
(2016) 04 GUJ CK 0021
In the Gujarat High Court
Case No : Criminal Appeal No. 319 of 1994

State of Gujarat

APPELLANT

Vs

Dhirubhai Ramjibhai Koli

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 378
Penal Code, 1860 (IPC) — Section 302, Section 34, Section 498-A

Citation : (2016) 04 GUJ CK 0021

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Shruti Pathak, APP, for the Appellant; Pratik B. Barot, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. The present appeal, under section 378 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") is directed against the judgment and order dated 30/10/1993, passed by the learned Additional Sessions Judge, Rajkot, in Sessions Case No. 61 of 1992, whereby the respondent herein - original accused has been acquitted of the charges levelled against him for the offences punishable under Sections 302 and 498-A of the Indian Penal Code, 1860 (for brevity, "the IPC").

2. Brief facts of the prosecution case are that on 10/03/1992, the respondent herein - original accused allegedly informed his wife - Bhanuben, the deceased that he wanted to remarry as she could not conceive and thereby, he further allegedly entered into altercation with his wife and thereafter, set her ablaze by pouring kerosene due to which, the deceased sustained severe burn injuries and ultimately, succumbed to the injuries. Thus, the respondent - accused committed the offence alleged against him, for which, a complaint came to be lodged.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it

was committed to the Sessions Court at Rajkot.

2.2 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.

2.3 In order to bring home the charge against the accused, the prosecution has examined following witnesses and also produced several documentary evidence, as under:

2.4 At the end of the trial and after recording the Further Statement of the accused under Section 313 of Code and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondent of all the charges levelled against him by impugned judgment and order.

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

3. We have heard Ms. Shruti Pathak, learned Additional Public Prosecutor, for the appellant - State and Mr. Pratik Barot, learned advocate for the respondent - original accused.

3.1 Ms. Pathak, the learned Additional Public Prosecutor appearing for the appellant - State has submitted that the trial Court committed an error in acquitting the respondent - accused. It was contended by her that the judgment 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 offence, alleged against the present respondent. The learned Additional Public Prosecutor has also taken this Court through the oral as well as the entire documentary evidence and submitted that considering the Dying Declaration of the deceased complainant and the history mentioned in her medical case papers, it is clear that the present respondent - accused had burnt her to death. It is further submitted that by the learned Additional Public Prosecutor that the deceased herself had lodged the complainant, exh. 59 and while giving the complaint, she was conscious enough to giving the correct facts of the incident in question. She also took us to the other evidence on record and submitted that the prosecution has successfully proved its case against the respondent beyond reasonable doubt, however, the learned trial Judge did not believe the same and has acquitted the respondent - accused and thereby, has committed a grave error of law and evidence on record, which requires to be rectified by this Court. Eventually, she requested to allow the present appeal.

4. On the other hand, Mr. Barot, the learned advocate appearing for the respondent - original accused, supported the impugned judgment and order and

submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that almost all the prosecution witnesses have turned hostile including the mother of the deceased, who had accompanied the deceased in a rickshaw to the hospital for getting her treated after the alleged incident had occurred. It is further submitted that even the person who had treated the deceased is not examined by the prosecution and under the circumstances, the death of the deceased cannot be said to be a culpable homicide amounting to murder but it is a case of an accidental death. Further, it is also submitted that there are material contradictions and improvements in the case of the prosecution and the learned trial Judge, after taking into consideration all the aspects of the matter, has come to such a conclusion, which is just and proper and has rightly acquitted the respondent - accused and accordingly, it is requested that this Court should not interfere in appeal.

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 Hon"ble Apex Court in catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr., reported in , (2006) 6 SCC 39, the Hon"ble 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 Hon"ble 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."

5.1 Further, in the case of Chandrappa Vs. State of Karnataka, reported in , (2007) 4 SCC 415 the Hon"ble Apex Court has 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 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."

5.2 Thus, it is a settled principle that while exercising appellate powers, 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.

5.3 Even in a recent decision of the Hon"ble Apex Court in the case of State of Goa V. Sanjay Thakran & 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."

5.4 Similar principle has been laid down by the Hon"ble Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh & Ors., reported in , 2007 AIR SCW 5553 and in Girja Prasad (Dead) by LRs Vs. State of M.P., reported in , 2007 AIR SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.5 In the case of Luna Ram Vs. Bhupat Singh and Ors., reported in , (2009) SCC

749, the Hon''ble 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."

5.6 Even in a recent decision of the Hon''ble Apex Court in the case of Mookiah and Anr. Vs. State rep. by the Inspector of Police, Tamil Nadu, reported in , AIR 2013 SC 321, the Hon''ble 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 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 v. Sohan Lal and others, , (2004) 5 SCC 573 : (AIR 2004 SC 4520 : 2004 AIR SCW 4321)]"

5.7 It is also a settled legal position that in acquittal appeal, the appellate Court is not required to re-write 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 Hon''ble Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in , AIR 1981 SC 1417 wherein it is held as under:

"...This court has observed in Girija Nandini Devi V. Bigendra Nandini

Chaudhary , (1967)1 SCR 93 : (AIR 1967 SC 1124) 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."

5.8 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.

6. We have examined the matter carefully and gone through the evidence on record. We have re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon"ble Apex Court. Besides, we have gone through the impugned judgment and order, more particularly, the reasoning adopted and view taken by the learned trial Judge, which appear to be probable. We find that the trial Court while considering the evidence on record, has very elaborately discussed the evidence adduced before it and has come to the conclusion that the prosecution has failed to prove the charge levelled against the accused. Further, taking into consideration the fact that all material witnesses have turned hostile and the fact that in the Dying Declaration, the thumb impression of the deceased has not been identified by the competent person and also taking into consideration the other evidence on record, we are of the opinion that the learned trial Judge has rightly come to such a conclusion. Moreover, the learned Additional Public Prosecutor for the appellant - State 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 that view of the matter, we are of the opinion that the Court below was completely justified in passing impugned judgment and order. Further, on perusal of the decision relied upon by the learned Additional Public Prosecutor, the same appears to be not applicable in the facts and circumstances of the case on hand.

7. We are, therefore, of the considered opinion that the findings recorded by the trial Court in acquitting the accused of the charge levelled against him 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 judgment and order of the trial Court.

8. In view of the aforesaid discussion, present appeal fails and is dismissed accordingly. The impugned judgment and order dated 30/10/1993, passed by the learned Additional Sessions Judge, Rajkot, in Sessions Case No. 61 of 1992, is hereby confirmed. Bail bond, if any, shall stand cancelled. Registry to return the R&P to the trial Court forthwith.