
(2013) 08 GUJ CK 0016
In the Gujarat High Court
Case No : Criminal Appeal No. 348 of 1992

State of Gujarat

APPELLANT

Vs

Dhirajlal Naranbhai Patel

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2014) CriLJ 2058

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—This appeal u/s 378 of the Criminal Procedure Code, at the instance of the State, is against the judgment and order of acquittal dated 24.07.1991 passed by the learned Extra Assistant Sessions Judge, Banaskantha at Palanpur in Session Case No. 96/1989 whereby, the respondents original accused have been acquitted of all the charges levelled against them. The brief facts of the prosecution case are that the complainant herein, Becharbhai Manjibhai, was residing along with his family consisting of his wife and two children, amongst whom one is the prosecutrix and other is Sureshbhai. Near the house of the complainant, respondent No. 1 herein was residing along with his family and respondent No. 2 herein happens to be the nephew of respondent No. 1, who was residing along with the family of respondent No. 1 at the relevant point of time.

1.1. On 26.08.1988 when the complainant returned home in the evening after work, he came to know that the prosecutrix had not returned home after she had left for Palanpur at 1100 hrs. for purchasing some grocery items. After carrying out necessary search, the complainant came to know that respondent No. 2 herein had allegedly kidnapped the prosecutrix in connivance of respondent No. 1. A complaint in connection with the above incident was lodged before Palanpur Taluka Police Station and necessary investigation was carried out.

1.2. 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, Jamnagar for adjudication on merits. The accused pleaded not guilty to the charges leveled against them.

1.3. During the trial, the prosecution had examined nine witnesses;

1.4. The prosecution had also placed reliance upon several documentary evidence, particularly, the complaint at Exhibit-30, arrest panchnama at Exhibit-19, panchnama regarding physical condition of prosecutrix at Exhibit-12, extract regarding date of birth of prosecutrix at Exhibit-28, Certificate issued by Medical Officer at Exhibit-23 and Certificate of accused issued by Medical Officer at Exhibit-24.

1.5. 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 respondents-accused since there were ample direct and indirect evidence on record to connect the respondent-accused with the crime. She further submitted that the trial Court has failed to appreciate the material on record in its true perspective. 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 view 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, 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.

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 reappraise 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. The parameters to be considered while deciding an appeal arising out of an order of acquittal has been reiterated by the Apex Court in a recent decision in Shivasharanappa and Others Vs. State of Karnataka, .

3.8. 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 advocate for the parties. The medical evidence on record of the prosecutrix goes to show that she had sustained an abrasion on the inner aspect of right thigh. Except the said injury, the Doctor found no other injuries on her body, including her vagina. In other words, on medical examination, it was not proved that the offence u/s. 376, IPC had been committed. If the evidence on record is scrutinized in light of the decisions of the Apex Court wherein, it has been consistently held that High Courts, being the first Court of Appeal, should evaluate and re-evaluate the evidence on record and that only if the order of acquittal is found to be perverse or improbable, then only it should be interfered with. In this case, looking to the findings recorded by the Court below, it cannot be said that the prosecutrix was allured by the respondents. It cannot be said that the offence u/s. 376, IPC had been committed on the prosecutrix.

6. Further, Dr. Shamaldas Mohanlal Athvan, who had carried out medical examination of the prosecutrix, has led evidence at Exhibit-12. From the panchnama regarding physical condition of prosecutrix, it does not appear that the prosecutrix was put under any kind of force or coercion as no injury marks were found on her body. The prosecutrix appeared to be physically well built on medical examination and therefore, the chances of her not resisting any physical force was negligible. Further, no injury marks were found on her private parts, which are otherwise found on a survivor of rape. Thus, as per medical evidence, no case for rape was made out. Having considered the evidence on record, we are unable to persuade ourselves to take any other view than the view taken by the Court below. Therefore, we do not find any infirmity with the impugned judgment of acquittal passed by the Court below.

7. Considering the facts of the case, it would be relevant to refer to an unreported decision of this Court rendered in Criminal Misc. Application No. 12653 of 2009 decided on 21.04.2010 and more particularly, on the observations

made in para 3 therein, which reads as under;

3. It appears to us that there are basic infirmities in the case of the prosecution inasmuch as in the history given before doctor the victim had stated that she herself had gone voluntarily with the accused. Further, the victim had stayed with the accused for about 8 months. She had all opportunities to go away. This shows that there was no compulsion on her part and she voluntarily remained with the accused. The age of the victim is proved above 16 years. Not only that, but, two times the abortion was made and in the Hospital she has declared that she is the wife of the accused. Under these circumstances it is not possible to believe that there was any sexual intercourse under compulsion, more particularly, when there is no medical evidence supporting the case for the offence u/s 376 of I.P. Code. The panchas have turned hostile and they have not supported the case of the prosecution.

8. 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 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. In above view of the matter, we are of the considered opinion that the Trial Court was completely justified in acquitting respondent-accused of all the charges. In above view of the matter, we are of the considered opinion 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 in complete agreement with the reasonings given by and the findings arrived at by the trial Court and hence find no reasons to interfere with the same. Hence, the appeal is hereby dismissed.