
(2013) 09 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 881 of 1994

State of Gujarat

APPELLANT

Vs

Lakha Ravji Sangada and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 302, 34, 504

Citation : (2013) 09 GUJ CK 0030

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

Bench : Division Bench

Advocate : C.M. Shah, Public Prosecutors No. 1, for the Appellant; Adil Mehta, Advocate for Respondent(s) No. 1 - 3, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Thaker, J

1. This is an appeal by the appellant State, challenging the judgment and order of the learned Sessions Judge, Godhra, Panchmahal, rendered in Sessions Case No. 123 of 1993, Dated: 25.01.1994, whereby, the learned Judge acquitted the original accused No. 1 to 3 - the opponents, herein, from the charges of the offence punishable u/s 302, 504 read with Section 114 of the Indian Penal Code. The brief facts of the case of the prosecution, as set out before the trial Court reads as under;

2. A complaint was given by one Balabhai Punabhai before Sukhpur Outpost on 10.05.1993, wherein, he stated that he was serving with the Forest Department at Bakor, Tal.: Lunavada, but, he is originally a resident of village Margala, where, he had come to attend a marriage. The complainant, then, stated that on 10.05.1993, in the afternoon at about 03:00 p.m., when he came to Margala, his aunt came to him while crying and informed him that the present opponents had picked up a quarrel with her husband, namely Chuniyabhai, and had caused injuries to him with kick and fists blows after abusing him and the injured was

lying at the place of offence. Subsequently, Chuniyabhai succumbed to the injuries sustained by him. On registration of the offence police carried out the investigation, and since, prima facie evidence were found against the opponents, a charge-sheet was laid against them. On completion of the trial, the statements of the opponents u/s 313 of the Cr.P.C. came to be recorded, and then, the trial Court passed the judgment and order, which is under challenge in this appeal.

3. Ms. C.M. Shah, learned APP, submitted that the trial Court committed an error in passing the impugned judgment and order inasmuch as, it failed to appreciate the material on record in its proper perspective, and hence, the appeal be allowed.

4. As against this, Mr. Mehata, learned Advocate for the opponents, supported the judgment and order of the trial Court submitting that the same was passed after appreciating the evidence adduced on record by the prosecution, and hence, no interference is called for with the same at the hands of this Court.

5. We have heard learned APP for the appellant - State and the learned Advocate for the opponents and perused the material on record with their assistance.

6. A perusal of the record shows that the trial Court, while passing the impugned judgment and order, observed that the evidence of the so called eye-witnesses are not consistent. Moreover, while deciding issued Nos. 2 to 4, in the opening paragraph, the trial Court observed that, though, the deceased was taken to P.W.-1 twice, he was not provided with the proper treatment and instead P.W.-1 referred the deceased to be taken to hospital at Jhalod for further treatment. It is also pertinent to note that, though, P.W.-1 was aware that it was a MLC case, he did not inform the police about the same. The trial Court, hence, rightly observed that there appears to be lapse on the part of P.W.-1.

7. Mr. Mehta, learned Advocate for the opponents, took us through the evidence of the wife of the deceased, who was examined as P.W.-3 at Exhibit-22. From a perusal of the examination-in-chief of P.W.-3, though, gives an impression that she is an eye-witness of the incident, her cross-examination clearly establishes that she has not seen the incident with her own eyes. In her cross-examination, P.W.-3 stated that she found that her husband was lying in the mud and his clothes were also stained with mud and he was breathing slowly. P.W.-3, further, stated that when she tried to inquire from the deceased and to give him water, the deceased neither replied nor could drink the water. Thus, this piece of evidence falsifies the say of P.W.-3 that she had seen the opponents inflicting injuries on the deceased, since, had she really seen the incident, there was no need for her to ask the deceased as to who had caused injuries to him. P.W.-3 clearly stated in her cross-examination that when she asked the deceased as to who had caused injuries to him, the deceased did not say anything. Thus, the aspect, as to how P.W.-3 came to know the names of the assailants of her husband, remains shrouded in the mystery.

8. In above view of the matter, we have to look into the matter from the

touchstone of the decisions of the Hon"ble Apex Court right from 1991 to 2013.

9. 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 catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , the Apex Court has narrated 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 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.

10. 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.

11. Thus, it is a settled principle that while exercising appellate powers, 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.

12. Even in the case of *State of Goa Vs. Sanjay Thakran and Another*, , 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.

13. Similar principle has been laid down by the Apex Court in cases of *State of Uttar Pradesh Vs. Ram Veer Singh and Others*, and in *Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh*, . Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

14. In the case of *Lunaram Vs. Bhupat Singh and Others*, , 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.

15. Even in a recent decision of the Apex Court in the case of *Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu*, , 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 u/s 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 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 Vs. Sohan Lal and Others, .

16. It is also a settled legal position that in acquittal appeals, 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 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 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.

17. In the recent decision, the Hon''ble Apex Court in Shivasharanappa and Others Vs. State of Karnataka, has held as under;

That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence.

18. In view of the above discussion, we are of the opinion that the learned Judge committed no error in passing the impugned judgment and order, and hence, the present appeal deserves to be dismissed. In the result, the appeal fails and is DISMISSED. The judgment and order of the trial Court, Dated: 25.01.1994, stands confirmed. Bail bonds of the accused, if any, on bail, stands discharged. R & P be sent back to the concerned trial Court, forthwith.