
(2016) 04 GUJ CK 0047
In the Gujarat High Court
Case No : Criminal Appeal No. 967 of 1994

State of Gujarat

APPELLANT

Vs

Harijan K. Gokal and Others

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135

Penal Code, 1860 (IPC) — Section 302, Section 307, Section 34, Section 504, Section 506(2)

Citation : (2016) 04 GUJ CK 0047

Hon'ble Judges : K.S. Jhaveri and Biren Vaishnav, JJ.

Bench : Division Bench

Advocate : Chetna M. Shah, Additional Public Prosecutor, for the Appellant;
Sachi Mathur, Advocate for Vikram J. Thakor, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. By way of this appeal, the appellant-State has challenged the judgment and order of acquittal passed by the learned Additional Sessions Judge, Banaskantha at Palanpur dated 27.12.1993, whereby the present accused-respondents were acquitted in Sessions Case No. 54 of 1992, for offences punishable under Sections 307,34,504,506(2) of the I.P.C and under Section 135 of the Bombay Police Act.

2. The facts of the case in brief are as follows:

"2.1 It is the case of the prosecution, that on 31.10.1991, at about 06:00 hrs in the evening at Bhabhar-Radhanpur Highway, at Bhabhar nearby the cabin of Thakor Vala Hema, both the accused has come and has attacked Varjangbhai Bhalabhai, resident of village Vadpag, Taluka: Deodar, and attempted to commit the murder. Respondent No. 2, had caught hold of the complainant with his hand and accused No. 1, as a result of instigation by accused No. 2, gave knife blow on the chest, abdomen and arm of the complainant, therefore, they were charged u/s. 307 r/w. Section 34 of the I.P.C. On the same date, time and place,

both the accused abused the victim, therefore, they were also charged u/s. 504 of I.P.C. On the same date, time and place, the accused gave life-threat to the victim, therefore, they were also charged u/s. 506(2) of the I.P.C. On the very same date, day and place, Prohibition of Arms Act, was in force. Hence, the accused were charged u/s. 135 of the Bombay Police Act.

2.2 A complaint in respect of the aforesaid incident was lodged before Bhahbhar Police Station. Necessary investigation was done and the accused came to be arrested. At the end of the investigation, charge-sheet was filed against all the accused before the trial Court. However, since it was a sessions triable offence, the case was committed to Sessions Court and ultimately trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 To prove the case against the prosecution, the following witnesses were examined:

3. The prosecution had produced and relied upon several documentary evidences like the Medical Certificate at Exh-18, panchnama regarding scene of offence at Exh-38, Complaint at Exh-8, Abstract of Police Station Diary at Exh-45 etc.,

4. Learned counsel for the appellant, has taken us to the evidence of the complainant-victim- Varjangbhai Bhalabhai and contended that the evidence of the victim and the medical evidence clearly establishes that the injuries which are caused could have caused the death of the victim, and contended that the trial Court has seriously committed an error in acquitting the accused.

5. Learned Counsel for the respondent Ms. Sachi Mathur, learned counsel for Mr. Thakor, has contended that no other witnesses have supported the case of the prosecution and the trial Court, while considering the evidences in paragraph 7 has rightly observed in favour of the accused in view of the decisions of Supreme Court.

6. 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 v. State of Kerala & Anr.*, , (2006) 6 S.C.C. 39, 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."

6.1 Further, in the case of *Chandrappa v. State of Karnataka*, , (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."

6.2 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.

6.3 Even in the case of *State of Goa V. Sanjay Thakran & Another*, , (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."

6.4 Similar principle has been laid down by the Apex Court in the 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 LRs v. State of MP* reported in , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

6.5 In the case of *Luna Ram v. Bhupat Singh and Ors*, , (2009) SCC 749, 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 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."

6.6 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, , 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 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]"

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 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."

7.1 Similar principle has been laid down by the Apex Court in the case of Shivasharanappa and others v. State of Karnataka, , JT 2013 (7) SC 66. 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.

8. We have heard learned counsel for both the sides and perused the documents on record. On perusal of the judgment of the trial Court, it appears that in its impugned judgment, the trial Court has observed that the names of the accused were framed for the alleged offence in view of the previous enmity between the accused and the victim. The trial Court further observed that no independent witnesses were examined, though there were large number of people present surrounding the place of incident. The prosecution had miserably failed to prove the case against the accused, and therefore, the trial Court has rightly granted benefit of doubt to the accused. Hence, the Court below was justified in acquitting the respondents of all the charges framed against them.

9. Learned APP is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude 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 material evidence while acquitting the accused persons. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondents-accused persons of the charge levelled against them. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the impugned judgment and therefore, find no reasons to entertain this appeal.

10. For the foregoing reasons, the appeal is dismissed and the impugned judgment and order dated 27.12.1993, passed by the learned Additional Sessions Judge, Banaskantha at Palanpur is confirmed.

Bail bonds, if any, stand cancelled. Record and proceedings, if lying here, be sent to the Court below forthwith.