
(2016) 03 GUJ CK 0017
In the Gujarat High Court
Case No : Criminal Appeal No. 717 of 1991

State of Gujarat

APPELLANT

Vs

Kaniyalal P. Dhobi and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, Section 302, Section 34

Citation : (2016) 03 GUJ CK 0017

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

Bench : Division Bench

Advocate : Hardik Soni, Additional Public Prosecutor, for the Appellant; P.H. Buch, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. Heard learned Advocates appearing for the respective parties.

2. By way of this Appeal, the Appellant - State has felt aggrieved by the judgment and order of acquittal dated 21.06.1991 passed by the learned Additional Sessions Judge, Vadodara in Sessions Case No. 43/1988 whereby the respondents were acquitted for the offences punishable under Sections 302 read with Sections 34 and 201 of the Indian Penal Code.

3. The case in brief is as under:--

"3.1. The respondent - accused No. 1 is the husband of the deceased, the accused No. 2 is the father-in-law of the deceased, the accused No. 3 is the mother-in-law of the deceased whereas the accused No. 4 is the Doctor. It is the case of the prosecution that the original accused No. 1 - Kanhaiyalal got married 12 years prior to the date of incident to the daughter of Bastiram - Kallu. From the past 3-4 years prior to the date of incident, Kallu used to come and go to the house of accused No. 1. It is alleged that the accused No. 1 did not like Kallu and did not desire to keep any matrimonial relations with her. It is the case of the

complainant that the original accused No. 1-3 all used to live in Room No. 3 at Rakrishnan Building alongwith the sister of accused No. 1. The sister of accused No. 1 was married to one - Rajeshbhai Dhobi who lived at Shahibaug, Ahmedabad. In the middle room of the above said residence, the original accused No. 2 and 3 used to sleep in the room and in the gallery, Kallu used to sleep all alone. The original accused No. 1 used to sleep on the terrace and in the monsoon season, he used to sleep outside the room.

3.2. It is the case of the prosecution that on 05.11.1987, the original accused No. 1 got up early in the morning and came down to the room. It came to the knowledge of all from the past week that the wife of the accused No. 1 was pregnant by about three months. Hence, the accused No. 1 is alleged to have asked Kallu that "when I did not have any sexual relations with you, then whose child are you carrying?". To the above query, Kallu did not give any answer and there was a fight between the two of them for the past one week. On the said day, the accused No. 1 in the night, went to sleep on the terrace and the accused No. 2 and 3 slept in the middle room and Kallu went to sleep in the gallery. On the said day, the accused No. 1 got up early, came down and saw that the room was locked. The accused No. 3 had locked the room and went to buy milk. The accused No. 3 came, opened the room and went to pull the handpump for getting water in the kitchen. The accused No. 2 was still sleeping. The accused No. 1 then went straight to the gallery and at that juncture, Kallu was standing. All this occurred at about 5.00 in the morning. The tea stall on the road had not yet opened but a little traffic had commenced on the road. The accused No. 1 is alleged to have made Kallu sit near the rack and then asked her as to whose child was she carrying?, to which Kallu did not reply. This infuriated the accused No. 1 to such an extent that he tied a rope to the upper portion of the rack, made a curtain out of old sarees and put the curtain around the neck of Kallu, pulled the curtain hard with his two hands and tried to kill Kallu. Kallu shouted for help and was wildly gasping for breath and made frantic attempts to free herself from the violent grasp. The accused No. 1 with the force of his hands pushed down the face and nose of Kallu because of which the jaws of Kallu broke. Thereafter, it is alleged that the accused No. 1 without telling anybody about the incident left the place for "dhobighaat". The accused No. 2 and 3 with a common intention are alleged to have helped the accused No. 1 in the commission of the crime. The aunt of Kallu - Radhaben was called and the accused No. 1 had stated to her that Kallu had expired. All the family members had gathered and the accused No. 4 was called, who gave a Certificate stating the cause of death to be heart attack. The complainant herein who happens to be a relative of Kallu also went and looking at the scene of incident, it surfaced that the deceased was killed.

