

(2009) 04 GUJ CK 0019
In the Gujarat High Court
Case No : Criminal Appeal No. 3143 of 2008

State of Gujarat

APPELLANT

Vs

Koli Khimji Savshi and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Citation : (2009) 04 GUJ CK 0019

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

Bench : Division Bench

Advocate : H.L. Jani, Addl Public Prosecutor 1, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 22.10.2008 passed by the Additional Sessions Judge, Dhrangadhra in Sessions Case No. 07 of 2005, whereby the accused have been acquitted from the charges leveled against them.

2. The brief facts of the prosecution case are as under:

2.1 On 23.03.2004, at about 6.10 pm, on the basis of the information received by the complainant, he carried out a raid with police party at a liquor shop situated at Malvan village where the accused with a mob of 700 to 800 people attacked on them, inflicted stone blows and caused injury to them. The said mob locked the members of the police party in Malvan Panchayat office and caused damage to the Government Jeep.

2.2 Therefore a complaint with respect to the aforesaid offence was filed against the respondents with Dhrangadhra Police Station vide C.R. No. I-34 of 2004. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondents were arrested

and, ultimately, charge-sheet was filed against them. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.3 The trial was initiated against the respondents and during the course of trial the prosecution examined 10 witnesses as oral evidences and 13 documents as documentary evidences. At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondents of all the charges leveled against them by judgement and order dated 22.10.2008.

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

3. It was contended by Mr. Jani, learned APP that the judgement 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 respondents . Learned APP has also taken this Court through the oral as well as the entire documentary evidence.

4. 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 M.P. reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

4.5 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 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.

4.6 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.

5. We have gone through the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence led by the trial court, more particularly the R & P received from the trial court and also considered the submissions made by learned Advocate for the appellant.

5.1 The trial court while considering the evidences in detail has observed that the prosecution has failed to prove the case against the accused beyond reasonable doubt. The trial court has framed 9 vital issues on the subject matter. The trial court has discussed issue No. 1 in paras 9-15, issue No. 2 in para 16, issue No. 3 & 4 in paras 17-21, issue No. 5 in para 22, issue No. 6 in para 23, issue No. 7 in para 24, issue No. 8 in para 25 and issue No. 9 in para 26. The trial court has gone into the evidence in detail and has come to the conclusion that except the issue No. 2, answers to all other issues are in the negative.

5.2 On an appreciation of the evidence, the trial court has observed that there is a delay in lodging the complaint when the complainant himself was a police officer. No plausible explanation has been given by the prosecution for the same.

5.3 As a result of hearing and perusal of records, it is borne out that though the investigating officer was an experienced personnel, he has not conducted the T.I parade. When there are around 48 accused persons out of a mob of around 700-800 people, identification was the need of the hour. Apart from that it is also borne out that the panchas have turned hostile which has proved fatal to the case of the prosecution. No medical evidence is placed on record to support the story of injury by the prosecution.

5.4 From the overall appreciation of facts, it is evident that the alleged story of causing damage to public property was also not fairly established by the

prosecution. Though the MLC case was filed, there was no complaint filed immediately by the complainant. Moreover, the names of the accused persons were not disclosed by the complainant in his complaint. All these go to show that there are serious lapses in the story of the prosecution and therefore the benefit of doubt deserves to be given to the accused.

5.5 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. In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondents of the charges leveled against them.

6.1 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.

6.2 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. Hence the appeal is hereby dismissed.

7. The judgement and order dated 22.10.2008 passed by the Additional Sessions Judge, Dhrangadhra in Sessions Case No. 07 of 2005 acquitting the respondents-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P to be sent back forthwith.