

(2016) 03 GUJ CK 0097
In the Gujarat High Court
Case No : Criminal Appeal No. 1528 of 2006

State of Gujarat	Vs	APPELLANT
Govindbhai Arjanbhai Mayatra and Others		RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 378
Penal Code, 1860 (IPC) — Section 114, Section 302, Section 323, Section 34, Section 447, Section 504, Section 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention

Citation : (2016) 03 GUJ CK 0097

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Rutviz Oza, Additional Public Prosecutor, for the Appellant;

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—1. Since respondent No. 1 - Govindbhai Arjanbhai Mayatra has expired, during the pendency of the appeal, the appeal is dismissed as abated qua him. As far as respondent No. 2 is concerned, the matter is taken up for final hearing today.

2. The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 07.03.2006 passed by the learned Presiding Officer, 3rd Fast Track Court, Junagadh, in Atrocity Case No. 34 of 2005, whereby, the learned trial Judge acquitted the original accused the respondents herein, of the charges for the offence punishable under Sections 447, 323, 504, 506(2) and 114 of the Indian Penal Code and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The brief facts of the prosecution case are that the incident occurred to the complainant on 03.09.2005 when the complainant was in the field and when they were trying to give water to their field, the accused belonging to the adjacent

field along with son came there with three buffaloes and one Cow. They came there to feed their cattle grazing there. The cattle was causing damage to the complainant's crop. Therefore, she complained and out of this, scuffle had occurred and therefore, the complaint was lodged.

3.1 Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, charge-sheet was filed against them in the Court of learned Judicial Magistrate First Class, Keshod. As the case was exclusively triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions, which was numbered as Atrocity City Case No. 34 of 2005. The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

3.2 To prove the case against the present accused, the prosecution has examined 10 witnesses which are as follows:

3.3 The prosecution has also produced 12 documentary evidence which are as follows:

"[1] Injury Certificate of Bhupatbhai- Exh. 12

[2] Injury Certificate of Hemiben- Exh. 13

[3] Yadi-Exh. 14

[4] Panchnama of place of incident-Exh. 15

[5] Notification -Exh. 16

[6] Wireless-Exh,. 17

[7] Special Report of offence-Exh. 18

[8] Caste certificate of the complainant-Exh. 19

[9] Panchnama of arrest, physical condition and arms of the accused-Exh. 22

[10] Original complaint of the complainant-Exh. 24

[11] copy of Extract of the complaint-Exh. 26

[12] Copy of Extract of Station Diary-Exh. 27"

4. At the end of trial, after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondents of all the charges leveled against him by judgment and order dated 07.03.2006.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial Court the appellant State has preferred the present appeal.

6. It was contended by learned APP Mr. Rutviz Oza, that the judgment and order

of the trial Court is against the provisions of law; the trial 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 all the ingredients of alleged charges against the present respondents. Learned APP Mr. OZat has also taken this court through the oral as well as the entire documentary evidence and submitted that the present appeal deserves to be allowed.

7. Though served none appears for the respondent No. 2- accused.

8. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of M.S. NARAYANA MENON @ MANI v. STATE OF KERALA & ANR, , (2006) 6 S.C.C. 39, the Apex Court has narrated 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 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."

9. Further, in the case of CHANDRAPPA v. STATE OF KARNATAKA, reported in , (2007) 4 S.C.C. 415, 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."

10. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/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.

11. Even in the case of *STATE OF GOA v. SANJAY THAKRAN & ANR.*, reported in , (2007) 3 S.C.C. 75, 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."

12. Similar principle has been laid down by the Apex Court in cases of *STATE OF UTTAR PRADESH v. RAM VEER SINGH & ORS.*, , 2007 A.I.R. S.C.W. 5553 and in *GIRJA PRASAD (DEAD) BY L.Rs. v. STATE OF MP*, , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

13. In the case of *LUNA RAM v. BHUPAT SINGH AND ORS.*, reported in , (2009) SCC 749, the Apex Court in para 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 strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem 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."

14. Even in a recent decision of the Apex Court in the case of MOOKKIAH AND ANR. v. STATE, REP. BY THE INSPECTOR OF POLICE, TAMIL NADU, reported in , AIR 2013 SC 321, 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 v. Sohan Lal and Others, , (2004) 5 SCC 573]"

15. It is also a settled legal position that in acquittal appeals, 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 v. HEMAREDDY, , AIR 1981, SC 1417, wherein it is held as under;

"...This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary , (1967) 1 SCR 93:(AIR 1967 SC 1124) 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."

16. In a recent decision, the Hon"ble Apex Court in SHIVASHARANAPPA & ORS. v. STATE OF KARNATAKA, , JT 2013 (7) SC 66 has held as under;

"That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind

that acquittal results into double presumption of innocence."

17. 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.

18. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned APP Mr. Oza for the appellant-State. The complaint in dispute who have also held to be not proved. If we go through the FIR there is no iota of evidence under 3(1)(10) of the Prevention of Atrocity Act and, therefore this is being a court of appeal all these three issues have to be decided.

19. As far as the issue of atrocity is concerned, the learned trial court has relied upon the of several authoritative pronouncements and factual scenario as it held the fact that the accused used language which was objectionable under Section 3(1)(10) of the Prevention of Atrocity Act. Whether the complainant was abused by the accused was not the case of the complainant that in the FIR and just because they belong to particular community, it cannot be said that Section 3(1)(10) of the Prevention of Atrocity Act was perpetrated. The decision cited and relied upon by the learned trial judge have to be concurred in different footing that have been taken by the trial court. As far as issue relating to Section 447 of the Indian Penal Code is concerned, the same is elaborately discussed in para 25 and 26 of the judgment of the learned trial Court. Hence, I concur with the findings of fact and the medical evidence of doctor also does not show any iota of injuries which can be said to be perpetrated to have been committed in furtherance of commission of offence under section 323 of the Indian Penal Code. The evidence does not transpire any confidence and there were several material contradictions and therefore the learned trial judge has rightly held that the offence under Section 504 and 506(2) of the Indian Penal Code is also not made out.

20. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him. I 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. I am, 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.

21. In the result, the present appeal is hereby dismissed. R & P to be sent back to the trial Court. Bail and bail bond, if any, stands cancelled. Surety also, if any given, stands discharged.