
(2009) 02 GUJ CK 0045
In the Gujarat High Court
Case No : Criminal Appeal No. 2061 of 2008

State of Gujarat

APPELLANT

Vs

Jagdishbhai Hirabhai Dalit

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 302, 313, 378(1)(3)

Citation : (2009) 02 GUJ CK 0045

Hon'ble Judges : Z.K. Saiyed, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 The present appeal, u/s 378(1)(3) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 23.05.2008 passed by the learned Presiding Officer, Fast Track Court No. 5, Morbi in Sessions Case No. 44 of 2007, whereby the respondent - accused has been acquitted from the charges leveled against him.

2.0 The brief facts of the prosecution case are as under:

2.1 It is the case of the prosecution that the complainant filed complaint with Morbi Taluka Police Station, inter-alia alleging that on 21.5.2007 at about 8.30 p.m. an altercation took place between the brother of the complainant viz. Chandubhai Bhanjibhai Koli (the deceased) and the accused in connection with distribution of country made liquor. The respondent - accused got enraged and killed the deceased. Thereafter, an offence u/s 302 was registered and the complaint was filed against the accused with Morbi Taluka Police station vide CR No. I-77 of 2007. On the basis of complaint, investigation was carried out, statements of witnesses were record, necessary panchnama was drawn and thereafter, after completing the formalities, since the investigating Officer found

prima facie case against the respondent - accused, charge-sheet came to be filed against the accused before the learned J.M.F.C., Morbi. Since the offence alleged against the accused was exclusively triable by the Court of Sessions, the learned JMFC, Morbi, committed the case to the Court of Sessions, which came to be registered as Sessions Case No. 44 of 2007.

2.2 Thereafter the charge was framed against the accused - respondent. The accused pleaded not guilty to the charge and claimed to be tried. Thereafter, the trial was conducted against the respondent. The prosecution has examined in all 15 witnesses and relied upon in all 25 documents to prove the case against the respondent - accused. Statement of the accused u/s 313 Cr.P.C. was also recorded in which also the accused denied the charges leveled against him. After considering the oral as well as documentary evidence and after hearing arguments on behalf of prosecution and the defence, the learned Presiding Officer, Fast Track Court No. 5, Morbi has acquitted the accused from the offences alleged against him.

2.3 Being aggrieved by and dissatisfied with the Judgment and Order dated 23.05.2007 passed by the learned Presiding Officer, Fast Track Court No. 5, Morbi, in Sessions Case No. 44 of 2007, the appellant - State has filed this Appeal.

3.0 Heard learned APP Mr. Kodekar on behalf of appellant - State He has also taken us through the papers of R & P. It was contended by learned APP that the judgment and order of the learned trial Judge is against the provisions of law; the learned Judge 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 ingredients of the commission of offence by leading evidence against the present respondent - accused. Learned APP has also taken this Court through the oral as well as the entire documentary evidence. Learned APP has contended that witness Narsihibhai Bhanjibhai, P.W.8 Ex.20 has deposed that he saw the deceased and the respondent - accused at Morbi Road at about 6.00 O'clock when he was returning back to his home. He has also contended that the respondent - accused has made extra judicial confession before the witnesses, viz. Kantilal Muljibhai, Balvantbhai Gandubhai and Kishorbhai Muljibhai, but the learned Judge has erroneously discarded their evidence. He, therefore, contended that the Judgment of learned Judge is erroneous and bad in eye of law.

4.0 In this case, Records & Proceedings from the trial Court is received. We have gone through the Judgment of the trial Court. We have also perused the reasons assigned by the learned Addl. Sessions Judge. We have also gone through the papers from Records & Proceeding. After perusing the Records & Proceeding we found that the learned Judge has not committed any error in the Judgment. In the Judgment the learned Judge has clearly observed that though the deceased was missing from 18.5.2007 to 21.5.2007, the complainant has not filed any complaint of missing of deceased and thereby there is delay of three days in

filing the complaint. The medical evidence has not supported the case of prosecution. Even the report of the Forensic Science Laboratory is also not supporting the case of prosecution. The clothes of the accused were also not identified by any of the witness. The panch witness also did not support the case of the prosecution and the confessional statement was not supported in view of witnesses being turned hostile. Apart from that the case was completely based on circumstantial evidence, but, the prosecution has failed to establish the complete chain of circumstances. Even the respondent - accused in his statement, recorded u/s 313 Cr.P.C. has stated before the trial Court that he has been falsely implicated in the commission of offence. Therefore, in our view, the learned trial Judge has not committed any error in passing impugned Judgment.

5.0 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.

5.1 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.

5.2 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.

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

5.5 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement or to give fresh reasoning, 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*, wherein it is held as under:

This court has observed in *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, 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.

5.6 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.

6.0 We have gone through the judgment and order passed by the trial court. We have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned A.P.P. for the appellant. The trial court has clearly recorded a finding that mandatory provision of law was not followed by the investigating agency. Apart from that the prosecution has not proved its case beyond reasonable doubt. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Mr. Kodekar 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.

7.0 In above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him. We 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. We are, 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.

9.0 In view of above the Appeal is dismissed. The judgment and order dated 23.05.2008 passed by the learned Presiding Officer, Fast Track Court No. 5, Morbi, in Sessions Case No. 44 of 2007 acquitting the respondent-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled.