh.17, the first informant Chimanbhai narrated the incident as if he has seen the incident as an eye-witness. According to the evidence of injured Tapubhai, he snatched away knife from the hand of the respondent and inflicted blow on the person of the respondent as well. In his cross-examination, he admitted that he has not stated to the Investigating Police Officer, at the time when his statement was recorded that he snatched away knife from the hands of the respondent, as well as he caused injury to the respondent. Even considering the evidence of Tapubhai, nothing emerges about the motive behind the incident. His evidence is full of material contradictions, as recorded by the learned trial Judge in the impugned judgment.

9.1 The prosecution examined witness Shantuben Vajubhai (PW-4) in capacity as eye-witness, but, she did not support the case of the prosecution. Even considering the medical evidence on record, nothing emerges that any of the injuries sustained by injured witness Tapubhai can be said to be such, which is described u/s 320 of the IPC as a grievous hurt. Of-course, considering the ocular evidence adduced by the prosecution, the very basic fact regarding the involvement of the respondent in the incident, cannot be said to have been duly proved.

10. In the result, considering the overall evidence on record and the impugned judgment and order rendered by the learned Magistrate recording acquittal of the respondent, the prosecution failed to establish its case beyond reasonable doubt against the respondent and the learned trial Judge rightly appreciated the evidence on record. It is pertinent to note that as observed by Honourable the Apex Court in the case of Chandrappa and ors. (supra) even if two reasonable views are possible, one leading to the innocence of the accused and another leading to the guilt of the accused, then the view leading to the innocence of the accused requires to be adopted. Thus, considering the overall evidence on record, the appeal deserves to be dismissed.

11. For the foregoing reasons, the appeal stands dismissed.