

(2016) 04 GUJ CK 0020
In the Gujarat High Court
Case No : Criminal Appeal No. 625 of 1995

State of Gujarat

APPELLANT

Vs

Kathi Kathubhai Valsurbhai

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

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

Citation : (2016) 04 GUJ CK 0020

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

Bench : Division Bench

Advocate : C.M. Shah, APP, for the Appellant; Mrudul M. Barot and Navneet D. Devmurari, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. The present appeal is filed by the appellant-State being aggrieved and dissatisfied with the judgment and order dated 7-1-1995 passed by the learned Additional Sessions Judge, Amreli, in Sessions Case No. 29 of 1990 whereby the respondent-original accused was acquitted of the charges levelled against him.

2. Short facts leading to filing of the present appeal are on 8-12-1989 at about 9 a.m., in the field adjoining to the waste land field of Valerabhai Selarbhai in Village Vaghvadi, Taluka and District Amreli, the accused attacked on the father of the complainant and tried to commit his murder by inflicting axe blow on his head. A complaint was, therefore, filed by the complainant before the police. In pursuance of said complaint, investigation started and as there appeared prima facie case against the accused, a charge sheet was filed against him. Thereafter charge was framed against the accused which was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried.

2.1 To prove the guilt against the accused, prosecution examined following

witnesses:

2.2 The prosecution also relied on following documentary evidence:

2.3 After filing of closing pursis by the prosecution, further statement of accused under Sec.313 of Cr.P.C. was recorded. On conclusion of trial and upon hearing the learned advocates appearing for the respective parties, respondent-accused was acquitted of the charges levelled against him, giving rise to this appeal.

3. Heard learned Additional Public Prosecutor, Ms. C.M. Shah for the appellant-State of Gujarat and learned advocate, Mr. Mrudul Barot for respondent-accused.

4. Learned APP, Ms. Shah for the appellant, took us through the evidence of the complainant, medical evidence and other oral as well as documentary evidence and submitted that the learned trial Judge has not properly appreciated oral as well as documentary evidence produced on record and has seriously erred in not relying upon the evidence of P.W. No. 3-Jinabhai, who was an eye witness, and erred in holding that the prosecution has failed to prove the charge against the accused beyond reasonable doubt. She submitted that though the prosecution has examined several witnesses supporting the case of the prosecution, the learned trial Judge has not properly appreciated their evidence and therefore, the finding recorded by the learned trial Judge that the prosecution has failed to prove the charge against the accused by leading legal, reliable and impeachable evidence is contrary to the evidence available on record. She further submitted that though almost all the witnesses have supported the case of the prosecution, the learned trial Judge has committed a grave error in disbelieving their evidence and in acquitting the respondent-accused and therefore, it is requested that the appeal deserves to be allowed.

5. Learned advocate, Mr. Barot for the respondent-original accused, on the other hand, submitted that no witness has supported the case of the prosecution. He also submitted that the trial court has rightly appreciated the evidence appearing on record and the reasons assigned for recording a finding of acquittal are reasonable and justifiable. According to him, there are glaring and major contradictions and material improvements without any satisfactory explanation in the depositions of prosecution witnesses and therefore, the respondent accused was rightly acquitted by the trial court. He further submitted that this being an appeal against the order of acquittal, the judgment and order delivered by the trial Court deserves to be upheld as proper, as plausible reasons for acquittal have been recorded. He ultimately urged to dismiss this appeal.

6. It is required to be noted that the principles governing and regulating the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very clearly explained by the Hon''ble Apex Court in number of decisions.

6.1 In the case of Dilawar Singh and Others v. State of Haryana reported in , (2015)1 SCC 737, it has been held by the Hon''ble Supreme Court in Paragraph

36 and 37 as under:

"36. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.

37. In *Chandrappa and Ors. v. State of Karnataka*, (2007) 4 SCC 415, the scope of power of appellate court dealing with an appeal against acquittal has been considered and this Court held as under:

"42.... (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."

Unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal. It has been so stated in *State of Rajasthan v. Shera Ram*, (2012) 1 SCC 602."

6.2 In the case of *State of Goa V. Sanjay Thakran & Anr.* reported in , (2007)3 SCC 75, it has been held by the Hon"ble Apex Court In para 16 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."

6.3 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 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."

6.4 Even in the case of Mookkiah and Anr. v. State, rep. by the Inspector of Police, Tamil Nadu, reported in , AIR 2013 SC 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 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 v. Sohan Lal and Others, , (2004) 5 SCC 573]"

6.5 It is also a settled legal position that in acquittal appeal, 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 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."

6.6 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.

6.7 Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower Court, then elaborate discussion of evidence or assigning fresh reasons are not necessary.

7. We have considered the above referred rival submissions made by the learned advocates for the respective parties in light of the principles laid down in the aforesaid decisions.

8. It is to be noted that the investigating officer has failed to write important aspect in the police statement. It appears from the evidence of investigating officer that statement of the injured witness was recorded ten days after occurrence of the incident. There is only one eye witness to the incident who is injured in the incident and the evidence of said injured witness-Rajabhai Devayatbhai is contradictory to the evidence of other witnesses and there is no other evidence supporting the case of the prosecution. It was, therefore, held by the trial court that in absence of any other supporting evidence, the accused cannot be held guilty for the serious offence of attempt to murder. It was further held by the trial court that although injuries were caused on the injured, the prosecution has not been able to establish the case against the accused beyond reasonable doubt and in such circumstances, it cannot be said that it was the accused who had caused injuries on the injured on the date of incident. Therefore, benefit of doubt was rightly given to the accused by the trial court and he was acquitted of the charges levelled against him. This Court is, therefore, of the opinion that the trial court was completely justified in acquitting the accused of the charges levelled against him. Therefore, the findings recorded by the trial court are absolutely just and proper and no illegality or infirmity has been committed by it in the said findings and therefore, we do not find it necessary to interfere with the same.

9. Learned Addl. Public Prosecutor is not in a position to show any evidence to take a view contrary to the view taken by the trial court 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.

10. Thus, the appeal is dismissed. The impugned judgment and order dated 7-1-1995 passed by the learned Additional Sessions Judge, Amreli, in Sessions Case No. 29 of 1990 is hereby confirmed. Bail bond, if any, stands cancelled. Record and proceedings shall be sent back forthwith to the trial court.