

(2009) 02 GUJ CK 0016
In the Gujarat High Court
Case No : Criminal Appeal No. 73 of 1988

State of Gujarat

APPELLANT

Vs

Chodhari Shankerbhai Karamshi and Others

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 378

Citation : (2009) 02 GUJ CK 0016

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

Bench : Division Bench

Advocate : R.C. Kodekar, APP 1, for the Appellant; K.B. Anandjiwala, for Opponents 1 - 5, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 17.10.1987 passed by the learned Addl. Sessions Judge, Mehsana in Sessions Case No. 16 of 1986, whereby the accused has been acquitted from the charges leveled against him.

2.0 The brief facts of the prosecution case are as under:

2.1 The prosecution against the accused cropped up at the filing of the complaint on 9.3.1985 at 6.20 hours about the incident which took place on 8.3.1985 at 20 hours. The accused Nos. 1 to 4 were arrested on 11.3.1985 and accused No. 5 was arrested on 25.3.1985 and all of them are on bail. After completion of investigation charge-sheet was filed against them on 25.10.1985 in the Court of Judicial Magistrate First Class, Patan. Case was registered as Criminal Case No. 2727/1985 and by an order dated 15.1.1986, the accused were committed u/s 209 of the Criminal Procedure Code to stand their trial before the Sessions Court.

2.2 To prove the case against the present accused, the prosecution has

examined, in all, eleven witnesses, which are as under:

PW-1 Chelabhai Devanbhai Ex. 21

PW-3 Okhaji Javanji Ex. 23

PW-2 Nanji Jagmal Ex. 22

PW-4 Kantibhai Motibhai Ex. 24

PW-5 Jethabhai Devanbhai Ex. 27

PW-6 Balvant Velabhai Ex. 28

PW-7 Velabhai Devshibhai Ex. 29

PW-8 Devjibhai Nanjibhai Ex. 30

PW-9 Dr. H.P. Vaniga Ex. 38

PW-10 Jitendrabahadursing Narendrasing Ex. 45

PW-11 Mukesh J. Bhatt Ex. 47

The prosecution has also produced documentary evidence to prove the case, which are as under:

Report of PSO Patan Ex. 14

Report of PSI Patan Taluka Ex. 15 & 16

Forwarding Note to FSL Ex. 17

Panchnama Ex. 18

Receipt from FSL Ex. 19

Panchnama Ex. 20

Panchnama Ex. 25 & 26

Report of PSI Patan Taluka Ex. 39

Medical Certificates Ex. 40 to 42

FSL Report Ex. 43 & 44

2.3 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 judgement and order dated 17.10.1987.

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

3.0 It was contended by Mr. Kodekar learned APP 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 respondent.

3.1 Learned APP has also taken this Court through the oral as well as the entire documentary evidence. He has further submitted that Ex. 14 Vardhi recorded first in time ought to have been considered along with FIR and after appreciating the Vardhi and FIR, the trial Court ought to have considered the evidence and ought to have believed eye witnesses, that is, PW-2, PW-5 & PW-6, instead of that, the trial Court placed reliance on evidence of PW-8 who was informant and rushed to the police station before the incident has taken place from the back-door of the Vada.

3.2 He further submitted that in view of the overall oral as well as documentary evidence, the prosecution has proved its case beyond any reasonable doubt and, therefore, the order of acquittal passed by the learned Judge is required to be quashed and set aside and respondents are required to be convicted.

4.0 Mr. KB Anadjiwala learned Counsel for the respondents has supported the judgment of the trial Court and submitted that the prosecution has failed to prove scene of offence and no medical evidence is proved to establish the injury and even no common object is also proved.

4.1 He further submitted that there are contradictions and omissions and the Vardhi and FIR and after considering the evidence on record, the trial Court has rightly appreciated the evidence and no case is made out to interfere with the conclusion reached by the trial Court.

4.2 He has further submitted that in view of the recent decision of the Apex Court, on over-all appreciation of facts, it will not be appropriate for this Court to substitute the opinion even if the Vardhi is considered to be as FIR. He, therefore, submitted that the appeal deserves to be dismissed.

5. 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 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. 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 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.

7. 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.

8. 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 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.

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

10. 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 reasons, 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.

11. 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.

12. We have gone through the judgement 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 Advocate for both the sides. From the evidence, it was clear before the trial Court that there was no object and the dispute started on the spot and the place of offence is also changed.

12.1 In the first information, that is, Vardhi Ex. 14, if it read closely, none of the accused is referred, but subsequently 21 names were referred in the complaint, but prosecution has selected only five persons. We have considered the contents of the Vardhi that information which is noted in that Vardhi is an information of cognizable offence and from the evidence of I.O. also, we found that from the statements of witnesses, five accused were booked in the said offence. While considering the oral evidence of PW-1 in para-13, the trial Court has found that the information given by the informant to the police was true and that Jamadar recorded the true facts, however, he denied having informed the police that 25 to

30 Thakardas had come and were causing trouble.

12.2 It is not admitted by him that from his Madh he went to the Velaba Madh and had gone to the uncle though he denied that uncle Jagmalji was telephoning or trying to ring down. Even the trial Court has considered the conduct of Devjbhai Nanjibhai Ex. 30 and the trial Court has also discussed the evidence in paras-19 and 20 of the judgment, which reads as under:

19. Lastly, when the panchnama of the place of offence is read, it is indeed manifest that the entire public street was scattered in the stones and that no mark of thumping the door with the implement were observed on the madh where the prosecution witnesses claim to have been present, but the entire scene of events seems to have been at the place other than what the prosecution witnesses say.

20. For the reasons which I explained hereinabove, as a matter of fact in view of the fact that the alleged offensive act by 25 to 30 Thakaradas was informed by the informant Devaji to the police and that information was after meeting the father Nanji who is alleged to have been the entire incident, and the fact that police did arrest the two Thakardas, and that the prosecution witnesses are proved by contradictions to have attributed the presence and participation of Thakardas at the place other than which they now say and the fact that the medical evidence also disproves the truthfulness of what they say. I conclude that it is hazardous to accept their say as truthful say, notwithstanding the fact that they corroborate each other about the presence and the weapons used and the part of the body inflicted, and, therefore, in my conclusion circumstances does arise which raises a reasonable doubt about the truth of what they say and, therefore, a reasonable doubt about the truth of the complicity of the accused as well and, therefore, I conclude that the prosecution evidence against the accused does not prove the charges levelled against them beyond reasonable doubt and, therefore, they would be entitled to be acquitted.

12.3 Moreover, the prosecution has failed to prove the role or overt-act of each of the accused which believe us to come to a different conclusion.

12.4 On closed scrutiny of the evidence, it is difficult to come to one conclusion that each of the accused has played a particular role and acted with common intention. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

12.5 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.

13. 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. 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. 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.