

(2009) 02 GUJ CK 0057
In the Gujarat High Court
Case No : Criminal Appeal No. 1897 of 2008

State of Gujarat

APPELLANT

Vs

Karsan Vihabhai Raval and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Atrocity Act — Section 3(1)(10)
Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1)(3)
Penal Code, 1860 (IPC) — Section 114, 323, 504, 506(2)

Citation : (2009) 02 GUJ CK 0057

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

Bench : Division Bench

Advocate : R.C. Kodekar, APP 1, for the Appellant; None for Opponents 1-4, 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 31.03.2008 passed by the learned Additional Sessions Judge, Fast Track Court, Deesa, in Special (Atrocity) Case No. 14 of 2008, whereby the accused have been acquitted from the charges leveled against them.

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

2.1 It is the case of the prosecution that the complainant Govabhai Khetabhai Harijan filed complaint against the respondents-accused alleging that when the complainant went towards the farm of Nagjibhai Mashrubhai Rabari at that time accused Nos. 1 to 3 met him and told the complainant that "Amare Ane Rabario Ne Jaminni Takarar Chale Che Ane Gaya Param Na Roj Court Mathi Manaso Panchnamu Karva Aavela Tyare Tara Bhaiye Kem Sahio Kari Aapel che".

Thereupon the complainant told them that he does not know about the same. Pursuant to that all these accused persons got provoked and gave filthy abuses against his mother and sister and also gave filthy abuses against the caste of the complainant by saying "Aa Salo Dhedo Kando Gamma Fati Gayo Che Ane Gamma Badha Ne Ladai Mare Chhe." Thereafter, accused No. 4 Babubhai Raval by holding spade in his hand came towards the complainant by saying : Sala Govla Ne Aaje jivto Chhodvo Nathi Tene Mari Nakho." Pursuant to that all the accused persons inflicted fist blows on the complainant and because of that, from the nearest farm, son of the complainant Shravan and his villager Rabari Revabhai Pirabhai came there and intervened in the incident and saved the complainant from further blows. Therefore, accused went away by threatening the complainant "Aaje To Tu Aa logo na aavi javathi Bachi Gayo Che, Parantu Lag Male To Tane Chhodvo Nathi, Janthi Mari Nakhvo Chhe Ane Tara Tukda Karva Che."

2.2 Therefore, complainant had lodged complaint before Bhildi Police Station, against the accused which was registered as C.R. No. II-3101 of 2007 for the offences punishable u/s 323, 504, 506(2) and 114 of I.P. Code and u/s 3(1)(10) of Atrocity Act and also u/s 135 of the Bombay Police Act. On the basis of said complaint necessary investigation was carried out and statements of witnesses were recorded. Thereafter, the charge-sheet was filed in the Court of learned J.M.F.C., Deesa. As the offences were exclusively triable by the Court of Sessions, the learned Magistrate committed the said case to the Court of Sessions. The said case was transferred and placed for trial before the learned Additional Sessions Judge, Fast Track Court, Deesa which was numbered as Special (Atro) Case No. 14 of 2008. Thereafter the charge was framed against the accused-respondents. The accused pleaded not guilty to the charge and claimed to be tried. Thereafter, the trial was initiated against the respondent. The prosecution has examined in all 10 witnesses. The prosecution has also produced and relied upon in all 8 documents. Thereafter, the statement of accused u/s 313 Cr.P.C. was recorded and after hearing arguments on behalf of prosecution and the defence, the learned Special Judge has acquitted the accused from the offences alleged against the accused. While appreciating the evidence on record and considering the documents the learned Judge has observed that the prosecution has failed to prove case against the accused beyond reasonable doubt. The learned Sessions Judge has also come to the conclusion that there is contradiction between the complainant, eye witnesses and the independent witness and one of the witness, who is brother of the complainant, has not supported the case of the prosecution and he has turned hostile. Even the medical evidence has not supported the case of the prosecution.

2.3 Being aggrieved by and dissatisfied with the Judgment and Order dated 31.03.2008 passed by the learned Additional Sessions Judge, Fast Track Court, Deesa, in Special (Atrocity) Case No. 14 of 2008, the appellant-State has filed this Appeal.

3.0 It was contended by learned APP that the judgment and order of the 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.

4.0 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 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.

4.1 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.

4.2 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.

4.3 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.

4.4 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.

4.3 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.

4.5 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.

5.0 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 Advocate for the appellant. The trial court has clearly recorded a finding that the prosecution has failed to prove the ownership of the premises and that there is delay in filing the complaint. Apart from that the Authority 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. 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.

6.0 In the 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.

7.0 In view of above the Appeal is dismissed. The judgment and order dated 31.03.2008 passed by the learned Additional Sessions Judge, Fast Track Court, Deesa, in Special (Atrocity) Case No. 14 of 2008 acquitting the respondents-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled.