
(2010) 02 GUJ CK 0104
In the Gujarat High Court
Case No : Criminal Appeal No. 1108 of 1995

State of Gujarat

APPELLANT

Vs

Hirabhai Manjibhai and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 114, 323, 324, 504

Citation : (2010) 02 GUJ CK 0104

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : D.C. Sejpal, app, for the Appellant; Mahendra K. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 11.08.1995 passed by the learned Judicial Magistrate, First Class, Viramgam, in Criminal Case No. 1074 of 1989, whereby the respondents - accused have been acquitted of the charges leveled against them.

2. The brief facts of the prosecution case are that on 4.6.1989 at 20.15 hours the accused - respondents attacked on the complainant. It is alleged that accused No. 2 gave stick blow to the complainant and caused injury on the right side eye and other accused have also caused injury to the complainant and also gave abuses to the complainant. Thereby, all the accused with the help of each others attacked on the complainant and caused injuries and abuse him. Therefore, the complainant has filed complaint against the accused for the offences punishable under Sections 324, 323, 504, 114 of I.P. Code.

3. Thereafter, necessary investigation was carried out and statements of witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, charge-sheet was filed against him before the court and

thereafter the trial was initiated against the respondent.

4. To prove the case against the present accused, the prosecution has examined the witnesses and also produced documentary evidence.

5. At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Magistrate acquitted the respondents - accused of all the charges leveled against them by judgment and order dated 11.08.1995.

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

7. Heard learned A.P.P., appearing on behalf of the appellant - State. It has been contended by learned PP 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 the whole ingredients of the offence against the present respondents. Learned APP has also taken this Court through the oral as well as the entire documentary evidence. Learned APP has also taken this Court through the entire oral as well as documentary evidence.

8. 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 about 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 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 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 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.

11. Even in a recent decision of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. Reported in (2007)3 SCC 75, the Court has reiterated the powers of the High Court in such cases, more particularly in para 16 of the said decision.

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

13. 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 Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another,

14. 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.

15. 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 PP for the appellant-State. Looking to the evidence of witnesses as also the documentary evidence produced

on the record it is clearly established that the medical evidence is totally contradictory.

16. The trial Court, after appreciating the oral as well as documentary evidence has found that there are contradictions in the evidence of the doctor and the eye witnesses. The trial Court has also found that from the deposition of the witnesses it is not clear that which accused was having which weapons. The trial Court has also found that as per the deposition of Medical Officer and also the Certificate the injury was caused by another weapons. The trial Court has also observed that Panchas have not supported the case of prosecution and they have turned hostile. The trial Court has also found that there are serious lacunae in the evidence of witnesses. Nothing is produced on record to rebut the concret e findings of the trial Court.

17. Learned APP is not in a position to show any evidence to take a contrary view of 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.

18. 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.

19. 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.

20. 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. Hence the appeal is hereby dismissed. The Judgment and order dated 11.08.1995 passed by the learned Magistrate, in Criminal Case No. 1074 of 1989 is hereby conformed. Bail bonds, if any, shall stand cancelled.