3.3. On the basis of the above, a complaint was filed on 05.11.1987 at about 10 am. The inquest panchnama was carried out and the body of the deceased was sent for post mortem. The Medical Officer opined that the cause of death was because of strangulation of neck and that the deceased was pregnant at the time

of death. The investigation commenced. Charges were led against all the original accused under Sections 302 read with Sections 34 and 201 of the Indian Penal Code in the Court of the learned Judicial Magistrate First Class. Since it was a Sessions triable case, the learned Judicial Magistrate First Class committed the case to the Court of Sessions.

3.4. At the time of the trial, the prosecution examined about five witness and various documents.

3.5. At the end of the trial, further statement of the accused under Section 313 of the Code of Criminal Procedure was recorded in which the respondents pleaded not guilty and stated that they have been falsely implicated in the offence. Thus, after recording the further statement of the accused and hearing the arguments of both the sides, the learned Sessions Judge passed the above judgment and order. Being aggrieved by the same, the present Appeal has been filed by the State, as aforesaid."

4. Learned Additional Public Prosecutor Mr. Hardik Soni for the appellant - State has taken this Court to the medical evidence and has submitted that the presence of the accused No. 1 is proved in the commission of the crime. It is further submitted that learned Judge has erred in holding that the prosecution has failed to prove that the accused No. 1 had committed murder of his wife by throttling. It is further submitted that the circumstantial evidence also lends corroboration to the evidence of the version of the prosecution. It is further submitted that the accused No. 2 and 3 were also instrumental in helping the accused No. 1 in the commission of the crime. Considering the above, it is submitted that this is a fit case which requires interference of this Court and the judgment and order of the learned Judge qua the acquittal of the respondents should be upturned by this Court.

5. On the other hand, learned Advocate appearing for the respondents accused Mr. P.H. Buch has stated that there are several discrepancies in the evidence led by the complainant. It is further submitted that the medical evidence adduced also does not support the case of the prosecution. It is also submitted that the entire case rests on circumstantial evidence and this evidence cannot be said to be a corroborative piece of evidence and therefore, this Court should not interfere in the well reasoned judgment and order of the learned Additional Sessions Judge.

6. In the case of M.S. Narayana Menon @ Mani v. State of Kerala & Anr, reported in , (2006) 6 S.C.C. 39, 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."

Further, in the case of Chandrappa v. State of Karnataka reported in , (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 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."

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.

Even in the case of State of Goa V. Sanjay Thakran & Anr. reported in , (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."

Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh & Ors reported in , 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.

In the case of Luna Ram v. Bhupat Singh and Ors, reported in , (2009) SCC 749, the Apex Court in para 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 strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post-mortem 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.

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."

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, reported in , AIR 2013 SCC 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 appellant 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]."

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 v. Hemareddy, reported in , 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."

Similar principle has been laid down by the Apex Court in the case of Shivasharanappa and Ors v. State of Karnataka, reported in , JT 2013(7) SC 66.

7. We have heard learned Advocates for the parties and perused the records of the case. While going through the well reasoned judgment and order of the learned Sessions Judge, it surfaces on record that the complainant himself turned hostile. No independent witnesses were also examined. It also appears from the records of the case that the prosecution has miserably failed to prove its case against the respondents qua the complete chain of events leading to the commission of the crime. Apart from that, the learned Additional Public Prosecutor Mr. Hardik Soni for the appellant - State is not in a position to show any evidence to take a contrary view in 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. In that view of the matter, we are in complete agreement with the reasons recorded by the learned trial court and in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court.

8. The Appeal is devoid of merits and stands dismissed. The judgment and order of acquittal dated 21.06.1991 passed by the learned Additional Sessions Judge, Vadodara in Sessions Case No. 43/1988 stands confirmed. Bail and bail bond, stands cancelled. Record and proceedings be sent to the concerned Trial court forthwith.