

(2015) 08 GUJ CK 0017
In the Gujarat High Court

Case No : Criminal Appeal (Against Acquittal) No. 302 of 1993

State of Gujarat

APPELLANT

Vs

Bhijrajsinh Savalsnh Rathod

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 08 GUJ CK 0017

Hon'ble Judges : K.S. Jhaveri, J;G.B. Shah, J

Bench : Division Bench

Advocate : L.R. Pujari, APP, for the Appellant; Kirtidev R. Dave, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J—This appeal is directed against the judgment and order of acquittal dated 24.12.1992 passed by the learned Sessions Judge, Kutch-Bhuj, in Sessions Case No. 28 of 1991, whereby the respondent-original accused was acquitted of the charge under Section 20(B)(2) of Narcotic Drugs and Psychotropic Substances Act.

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

2.1 The police got previous information that the present respondent-accused is keeping charas, a prohibited article in his possession and on that basis on 7.1.1991 at 19.40 hours at the residence of the accused situated at Village-Nanalayja, Taluka-Mandvi, District-Kutch, the police party carried out a successful raid and on search of the house of the accused in his presence, in a brown coloured suit case below the bed sheet in one cloth bag 3 kg. charas was found. For the possession of this contraband goods, the accused was asked whether he has got any pass or permit, to which accused said "No". Therefore, aforesaid 3 kg. charas was seized from the house of the accused as stated above and the complaint was given. Necessary investigation was done and the accused

person came to be arrested. At the end of investigation, charge-sheet was filed against the accused before the trial Court. However, since it was a sessions triable offence, the case was committed to Sessions Court, Kutch-Bhuj and ultimately, trial was initiated.

3. During the trial, the prosecution had examined following witnesses;

3.1 The prosecution had also produced and relied upon several documentary evidence, particularly, the Entry of Muddamal Register Exh.18, Letter to laboratory for examination of the muddamal Exh.19, Copy of the form to be filled at the time of sending muddamal for examination to the laboratory, Exh.19, Letter sending Muddamal to the laboratory, Exh.21, Letter written to District Superintendent of Police by the laboratory, Exh.22, Panchnama Exh.39, Complaint Exh.40, Extract of entry No. 23/91 Exh.42, Report of FSL Exh.43, Report of FSL Exh.44.

3.2 At the end of trial, the Court below recorded further statement of accused person under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order of acquittal, which has led to the filing of present appeal.

4. 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.

5. On the other hand, learned counsel for the respondent-accused has contended that so far as acquittal appeals are concerned, the law is well settled and by taking us through the impugned judgment, he submitted that this Court may not interfere with the impugned judgment and the appeal may be dismissed.

6. 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, AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6 CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp : (2006) AIRSCW 4652 : (2006) 5 Supreme 547 , 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 view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

6.1 Further, in the case of Chandrappa and Others Vs. State of Karnataka, (2007)

CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630 , 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.

6.2 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.

6.3 Even in the case of State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , 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."

6.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

6.5 In the case of Lunaram Vs. Bhupat Singh and Others, (2009) CriLJ 1899 : (2009) 3 JT 155 : (2009) 3 SCALE 363 : (2009) 3 SCC 749 : (2009) 3 SCR 706 : (2010) AIRSCW 298 : (2009) 7 Supreme 103 , 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."

6.6 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, AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1 Supreme 88 , 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) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480 Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404]"

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 Alias Vemareddy and Another, AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981) 2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 , wherein it is held as under:

...This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, AIR 1967 SC 1124 : (1967) 1 SCR 93 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.

9. We have gone through the oral as well as documentary evidence on record. While passing the impugned judgment, the learned Judge has taken into consideration the following aspects:-

(a) The prosecution has failed to establish as to at which place the raid was carried out.

(b) The prosecution has failed to produce any evidence to show that the place at which the raid was carried out was the residence of the accused and it was in possession of the accused.

(c) It is accepted that the prosecution has recorded the statements of the persons of nearby vicinity at the time of carrying out the raid but such persons are not cited as witnesses and they have not been examined.

(d) The investigating officer has stated about the recovery of electric bill at the time of carrying out the raid but he has not produced such bill and no explanation is given for such non-production of the bill.

(e) The prosecution case depends upon police witnesses only and there are contradictions in the evidence of such witnesses.

(f) There are contradictions in the evidence of PSI Parmar and other police witnesses as to whether samples were taken from muddamal or not at the time of carrying out the raid.

(g) FSL report shows that the packets bearing A, B and C marks were containing two different packets and they were numbered as A-1, A-2, B-1, B-2 and C-1, C-2. However, prosecution witnesses have stated that sample was sent in three packets only and it cannot be accepted that samples might have broken and it might have been given different numbers as the packets before the Court are intact and they are not broken.

(h) Upon examination of the muddamal article it appears that no sample is taken from the packets marked as "B" and "C".

(i) It is not established that the report of the FSL is of the article recovered in the present case.

(j) There is contradictory evidence as regards sending the muddamal to FSL.

(k) It has come on record that earlier raids were carried out at the residence of the accused in connection with prohibition cases and at that time nil panchnamas have been drawn.

(l) Looking to the totality of the evidence, the possibility of prejudice against the accused cannot be ruled out.

(m) There are contradictions even in the evidence as regards sealing the muddamal at the time of its recovery.

(n) No evidence is produced on record with regard to the case of the prosecution that the place at which the raid was carried out belongs to the accused.

(o) Police officers have given different description of the place where raid was carried out and there are also contradictions as regards whether the accused was with them or not at the time of raid.

(p) It has not come in evidence that the accused had shown his house.

10. From the above, it is clear that the learned Judge has not committed any error while acquitting the accused of the charges levelled against him. 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 while acquitting the accused persons.

Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondent-accused of the charge levelled against him. 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 this appeal.

11. For the foregoing reasons, the appeal is dismissed and the impugned judgment and order is confirmed. Bail bonds stand discharged. Record and proceedings, if lying here, be sent to the Court below forthwith.