

(2009) 05 GUJ CK 0053
In the Gujarat High Court
Case No : Criminal Appeal No. 48 of 2009

State of Gujarat

APPELLANT

Vs

Janaksinh @ Kalusinh Dilipsinhparmar

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Atrocities Act — Section 3(1)(10)
Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 209, 378
Penal Code, 1860 (IPC) — Section 325, 506(2)

Citation : (2009) 05 GUJ CK 0053

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

Bench : Division Bench

Advocate : H.L. Jani, APP 1, for the Appellant; None for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 10/10/2008 passed by the learned Additional Sessions Judge, Himmatnagar, Sabarkantha in Atrocity Case No. 39 of 2007 whereby the accused was acquitted of the charges leveled against him.

2. The brief facts of the prosecution case are as under:

2.1. On 9/8/2006 at about 17:30 hours, at village Morvad when witness Manojkumar Shamalbhai Solanki riding his cycle the present accused abused him by saying "Sala Dheda Cycle Par Besi Ne Kem Jay Che, Niche Utri Ja, Tane Janthi Patavi Daish". After saying so, he inflicted stick blows on the head of Manojkumar and caused grievous hurt to him. Therefore, complainant Shamalbhai @ Bhikhabhai Manbhai Solanki (Chamar) residing at Morvad, Taluka-Prantij, District-Sabarkantha, lodged complaint before Prantij Police Station being CR No. I-89 of 2006 against the present accused for the offences punishable

under Sections 325, 506(2) of the Indian Penal Code and Section 3(1)(10) of the Atrocities Act and Section 135 of the Bombay Police Act.

2.2. Necessary investigation was carried out and statements of witnesses were recorded. Ultimately, chargesheet was filed against the respondent before the court of learned JMFC, Prantij.

2.3. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Court of learned Additional Sessions Judge, Himmatnagar, Sabarkantha u/s 209 of Criminal Procedure Code. There the case was numbered as Atrocity Case No. 39 of 2007. The trial was initiated against the respondent-accused.

2.4. To prove the guilt against the accused the prosecution has examined the following witnesses:

- [1] Mukeshbhai Somabhai - Exh.-11
- [2] Dineshchandra Dhanjibhai - Exh.-14
- [3] Bhupatsinh Pratapsinh - Exh.-15
- [4] Kanusinh Kalusinh - Exh.-17
- [5] Shamalbhai Manabhai - Exh.-18
- [6] Dr. Hardik Vasantbhai, Medical Officer, Prantij - Exh.-23
- [7] Dr. Bipinbhai Motilal, Medical Officer, Himmatnagar - Exh.-27
- [8] Sanjaykumar Shamalbhai - Exh.-30
- [9] Nandaben Shamalbhai - Exh.-31
- [10] Ranchodbhai Mulabhai - Exh.-32
- [11] Yogeshkumar Karsanbhai - Exh.-33
- [12] Manojkumar Shamalbhai - Exh.-34
- [13] Gajanand Sampatram (PSO- Prantij Police Station) - Exh.-35
- [14] Manoharsinh Gulabsinh Vaghela (Dy. S. P.) - Exh.-36

2.5. In order to support the case, the prosecution has produced the following documents:

- [1] Panchnama of place of offence - Exh.-12
- [2] Panchnama of seizer of stick - Exh.-16
- [3] Original complaint - Exh.-19
- [4] Caste certificate - Exh.-20
- [5] Medical Yadi - Exh.-24

[6] Medical Certificate, Prantij - Exh.-25

[7] Case papers of dispensary of Manojbhai Shamalbhai - Exh.-26

[8] Original certificate of Medical Officer, Himmatnagar - Exh.-28

[9] Original medical case record, Himmatnagar - Exh.-29

[10] Notification of Addl. District Magistrate, Himmatnagar, Sabarkantha - Exh.37

2.6. 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 Additional Sessions Judge acquitted the respondent of all the charges leveled against him by judgement and order dated 10/10/2008.

2.7. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Additional Sessions Court, Himmatnagar, Sabarkantha, the appellant-State has preferred the present appeal.

3. Though served, the respondent-accused has not remained present.

4. Mr. H.L. Jani, learned APP contended that the judgement and order of the Additional Sessions Court is against the provisions of law; the Sessions 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 evidence against the present respondent. Learned APP has also taken this Court through the oral as well as the entire documentary evidence. He submitted that the prosecution witness had clearly deposed in his deposition that the respondent-accused was found committing offence u/s 325 and 506(2) of the Indian Penal Code and Section 3(1)(10) of the Atrocities Act and Section 135 of the Bombay Police Act. He further submitted that there was no reason for the Sessions Judge to disbelieve the prosecution case and to acquit the respondent-accused.

5. 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 judgement 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 emphasize 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 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, 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. We have gone through the judgement 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 Advocate for the appellant.

6.1. While appreciating the oral as well as documentary evidence, it is found that no independent witnesses were examined and only interested witnesses were examined. The medical evidence has not supported the case of the prosecution. No recovery of alleged weapon was made. It has come an evidence that while reporting before the medical officer, no such history was given. Further all the panchas have turned hostile. All these have become fatal to the prosecution case. The prosecution has failed to establish the case against the respondent-accused. Therefore the trial court has given the benefit of doubt to the accused and we do not find any reason to interfere with the said finding.

6.2. From the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Mr. Jani, 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. In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent-accused 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. Record and Proceedings to be sent back forthwith.