

(2015) 10 GUJ CK 0113
In the Gujarat High Court

Case No : Criminal Appeal (Against Acquittal) No. 1331 of 1993

State of Gujarat

APPELLANT

Vs

Kanubhai Pashabhai Patel

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34, 498(A)

Citation : (2015) 10 GUJ CK 0113

Hon'ble Judges : M.R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Himanshu Patel, A.P.P., for the Appellant; Jigar G. Gadhavi,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J—By way of this appeal, the appellant- State has challenged the judgment and order passed by the Additional Sessions Judge, Sabarkantha at Himmatnagar (for short, "the trial Court"), Dated: 07.07.1993, rendered in Special Case No. 49 of 1992, whereby, the learned trial Court acquitted the original accused-the opponent, herein, of the charge for the offence punishable under Sections 307 and 498(A) of the Indian Penal Code.

2. The brief facts of the case of the prosecution, as set out before the trial Court, are that on 28.02.1992, a complaint came to be lodged by one Anjnaben Dhulabhai Maganbhai, wherein, she stated that she is married with one Kanubhai Patel, who is a resident of the village Hadiyol. Before about one week of the incident, she had come to her matrimonial home. The complainant, further, stated in her complaint that on 28.02.1992, her husband, took her to Himmatnagar for a visit. On reaching Himmatnagar, they went to taxi stand and from there they went to Sabar Dairy and from there, they went towards canal on foot. At that point of time, the complainant asked her husband, as to why do you keep relations with Jagruti. On her saying so, her husband, i.e. the accused, got enraged and took out a knife from his person and started inflicting blows on her

indiscriminately and despite the fact that the complainant tried to resist him, the accused caused injuries on her abdomen, thigh, both hands, back etc. When the complainant started shouting, the accused run away and several persons came from the direction of Sabar Dairy and out of them, somebody made a telephone call to her house. On receiving the telephone call, her cousins namely Dinesh and Jagdishbhai came there and took her to the hospital, where, the complainant gave the detailed complaint about the incident before the police.

3. On registration of the complaint, police carried out the investigation and on finding sufficient evidence, lodged charge-sheet against the accused-opponent, herein, before the Court of the learned Chief Judicial Magistrate, Himmatnagar. However, since, the case was sessions triable, it was committed before the Sessions Court, Himmatnagar, i.e. trial Court. The prosecution, in support of its case, examined following witnesses;

4. Apart from that the prosecution also produced the following documentary evidences in support of its case;

5. After recording the evidence of the witnesses and perusing the material on record, the trial Court passed the impugned order. Hence, the present appeal.

6. Mr. Patel, learned APP for the Appellant-State, vehemently submitted that the trial committed a grave error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective. He submitted that the trial Court ought to have relied on the evidence of the complainant-Anjanaben, which gets corroboration from the FIR, which was lodged immediately after the incident. He, further, submitted that as there are sufficient evidences, direct as well as circumstantial, the trial Court ought to have convicted the accused-opponent. He invited the attention of this Court to the fact that even the accused, himself, had also sustained injury during the alleged incident, and thus, his presence is proved beyond doubt at the place of offence, at the time of its commission. He submitted that the accused happened to be the husband of the original complainant-Anjanaben, and therefore, the question of mistaken identity does not arise. He submitted that the trial Court ought to have believed the evidence of PW-3, who is an independent witness. He, therefore, submitted that the present appeal be allowed.

7. On the other hand, Mr. Gadhvi, learned Advocate for the original accused-opponent, herein, opposed the appeal and submitted that the trial Court passed the impugned judgment and order after perusing the entire material on record, and hence, no interference is called for at the hands of this Court and the appeal be dismissed.

8. We have heard learned APP for the appellant-State and the learned Advocate for the opponent-accused and perused the material on record with their assistance.

9. At the outset, it is required to be noted that when this matter was taken-up

for final hearing, the accused-opponent was present before the Court in person and he orally submitted that the matter was settled between the parties at the trial Court level and according to the said settlement, the opponent-accused had paid certain amount to the original complainant, i.e. his erstwhile wife, and due to that the complainant did not support the case of the prosecution before the trial Court and she was declared hostile. It is also brought to the notice of this Court that after the alleged incident, the complainant and the accused got divorced and they again married to other persons and they have been leading a happy life and as such they are settled in their lives.

