

(2009) 02 GUJ CK 0019
In the Gujarat High Court
Case No : Criminal Appeal No. 393 of 1988

State of Gujarat

APPELLANT

Vs

Kiritkumar Ramanlal Kantawala and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 114, 120B, 363, 366

Citation : (2009) 02 GUJ CK 0019

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

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; Shilpa R. Shah, for Opponent 1 and Manaji G. Thakore, for Opponents 2 - 3, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 By way of this appeal, u/s 378 of the Code of Criminal Procedure, 1973, the appellant-State has prayed to quash and set aside the judgment and order dated 30.01.1988 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 68 of 1985, whereby, the respondents, accused persons, have been acquitted from the offences punishable u/s 120-B, 363, 366 r/w. Section 114 of the Indian Penal Code, 1860 [for short, "the IPC"].

2.0 The facts in brief, giving rise to the filing of the present appeal, are as under:

2.1 On 23.01.1985, in the morning hours, while the complainant, Raval Jayantilal Shivram, was having his break-fast, he realized that one of his daughters, Jaya, was not present in the house. Therefore, he made necessary efforts to know the whereabouts of his daughter, Jaya but, none of his efforts yielded any result. On the next day, the complainant realized that cash amounting to Rs. 1000/- and some other valuables were also missing from his house. The complainant also made inquiry from his relatives and friends to ascertain the whereabouts of his

daughter, Jaya but, none of his efforts yielded any results.

2.2 In the afternoon hours of 24.01.1985, the complainant came to know from one of the shop-keepers of his Village that her daughter, Jaya and one Dinesh Jayantilal Shah had boarded the bus going towards Tokariya Village on the previous day evening. Therefore, the complainant along with other well-wishers proceeded towards the said Village. From that place, the complainant came to know that her daughter and said Dinesh Jayantilal Shah had proceeded towards Palanpur. Therefore, the complainant and other persons came back to their Village Saripda and inquired from Jayantilal Shah, father of said Dinesh Shah, about her daughter, Jaya. Said Jayantilal Shah informed the complainant that he had gone to Palanpur to search for his son, Dinesh and that respondents No. 2 & 3 herein had taken physical custody of both Dinesh and Jaya and have demanded ransom of Rs. 5000/- for the release of his son, Dinesh. Therefore, the complainant, said Jayantilal Shah and the Sarpanch of the Village proceeded towards Palanpur.

2.3 On the next day, i.e. on 25.01.1985, the Sarpanch of the Village and one of his well-wishers came to the house of the complainant and informed him that Dinesh and Jaya are desirous to marry each other and that they both are present in the house of respondent No. 1. Thereafter, on the next day, i.e. on 26.01.1985, the complainant and said Jayantilal Shah went to the house of respondent No. 1. From him they came to know that both Dinesh and Jaya have got married and that he was not aware of the whereabouts of both Dinesh and Jaya. Therefore, on 28.01.1985 a complaint vide C. R. I - No. 17 of 1985 u/s 363, 366, 120-B r/w. Section 114 of IPC was filed before Gadh Police Station. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, as sufficient material was found against the accused persons, they were arrested and, ultimately, charge-sheet was filed against them before the Court of learned C.J.M., Palanpur. As the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, Banaskantha at Palanpur and it was numbered as Sessions Case No. 68 of 1985. Before the initiation of trial, original accused-Dinesh had expired and therefore, trial was initiated against other accused persons, the respondents herein. During the course of trial, the prosecution had 18 witnesses and had placed reliance upon several documentary evidence, more particularly, the evidence in the form of complaint at Exhibit - 21, the extract of the Hotel Register at Exhibit - 33, the panchnama regarding seizure of muddamal at Exhibit - 40 and the Certificate at Exhibit - 61. At the end of trial and after recording the statement of the accused persons u/s 313 of Cr.P.C., the learned Addl. Sessions Judge acquitted the respondents of all the charges leveled against them.

2.4 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant - State has preferred the present appeal.

3.0 Mr. R.C. Kodekar, learned APP, contented that the judgment and order of the Court below is against the provisions of law; the Court below has not properly considered the evidence led by the prosecution and that looking to the provisions of law itself, it is established that the prosecution has proved the ingredients of the offence against the present respondent. Hence, the impugned judgment and order passed by the Court below deserves to be quashed and set aside and the respondents-accused persons deserve to be convicted.

4.0 Mrs. Shilpa R. Shah, learned Advocate for the respondents-accused persons, contented that the prosecution has failed to prove beyond doubt that the victim was below 16 years of age at the relevant point of time. She has submitted that the victim, at her own will, had eloped with deceased-Dinesh and married him and that once it is found that the victim was above 16 years of age, at the relevant point of time, then the alleged offence in question could not be said to have been committed. Hence, the Court below was completely justified in acquitting the respondents-accused persons from the alleged offence in question.

5.0 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.

5.1 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, 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.

5.2 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.

5.3 Even in a recent decision in the case of *State of Goa v. Sanjay Thakran and 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.

5.4 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 S.C.W. 5553 and in *Girja Prasad (Dead) by LRs v. State of MP* reported in AIR 2007 S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

5.5 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 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.

5.6 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.

6.0 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 APP for the appellant-State. The Marriage Certificate of deceased-Dinesh and victim was produced on record vide Exhibit - 28. From the said document, it transpires that their marriage had taken place on 24.01.1985 and that, at that time, deceased-Dinesh was aged 22 years and the victim 19 years.

6.1 Even, as per the documents at Exhibits - 42 & 61, which is an extract of the Birth - Death Register, the age of the victim, at the relevant point of time, is found to be well above 16 years of age. Therefore, evidently, at the time when the marriage had taken place, the victim was above 16 years of age. In such circumstances, it could not be said that the victim was taken away from the lawful guardianship of her parents by the respondents, accused persons and consequently, the provisions of Section 363 & 366 IPC will not be attracted.

6.2 In fact, it transpires from the record that the victim had eloped with deceased-Dinesh at her own free will and consent and had married him, without any threat or coercion to that effect.

7.0 Moreover, the prosecution has also not been able to prove the existence of the ingredients of Section 120-B of IPC in the present case. There is not an iota of evidence to show that the respondents, accused persons, had conspired in any way to take away the victim from the lawful guardianship of her parents.

7.1 The involvement of respondents No. 2 & 3, original accused No. 3 & 4, in the alleged offence in question, in any manner, is not made out. Therefore, the provisions of Section 120-B of IPC are not attracted at all in this case. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

7.2 Mr. Kodekar, 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.

8.0 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.

8.1 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.

8.2 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.

9.0 The appeal is, accordingly, dismissed. Bail bonds, if any, shall stand cancelled.