

(2016) 04 GUJ CK 0042
In the Gujarat High Court

Case No : Criminal Appeal No. 1049 of 1994 and Criminal Revision Application
No. 388 of 1994

State of Gujarat

APPELLANT

Vs

Kharak Laxman Vashram

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, Section 34, Section 447, Section 504

Citation : (2016) 04 GUJ CK 0042

Hon'ble Judges : K.S. Jhaveri and Biren Vaishnav, JJ.

Bench : Division Bench

Advocate : C.M. Shah, APP, for the Appellant; Rajesh M. Agrawal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. These appeal as well as revision application are directed against the judgment and order of acquittal dated 28.07.1994 passed by learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 86 of 1992. By the impugned judgment, the accused was acquitted of the charge of offence punishable under Sections 302, 447 and 504 of the Indian Penal Code (for short, "IPC"). Being aggrieved by the impugned judgment, Criminal Appeal is preferred by the State, while Criminal Revision Application is preferred by the complainant.

2. The facts in brief giving rise to the filing of present appeal as well as revision application are as under:--

"2.1 On 24.1.1992, in the morning at about 7 a.m., when the deceased was going towards his field, at that time, the accused came with kudali in his hand and started using abusive language. The accused told that why have you filed a false case? Thereafter, the accused assaulted the deceased and caused injuries with kodali. The deceased succumbed to such injuries. Therefore, a complaint was lodged against the accused before police.

2.2 After filing of the complaint, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused before the Magistrate Court. Since the offence was exclusively triable by the Court of Sessions, the case was committed to Sessions Court and, ultimately, trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 In order to bring home the charges against the accused persons, prosecution has examined following witnesses.

2.4 The prosecution has also produced following documents in support of its case:--

2.5 Thereafter, after filing of closing purshis by the prosecution, further statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused denied the case of the prosecution and submitted that a false case is filed against them."

3. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned trial Judge passed the impugned Judgment. Being aggrieved by and dissatisfied with the said judgment and order dated 28.07.1994 passed by learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 86 of 1992 acquitting the respondent, State has preferred Criminal Appeal and the complainant has preferred Revision Application before this Court.

4. Ms. C.M. Shah, learned APP has taken us through the evidence and contended that the trial Court has committed an error in acquitting the accused inspite of voluminous evidence against him and contended that the trial Court ought not to have acquitted the accused. She submitted that though the prosecution has examined 9 witnesses and also produced 16 documents in support of its case, the learned trial Judge has not properly appreciated him and acquitted the accused of the charges levelled against him. She submitted that the prosecution has successfully proved its case against the accused. She submitted that even the medical evidence supports the case of the prosecution. She submitted that in view of the medical evidence, it is clear that the injuries caused to the deceased were the reason for his death. She has taken us through the evidence of the complainant and other witnesses and submitted that the accused is guilty of offence under Section 302 of IPC and learned trial Judge has committed an error in acquitting him. She also submitted that the learned trial Judge has failed to appreciate the evidence on record in its proper perspective, therefore, the impugned judgment is required to be quashed and set aside by allowing present appeal.

5. Mr. Rajesh Gidiya, learned advocate appearing for the complainant in Revision Application has accepted the arguments advanced by learned APP. He further submitted that in view of the evidence of Dr. Ganibhai Kasambhai Saiyed, PW-2 and the postmortem report of the deceased, it is clear that the injuries caused to the deceased were the reason for his death. He also submitted that, in view of

the evidence of the prosecution witnesses, it can be said that these injuries were caused by the accused, therefore, learned trial Judge has committed an error in acquitting the accused. He, therefore, prays that Revision Application may be allowed by reversing the impugned judgment.

6. We have heard Ms. C.M. Shah, learned APP for the appellant-State and Mr. Rajesh Gidiya, learned advocate for the revisionist-original complainant. We have gone through the evidence on record. Looking to the fact that the charge against the respondent-accused is for the offence under Sections 302 of IPC, the prosecution has to prove its case beyond reasonable doubt. From the evidence on record, more particularly map of the place of the incident, it is rightly found by the trial Court that the truck can go straightway into the field of Dhanji Kanji and there is no need to go through the field of Gora Sava. It is also clear that the complainant has tried to improve upon his version narrated before the police in complaint. In his evidence before the Court, the complainant has added many things, which were not there in the complaint. Not only that there are many contradictions in the evidence of the complainant. Even before the doctor, the complainant has not stated that the deceased was beaten by the accused. Though Nanji Mepa has stated in his evidence that the truck had passed through his field, this fact is not supported by the panchnama and no marks of tyre of the truck were found in the field of Nanji Mepa. The prosecution has failed to establish that the witnesses, who were examined as eye witnesses, were present at the scene of offence and it is also found that these witnesses were unable to describe the manner in which the incident had taken place. Therefore, though the deceased has died an unnatural death, it cannot be said that the accused has committed murder of the deceased. In our view, the prosecution has miserably failed in proving the case against the accused. It is clear that the learned Judge has not committed any error while acquitting the accused of the charges levelled against him. It cannot be said that the learned Judge has committed any error while acquitting the accused as the prosecution could not prove its case beyond reasonable doubt.

7. 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 v. State of Kerala & Anr.*, (2006) 6 S.C.C. 39, the Apex Court has narrated the powers of 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."

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

7.2 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.

7.3 Even in the case of *State of Goa V. Sanjay Thakran & Another*, , (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."

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

7.5 In the case of Luna Ram v. Bhupat Singh and Ors, , (2009) SCC 749, the Apex Court in paras-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."

7.6 Even in a recent decision of the Apex Court in the case of Mookiah and Anr. v. State, rep. by the Inspector of Police, Tamil Nadu, , 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 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 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]"

7.7 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, , 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."

7.8 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.

8. We have gone through the oral as well as documentary evidence on record and we are in agreement with the view taken by the lower Court. Moreover, learned APP is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored material evidence while acquitting the accused. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondents-accused of the charge levelled against them. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the impugned judgment and, therefore, find no reasons to entertain this appeal.

9. For the foregoing reasons, Criminal Appeal as well as Criminal Revision Application are dismissed. The impugned judgment and order dated 28.07.1994 passed by learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 86 of 1992 is hereby confirmed. Bail bond, if any, stands cancelled. Registry to return the R&P to the concerned trial Court forthwith.