

(2015) 08 GUJ CK 0050
In the Gujarat High Court
Case No : Criminal Appeal No. 1282 of 1993

State of Gujarat	Vs	APPELLANT
Bhupatbhai and Others		RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37(1)
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 114, 302, 307, 324, 326

Citation : (2015) 08 GUJ CK 0050

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

Bench : Division Bench

Advocate : L.R. Pujari, A.P.P., for the Appellant

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J—Mr. Chirag Parekh, learned advocate appearing for the respondents states that respondent No. 1 - Bhupatbhai alias Bhagat Tapubhai alias Jinabhai Bharwad has expired on 22.09.1999. The death certificate issued by Dr. N.H. Vasavada, Madhuram Hospital is also placed on record. Therefore, this appeal stands disposed of as having been abated qua respondent No. 1 - Bhupatbhai alias Bhagat Tapubhai alias Jinabhai Bharwad. So far as the respondents No. 2 to 4 (hereinafter referred to as "the respondents") are concerned, we have heard learned advocates for both the sides at length.

2. The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order dated 21.05.1993 passed by the Additional Sessions Judge, Rajkot in Sessions Case No. 115 of 1989 whereby the trial court acquitted the respondents under Sections 307, 324, 326 r/w 114 of Indian Penal Code as well as under Sections 37(1) and 135 of B.P. Act

3. The brief facts of the prosecution case are that original accused No. 1 - present respondent No. 1 had hired a matador vehicle of the witness Narendra @ Babo Maganlal Lohana who was the friend of the complainant Laxman Jiva for

which the witness Laxman asked Rs. 600/- as rent which was not being paid by original accused No. 1 - present respondent No. 1. The original accused No. 1 - present respondent No. 1 had an altercation in this regard with witness Narendra.

3.1 Thereafter, on 22.06.1989, at night, when the complainant Laxman Jiva and witnesses Narendra @ Babo Maganlal Lohana, Dhiru Teja Patel and Dilip Mansur had come at Karanpara, situated opposite Mohan Studio on Prahlad Road to persuade original accused No. 1 - present respondent No. 1 to pay the money. At that time, original accused No. 1 - present respondent No. 1 along with other respondents assaulted the complainant and the witnesses. Original accused No. 1 - present respondent No. 1 inflicted knife blow on the chest of Laxman Jivabhai. Original accused No. 1 - present respondent No. 1 as well as original accused No. 3 - present respondent No. 3 inflicted scythe blow on the head of witness Narendra and original accused Nos. 2 & 4 - present respondents Nos. 2 & 4 inflicted knife blows on the chest and back of the witnesses Narendra and Dhirubhai Tejabhai respectively.

3.2 Therefore the police was informed and complaint was lodged. Pursuant to the complaint, investigation was carried out. After investigation, the accused persons were apprehended and charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Court of Sessions, Rajkot.

3.3 The trial court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

3.4 The trial was initiated against the accused and during the course of trial the prosecution examined following witnesses whose evidences have been read before us:

3.4 The prosecution also relied upon the following documents as documentary evidences which have been perused by us:

3.5 At the end of trial, after recording the further statement of the accused under section 313 of the Cr.P.C and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondents of the charges leveled against them by giving them benefit of doubt vide impugned judgement and order.

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

4. Mr. L.R. Pujari, learned APP appearing for the appellant-State has submitted that the trial court committed an error in releasing the respondents-accused. It was contended by Mr. Pujari that the judgement 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 respondents.

4.1 Mr. Pujari has also taken this court through the oral as well as the entire documentary evidence and submitted that the evidences of the witnesses at the time of the incident and injured persons Laxmanbhai, Narendrabhai and Dilipbhai have got corroboration from the evidences of other witnesses. He submitted that the prosecution has proved the case against the respondents beyond reasonable doubt.

5. Mr. Chirag Parekh, learned advocate appearing for the respondents supported the impugned judgement and order and submitted that the same having been passed in accordance with law does not call for any interference. He submitted that the prosecution has failed to prove the case against the respondents beyond reasonable doubt. He submitted that no independent witness was examined. He submitted that there was a delay in lodging the complaint and the time of incident mentioned in the complaint does not corroborate the time mentioned in the dying declaration.

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 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."

6.1 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, 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 emphasize 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 a recent decision of the Apex Court 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 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."

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 strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post-mortem 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 a running condition.

11. Considering the parameters of appeal against the judgement 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 reappreciate 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 "

6.7 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement or to give fresh reasoning's , 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 Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, AIR 1967 SC 1124 : (1967) 1 SCR 93 : (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."

6.8 Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

7. We have examined the matter carefully and gone through the evidence on record. We have appreciated, reappreciated and re-evaluated the evidence on the touchstone of the aforesaid decisions of the Hon"ble Apex Court.

7.1 We find that the trial Court while considering the evidence on record, has very elaborately discussed the FSL report, Panchnama and the evidence on record. The medical evidence has been extensively dealt with by the learned trial judge. It is borne out that the sole eye witness, PW.. 15 - Jayantibhai Parsottam did not support the case of the prosecution and he was declared hostile. Even P.W. 17-Laxmidas Thakarshi who is the shop owner of Season Stores has not supported the case of the prosecution and therefore he has also been declared hostile. P.W. 8 - Jaysukhbhai Chandulal is the rickshaw driver who took the injured persons to Government hospital by his rickshaw. He has stated that he did not see any person beating the injured. No other independent witness was examined by the prosecution. Though there were many persons from the public who are said to have gathered at the time of incident, none of them was examined. Moreover, from the evidence on record, it is borne out that the complainant did not go to the hospital immediately after the incident but he first

went to his house and later on he went to the hospital. Narendrabhai and Dhirubhai had not disclosed the name of the complainant in their dying declarations and had not lodged the complaint in respect of the incident before the complainant though they went to hospital earlier in point of time than the complainant. The time of incident as mentioned in the complaint and the dying declaration also do not match.

8. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or 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 the material evidence on record. In above view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgement and order.

9. We are, therefore, of the considered opinion that the findings recorded by the trial Court in acquitting the accused of the charge levelled against them by giving them benefit of doubt are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are in complete agreement with the reasonings given and the findings arrived at by the trial Court. No interference is warranted with the judgement and order of the trial Court.

10. Accordingly, appeal is hereby dismissed. The judgement and order dated 21.05.1993 passed by the Additional Sessions Judge, Rajkot in Sessions Case No. 115 of 1989 is confirmed qua the acquittal of the respondents under sections 307, 324, 326 r/w 114 of Indian Penal Code as well as under sections 37(1) and 135 of B.P. Act. Non-bailable warrant shall stand cancelled.