

(2016) 03 GUJ CK 0014
In the Gujarat High Court
Case No : Criminal Appeal No. 624 of 1997

State of Gujarat

APPELLANT

Vs

Harijan Nemabhai Shivabhai and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 113-A

Penal Code, 1860 (IPC) — Section 201, Section 302, Section 34, Section 498-A

Citation : (2016) 03 GUJ CK 0014

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

Bench : Division Bench

Advocate : Hardik Soni, APP, for the Appellant; M.C. Barot, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. This appeal is directed against the judgment and order of acquittal dated 11.04.1997 passed by learned Sessions Judge, Banaskantha, Palanpur, in Sessions Case No. 174 of 1996. By the impugned judgment, the accused were acquitted of the charge of offences punishable under Sections 201, 498-A and 302 read with Section 34 of the Indian Penal Code (for short, IPC").

2. The facts in brief giving rise to the filing of present appeal as well as revision application are as under:--

"2.1 In 1993, Premilaben got married with accused No. 1. Accused No. 3 is the mother-in-law of the victim, while accused No. 4 is her sister-in-law. Accused No. 2, father-in-law of the victim, has expired during the course of trial. It is alleged that the accused were torturing the victim physically and mentally. It is alleged that on 24.10.1995, at about 6 a.m., all the accused had a common intention to kill the victim, therefore, accused No. 1 poured kerosene on her and set her on fire. Other accused told that kill her by setting her on fire. Upon hearing the shouts of the victim, neighbours gathered there and took her to hospital, where

she expired after ten days of the incident. It is alleged that accused Nos. 2 to 4 abetted the offence and gave wrong information that the deceased got burn injuries due to an accident while preparing tea. It is also alleged that the accused tried to destroy the evidence. With these allegations, complaint was filed against the accused persons by the father of the deceased.

2.2 Thereafter, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused persons before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, 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 In order to bring home the charges against the accused persons, prosecution has examined following witnesses.

2.4 The prosecution has also produced following documents in support of its case:--

2.5 Thereafter, after filing of closing purshis by the prosecution, further statements of the accused persons under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused denied the case of the prosecution and submitted that a false case is filed against them."

3. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge passed the impugned Judgment. Being aggrieved by and dissatisfied with the said judgment and order dated 11.04.1997 passed by learned Sessions Judge, Banaskantha, Palanpur, in Sessions Case No. 174 of 1996 acquitting the respondents, the appellant-State has preferred present appeal before this Court.

4. Mr. Hardik Soni, learned APP has taken us through the evidence and contended that the trial Court has committed an error in acquitting the accused inspite of voluminous evidence against them and contended that the trial Court ought not to have acquitted the accused. He submitted that though the prosecution has examined 7 witnesses and produced 18 documents in support of its case, the learned trial Judge has not properly appreciated them and acquitted the accused of the charges levelled against them. He submitted that the prosecution has successfully proved its case against the accused. He submitted that even the medical evidence supports the case of the prosecution. He submitted that marriage span of the deceased with the accused is about two years, therefore, adverse inference should have been drawn against the accused as per Section 113-A of the Evidence Act. He has also taken us through the complaint and the dying declaration of the deceased, wherein she has stated about the ill-treatment given to her by the accused and the manner in which she was set ablaze by accused No. 1. In her dying declaration, the deceased has also narrated the role of other accused persons. Therefore, he submitted that the trial Court has committed an error in acquitting the respondents-accused. He further

submitted that since the deceased was not having any children, the accused used to taunt her and give physical and mental torture to her. He also submitted that this fact regarding the torture given to the deceased was narrated by her to her relatives. In view of this, he submitted that the case against the accused persons is proved beyond reasonable doubt and the learned trial Judge has failed to appreciate the evidence on record in its proper perspective. In view of all these, he prays that this appeal may be allowed by setting aside the impugned judgment.

5. Mr. M.C. Barot, learned advocate appearing for the respondents-accused submitted that there is no infirmity in the impugned order. He submitted that the lower court has rightly appreciated the evidence on record and acquitted the respondents of the charges levelled against them. He submitted that most of the prosecution witnesses have turned hostile and they have not supported the case of the prosecution. He further submitted that as per the evidence of Dr. Natubhai Thakkar, PW-1, Exh. 12, in the history narrated before him the deceased had stated that since the cooking stove burst she received burn injuries, therefore, this is an accident and it cannot be said that the accused have committed the offence. He submitted that the prosecution could not prove its case beyond reasonable doubt. He further contended that so far as acquittal appeals are concerned, the law is well settled and by taking us through the impugned judgment, he submitted that this Court may not interfere with the impugned judgment and the appeal may be dismissed.

6. We have heard Mr. Hardik Soni, learned APP for the appellant-State and Mr. M.C. Barot, learned advocate for the respondents-accused. We have gone through the evidence on record. Looking to the fact that the charge against the respondent-accused is for the offence under Sections 302 of IPC, the prosecution has to prove its case beyond reasonable doubt. In the dying declaration, the deceased alleged that her husband had poured kerosene on her and set her on fire, however, in the history narrated before the doctor, she had stated that she received burn injuries as the stove got burst while she was preparing tea. Not only that most of the prosecution witnesses have turned hostile and they have not supported the case of the prosecution. Even the mother of the victim, Surajben Raghobhai, PW-4, Exh. 16 has stated in her cross-examination that relations between accused No. 1 and the deceased were cordial. Therefore, it is clear that the prosecution has miserably failed in proving the case against the accused. In our view, the learned Judge has not committed any error while acquitting the accused of the charges levelled against them. It cannot be said that the learned Judge has committed any error while acquitting the accused as the prosecution could not prove its case beyond reasonable doubt.

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

7.1 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 emphasise 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."

7.2 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.

7.3 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."

7.4 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.

7.5 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."

7.6 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]"

7.7 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."

7.8 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 gone through the oral as well as documentary evidence on record and we are in agreement with the view taken by the lower Court. Moreover, 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. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondents-accused 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.

9. For the foregoing reasons, this Criminal Appeal is dismissed. The impugned judgment and order dated 11.04.1997 passed by learned Sessions Judge, Banaskantha at Palanpur, in Sessions Case No. 174 of 1996 is hereby confirmed.

Bail bond, if any, stands cancelled. Registry to return the R&P to the concerned trial Court forthwith.