

(2013) 11 GUJ CK 0016
In the Gujarat High Court
Case No : Criminal Appeal No. 270 of 2012

State of Gujarat

APPELLANT

Vs

Depak Natubhai Thakor and Another

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) CriLJ 1427

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Judgement

Kaushal Jayendra Thaker, J.—This appeal is directed against the judgment and order passed in Sessions Case No. 118/2010 dated 05.01.2012 by the learned 7th Addl. Sessions Judge, Ahmedabad (Rural), Mirzapur whereby, respondent No. 1, original accused No. 1, was convicted for the offences punishable u/s. 363, 366 and 376 of Indian Penal Code (for short, "the IPC") whereas, respondent No. 2, original accused No. 2, was convicted for the offences punishable u/s. 363 & 366 r/w. Section 114, IPC. For conviction u/s. 363, IPC, accused No. 1 was sentenced to undergo RI for six months and fine of Rs. 250/- and in case of default, RI for a further period of ten days. For conviction u/s. 366, IPC, accused No. 1 was sentenced to undergo RI for six months and fine of Rs. 250/- and in case of default, RI for a further period of ten days; and for conviction u/s. 376, IPC, accused No. 1 was sentenced to undergo RI for one year and fine of Rs. 500/- and in case of default, RI for a further period of one month.

For conviction u/s. 363 & 366, IPC, accused No. 2 was sentenced to undergo RI for fifteen days and fine of Rs. 500/- and in case of default, RI for a further period of ten days.

All the sentences were ordered to run concurrently, The sentence already undergone by accused was given set-off.

The facts in brief are as under:-- It is the prosecution case that complainant Natubhai was residing along with his family consisting of his wife and four

children near Trimurti Hospital, Bavla. On 17.12.2009 at around 0300 hrs., Hansaben, the wife of complainant, woke up and noticed that one of their daughters, aged around 15 years, was not on her bed. She informed the complainant about it. Necessary search was carried out. When inquired with accused No. 2, he informed that his daughter had been sent by him with accused No. 1. A complaint in connection with the above offence was lodged and necessary investigation was carried out.

1.1 At the end of investigation, charge-sheet was submitted before the magisterial Court but, as the case was sessions triable, it was committed to Sessions Court for adjudication on merits. The accused pleaded not guilty to the charges levelled against him. After recording evidence, the Court below acquitted the respondents of all the charges, vide impugned judgment and order. It is against the said judgment and order of acquittal that the present appeal has been filed by the State.

2. Learned APP appearing for the appellant State has submitted that the trial Court has committed error in acquitting the respondent-accused since there were ample direct and indirect evidence on record to connect the respondent-accused with the crime. She further submitted that trial Court has failed to appreciate the material on record in its true perspective.

2.1 Learned APP further submitted that prosecutrix was below the age of 16 years at the time of incident and therefore, the reasons assigned by the trial Court for awarding sentence of imprisonment already undergone as under-trial prisoner was not proper. Therefore, she requested this Court to allow this appeal.

3. 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 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 views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below.

3.1 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, 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.

3.2 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.

3.3 Even in the case of State of Goa Vs. Sanjay Thakran and Another, , 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.

3.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, . Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

3.5 In the case of Lunaram Vs. Bhupat Singh and Others, , 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 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.

3.6 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, , 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 levelled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused u/s 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,].

3.7 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, , 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 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. 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 APR Though served none appears on behalf of respondents-original accused. Having gone through the impugned judgment, it appears that the Court below has recorded the finding that the main accused was 18 years of age at the time of incident and that both appellant No. 1 and prosecutrix were in a close relationship. In our opinion, leniency in such matters, is not just and proper. At least custodial incarceration of three years would have been appropriate.

5.1 This is a matter where we would like to show further indulgence looking to the young age of accused No. 1 and prosecutrix. Considering the fact that by now both accused No. 1 and prosecutrix must have settled in their lives, it would not be in the interest of justice to send the accused behind bars. In our opinion, if the accused is directed to pay some amount as compensation to prosecutrix u/s. 357, Cr.P.C., the same would meet the ends of justice.

For the foregoing reasons, the appeal is partly allowed. The impugned judgment and order passed in Sessions Case No. 118/2010 dated 05.01.2012 is modified to the extent herein below:--

(1) The conviction of appellant No. 1, original accused No. 1, u/ss. 363, 366 & 376, IPC is confirmed. However, the sentence imposed for conviction u/s. 376, IPC is enhanced to rigorous imprisonment of Three Years instead of One Year, without disturbing the order regarding fine and default sentence. The sentence imposed for conviction u/s. 363 and 366, IPC is not disturbed. All the three sentences shall run concurrently.

(1.1) But, if appellant No. 1, original accused No. 1, deposits an amount of Rs. 20,000/- [Rupees Twenty thousand only] with the Registry of Sessions Court concerned, within a period of six months from today, which shall be paid as compensation to prosecutrix u/s. 357, Cr.P.C., then original accused No. 1 shall not be required to surrender to custody for undergoing imprisonment imposed by this Court; and the sentence already undergone by him shall be treated as

sufficient sentence.

(1.2) But, if he fails to deposit the amount within the aforesaid period, then he shall have to surrender to custody, immediately on expiry of the above period, for undergoing sentence imposed by this Court as aforesaid, failing which the investigating agency shall take necessary action in accordance with law.

(1.3) The Registry of Sessions Court concerned shall ensure that a writ of this order is served upon original accused No. 1 since he has chosen not to appear before this Court in this appeal.

(1.4) If appellant No. 1, original accused No. 1 deposits the amount as aforesaid, the Registry of Sessions Court concerned shall make payment of the said amount to prosecutrix, after necessary verification.

(2) The conviction and sentence imposed upon appellant No. 2, original accused No. 2, is not disturbed and is confirmed.

(3) Rest of the impugned judgment remains unaltered.