

(2022) 01 GUJ CK 0044

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 984 Of 2021 In R/Criminal Appeal No. 82 Of 2021

State Of Gujarat

APPELLANT

Vs

Jayantibhai Naranbhai Rakholiya

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 307, 323

Gujarat Police Act, 1951 — Section 135

Code Of Criminal Procedure, 1973 — Section 313, 378, 378(1)(3), 379

Citation : (2022) 01 GUJ CK 0044

Hon'ble Judges : S.H.Vora, J;Sandeep N. Bhatt, J

Bench : Division Bench

Advocate : CM Shah, Hardik D Muchhala

Final Decision : ?Dismissed

Judgement

S.H.Vora, J

1. Feeling aggrieved and dissatisfied with the judgment and order dated 17.2.2020 passed by the learned 2nd Addl. Sessions Judge, Dhari in Sessions

Case No.21 of 2019 for the offences under sections 307 and 323 of IPC and also u/s 135 of the G.P. Act, the applicant " State of Gujarat has

preferred this application to grant leave to appeal as provided under section 378(1)(3) of the Code of Criminal Procedure, 1973 (the Code for

short).

2. Briefly stated, it is the case of the prosecution respondent that complainant Rajubhai Makwana hired land of the accused for cultivation in partnership

since last two months of the incident dated 12.1.2019. It is the case of the complainant that on 12.1.2019 at about 11:00 hrs. in the morning, the

complainantrespondenthadgo to the field of the respondent accused and as the accused refused to give share of the crop despite demand by the

complainant and as the complainant insisted for the share, the respondent accused got enraged and brought shovel (Pavdo) and inflicted blow above

right ear and as the complainant fell down on the land, the respondent accused inflicted shovel blow on the right hand of the complainant and further

two blows on right leg below the knee were also inflicted.

After the incident, the complainant shouted for help and therefore, the respondent accused ran away from the place of incident. It is further the case

of the complainant that on hearing the shouts, one unknown person, who was at Pir Baba's Dargah came there and called 108. But the

complainant was taken in one diesel rickshaw of said unknown person to Government Hospital, Dhari. Thereafter, the complainant lodged the

complaint with regard to the incident before Dhari Police Station, which was registered as I â" C.R. No.05 of 2019 for the offences under sections

307 and 323 of IPC and also u/s 135 of the G.P. Act.

3. In pursuance of the complaint lodged by the complainant, investigating agency recorded statements of the witnesses, collected relevant evidence in

form of medical evidence and drawn various Panchnamas and other relevant evidence for the purpose of proving the offence. After having found

material against the respondent accused, charge-sheet came to be filed in the Court of learned JMFC, Dhari. As said Court lacks jurisdiction to try the

offence, it committed the case to the Sessions Court, Dhari as provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, Dhari, learned Sessions Judge framed charge at Exh.3 against the respondent accused for the

aforesaid offence. The respondent accused pleaded not guilty and claimed to be tried

5. In order to bring home charge, the prosecution has examined 18 witnesses and also produced various documentary evidence before the learned trial

Court, more particularly described in para 5 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the

respondent accused so as to obtain his explanation/answer as provided u/s 313 of the Code. In the further statement, the respondent accused denied

all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him to extort

money from him. After hearing both the sides and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the

respondent accused of the offences, for which he was tried, as the prosecution failed to prove the case beyond reasonable doubt.

7. We have heard learned APP Ms. Shah appearing for the applicant State and have minutely examined the documentary evidence provided to us by

learned APP during the course of hearing.

8. It appears that the dispute between complainant Mr. Rajubhai Makwana and the respondent accused occurred with respect to the share to be given

to the complainant for the cultivation of the respondent's field. The complainant is examined at Exh.20. The offence alleged against the

respondent accused is u/s 307 of the IPC. For such offence, the injured is star witness as he is the person, who received blows at the time of

occurrence of the offence. According to the complainant's own version put in the FIR, he sustained injury with shovel on head above right ear, on

right hand and two blows on right leg below the knee. In order to prove the injuries, the deposition of the complainant is required to be looked into at

this stage. In the deposition, the complainant only deposed that the respondent accused inflicted shovel blow. Except this one line statement in the

deposition, the complainant did not specify anything as to on which part of his body, the respondent accused inflicted blow. Now, if we examined the

deposition of two doctors i.e. Dr. Dharmesh Gandhi and Dr. Abhay Chandel, who treated the injured; one at Dhari and another at Amreli Civil

Hospital, whose depositions were recorded below Exh.13 and 18 respectively, there are serious contradictions and inconsistency in their version viz-a-

viz complainant's case. According to Dr. Chandel, the complainant did not provide any history, but on his examination, he found that there were

two injuries on the head and abrasion on right leg. So, meaning thereby, the respondent accused suffered three injuries. It is not the case of the

complainant in the FIR or in his oral deposition that he suffered two injuries on his head. No any injury on the hand of the complainant is noticed by

any of the doctors though it is alleged by the complainant in the FIR. It is also deposed by Dr. Chandel that injury suffered by the complainant is

possible with sharp cutting weapon. Neither the doctors nor the complainant is shown the muddamal shovel or any opinion is expressed by any of the

doctors that the injury on the body of the complainant is possible because of the muddamal article. In view of aforesaid evidence both oral and

documentary, one fact is noticed and found by the Court that the complaint is silent as to how many blows received by the complainant on any specific

part of the body. The evidence of the doctors does not tally with the injuries disclosed by the complainant in his complaint. Similarly, the injury

certificate of the complainant at Exh.15 does not disclose about the age of the injury/time of the injury.

In absence of specific evidence on the part of the complainant himself in his examination-in-chief, the learned trial judge has rightly disbelieved the

case of the prosecution. When the complainant injured is a star witness of the prosecution case, he Court did not disclose before respondent the as to

which part of his body received blow by the accused. When the case of the complainant is not believable or acceptable, no any case is made out by

the prosecution before this Court on the basis of evidence of both the doctors; namely Dr. Dharmesh Gandhi and Dr. Abhay Chandel, whose

depositions were recorded below Exh.13 and 18 respectively. Under the circumstances, the learned trial Judge has rightly acquitted the respondent

accused for the elaborate reasons stated in the impugned judgment and we also endorse the view/finding of the learned trial Judge leading to the

acquittal.

9. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute

its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably

wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the

learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on

record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

10. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:

“The powers of the High Court in an appeal from order of acquittal to reassess

the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.

11. As observed by the Hon'ble Supreme Court in the case of *Rajesh Singh & Others vs. State of Uttar Pradesh* reported in (2011) 11 SCC 444 and in the case of *Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh* reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

12. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

13. In view of the above and for the reasons stated above, present application for leave to appeal fails and same deserves to be dismissed and is accordingly dismissed. In view of dismissal of the application for leave to appeal, captioned Criminal Appeal also deserves to be dismissed and is accordingly dismissed.