10. With the above background, now, if, we examine the case of the prosecution, then, in the case on hand, the original complainant, Anjanaben, who is also an injured eye-witness, did not support the case of the prosecution. The complainant, though, in her examination-in-chief stated that she had stated in her complaint that when she started shouting for help, her husband, i.e. the opponent-accused, fled from there with the knife. However, the complainant, in her cross-examination, stated that she does not remember to have stated so before the police. In other words, she backed off from the aforesaid statement made by her in her examination-in-chief. Instead, before the Court, she narrated a totally different story that her husband had taken her to the place of nursery for a leisure tour and while he went to take refreshments, some unknown person attacked her. Here, it may be noted that PW-3 in his evidence stated that when he reached to the place of offence, the complainant-victim had told him that her husband had inflicted injuries on her. However, this fact itself clearly goes to show that PW-3, himself, has not seen the incident with his own eyes, but, what he states was told to him by the complainant. However, when the complainant, herself, has not supported the case of the prosecution, the evidence of PW-3 cannot be relied on. Further, from a perusal of the order of the trial Court, it also appears that, though, D.D. of the complainant was recorded, neither the same was produced on the record of the Court nor the person, who recorded the same was examined by the trial Court. Under the circumstances, we have to look into the matter from the touchstone of the decisions of the Hon'ble Apex Court right from 1991 to 2014.

11. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of "M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6 CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp : (2006) AIRSCW 4652 : (2006) 5 Supreme 547 , the Apex Court has narrated 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 views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below.

"Further, in the case of " Chandrappa and Others Vs. State of Karnataka, (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630 , 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 emphasise 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."

12. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/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.

13. Even in the case of " State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , 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."

14. Similar principle has been laid down by the Apex Court in cases of " State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in " Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

15. In the case of " Lunaram Vs. Bhupat Singh and Others, (2009) CriLJ 1899 : (2009) 3 JT 155 : (2009) 3 SCALE 363 : (2009) 3 SCC 749 : (2009) 3 SCR 706 : (2010) AIRSCW 298 : (2009) 7 Supreme 103 , 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 postmortem 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.

11. 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."

16. Even in a recent decision of the Apex Court in the case of " Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1 Supreme 88 , 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 appellants 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 reappreciate 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 Vs. Sohan Lal and Others, (2004) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480 Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404]"

17. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite 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, AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981) 2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 , wherein it is held as under;

"...This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, AIR 1967 SC 1124 : (1967) 1 SCR 93 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."

18. In a recent decision, the Hon"ble Apex Court in " Shivasharanappa and Others Vs. State of Karnataka, AIR 2013 SC 2144 : (2014) 1 CCR 485 : (2013) CriLJ 2658 : (2013) 7 JT 66 : (2013) 3 RCR(Criminal) 86 : (2013) 6 SCALE 757 : (2013) 5 SCC 705 : (2013) AIRSCW 2719 : (2013) 4 Supreme 38 has held as under;

"That appellate Court is empowered to reappreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

19. Further, in the case of " State of Punjab Vs. Madan Mohan Lal Verma, AIR 2013 SC 3368 : (2013) CriLJ 4050 : (2013) 3 RCR(Criminal) 972 : (2013) 10 SCALE 211 : (2013) 14 SCC 153 : (2013) 217 TAXMAN 402 , the Apex Court held as under;

"The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convincing the accused person."

20. In view of the above discussion, we are of the opinion that the trial Court committed no error in passing the impugned judgment and order acquitting the original accused-opponent, herein, and hence, the present appeal deserves to be dismissed.

21. In the result, this appeal fails and is DISMISSED. The judgment and order of the trial Court, Dated: 29.04.2014, stands CONFIRMED. Bail bonds of the opponent-accused, if any on bail, stands discharged. R&P be sent back to the concerned trial Court, forthwith.