
(2016) 02 GUJ CK 0014
In the Gujarat High Court
Case No : Criminal Appeal No. 1975 of 2005

State of Gujarat

APPELLANT

Vs

Mahendra and Others

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, Section 313, Section 378(1)(3)
Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2016) 02 GUJ CK 0014

Hon'ble Judges : Abdullah Gulamahmed Uraizee, J.

Bench : Single Bench

Advocate : N.J. Shah, APP, for the Appellant;

Final Decision : Dismissed

Judgement

Abdullah Gulamahmed Uraizee, J.—1. The State has preferred this appeal under section 378(1)(3) of the Code of Criminal Procedure, 1973 ("the Code", for short) to challenge the correctness and illegality of the judgement and order of acquittal dated 16/5/2005 passed by learned Principal Sessions Judge, Court No. 1, Ahmedabad City in Sessions Case No. 147 of 2004.

2. The brief facts giving raise to the present appeal are that on 27/7/2002, the respondents -accused persons hired an-auto rickshaw of complainant Natwarbhai Kanjibhai Parekh to go to Chakudia Mahadev temple. Respondent No. 2 came out from the temple with prasad after offering obsession at the temple. The said prasad was offered to the de-facto complainant. Upon consumption of the prasad, the de-facto complainant became unconscious. Thereafter, both the respondents removed gold ring worth Rs. 3500/- from the person of the de-facto complainant. The complaint, in respect of this incident, came to be lodged against the respondents by the de-facto complainant with Rakhiyal Police Station, where it was registered vide I-CR-69 of 2002. Upon completion of the investigation, the charge sheet was filed against the respondents.

3. The case came to be committed to the Sessions Court on 9/4/2004 by learned Metropolitan Magistrate as the offence alleged against the respondents were exclusively triable by the Court of Sessions. In the Sessions Court, the case was registered as Sessions Case No. 147 of 2004.

4. The charge vide exh-1, came to be framed against the respondents. They pleaded not guilty and claimed to be tried. In order to bring home, the charge against the respondents following witnesses were examined by the prosecution.

"(1) Natvarbhai Kanjibhai Parekh, PW No. 1 at Exh. 9

(2) Nasirkhan Jakirkhan, PW No. 2 at Exh 11

(3) Chimji Vanraj Ranava, PW No. 3 at Exh 12

(4) Dipak Rajendrabhai Chowkshi (Agrawal), PW No. 4 at Exh 13

(5) Dr. Dineshbhai Savjibhai Chandana, PW No. 5 at Exh 15

(6) Ranchhodbhai Rupabhai Parmar, PW No. 5 at Exh. 18

(7) Jagdishbhai Trikambhai Dodia, PW No. 6 at Exh 22

(8) Shivrathsinh Radhavsingh Yadav, PW No. 8 at Exh 26 and

(9) Mansingh Devsinghbhai Chaudhary, PW No. 9 at Exh 30."

5. The prosecution also produced and relied upon the following documentary evidence:

"(1) The complaint given by NATVARBHAI KANJIBHAI PAREKH vide exh. 10.

(2) The report prepared under section 157 of the Cr.P.C. vide exh 19.

(3) The panchnama of the place of incident vide exh 20.

(4) The panchnama of the identification of the accused vide exh 27.

(5) The panchnama of the recovery of muddamal article vide exh. 23.

(6) The receipt given by MAHAJAN AT MANEKCHAWK and by SONI GHANSHYAMBHAI CHHAGANBHAI vide exhs. 28 and 29.

(7) The certificate issued by Hospital Authority to the complainant vide exh 16 and the papers pertaining to the treatment given to NATVARBHAI PAREKH vide exh. 17 to the present case."

6. Upon conclusion of the trial, the statement under section 313 of the respondents came to be recorded, wherein they stated that they were innocent and false case filed against them.

7. Learned Trial Judge, after hearing the arguments on behalf of the prosecution and defence and upon appreciation of the documentary and ocular evidence produced during the Court of the trial, acquitted the respondents by impugned

judgement and order. Therefore, the State is in appeal.

8. I have heard Mr. N.J. Shah, learned APP for the State. Bailable warrant issued against the respondents could not be executed as they are not available at residing address but looking to the evidence on record, it was though expedient by me to hear the arguments and decide the appeal in absence of the respondents. In my opinion, I do not find any substance in this acquittal appeal.

9. Before dwelling upon the merits of the case, it is necessary to take note of certain decisions of the Supreme Court, wherein the powers of this Court while dealing this acquittal appeal are explained:

"*In case of Chandrappa v. State of Karnataka [, (2007) 4 SCC 415], the Supreme Court has laid down following principles concerning acquittal appeals are as under:

"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."

*Again in case of State of Goa v. Sanjay Thakran & Anr. [, (2007) 3 SCC 75], the Supreme Court has propounded the following proposition:

[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 emphasise 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."

*In case of *Mookiah and Anr. v. State rep. By the Inspector of Police, Tamil Nadu* [, AIR 2013 SC 321], the Supreme Court has held that:

"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 levelled 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 reappraise 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 : (AIR 2004 SC 4520 : 2004 AIR SCW 4321)]"

*In case of State of Karnataka v. Hemareddy [, AIR 1981 SC 1417], the Supreme Court has held as under:

"...This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary , (1967) 1 SCR 93 : (AIR 1967 SC 1124) 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."

10. Keeping in mind the above brought principles, it can be said that the powers of an Appellate Court while deciding the acquittal appeal are in fetter and the Appellate Court has empowered to undertake the exercise of re-appreciation and revaluation of the documentary and oral evidence adduced by the prosecution as also the defence. The only limitation which seems to have been their powers of the Appellate Court is there i.e. two plausible views are possible and the Courts below have adopted one of the plausible view. The same cannot be substituted by the Appellate Court by other plausible view unless the view taken by the Lower Court is find to be perverse or de-horse the evidence on record.

11. In the present case, the learned Trial Judge upon appreciation of the oral and documentary evidence in para 11 & 12, summed up the case against the respondents to record the findings of acquittal which reads as under:

"11. I have taken into consideration the rival submissions and perused the oral depositions as well as the documentary evidence on which heavy reliance is placed by the prosecution with a view to prove the involvement of the accused in the commission of offence. The prosecution has examined the complainant NATVARBHAI PW. 1 at exh. 9. On perusal of the deposition adduced by NATVARBHAI it becomes clear that he was offered PRASAD by the two accused and after consumption of the PRASAD he became unconscious and subsequently the accused robbed him of the gold ring worth Rs. 3,500/-. The complaint given by NATVARBHAI gets necessary support to the prosecution case. The prosecution has over and above the complainant, examined NASHIRKHAN JAKIRKHAN PW NO. 2 at exh. 11, CHIMAJI PW NO. 3 AT EXH. 12 and DEEPAK RAJENDRABHAI CHAWKSHI PW NO. 4 at exh 13 who are the panch witnesses and Jewellers but they have not supported the prosecution case indicating the involvement of the accused in the commission of offence. DR DINESH PW NO. 5 has been examined vide exh. 15 and he has deposed in his testimony that he was working in the v. Hospital as RMO on the date of incident. On 17-7-2002 one patient was admitted in the Hospital named NATVARBHAI KANJIBHAI PAREKH and he was discharged on 30/7/2002. He had identified the certificate issued by the Hospital authority. In his cross examination he has admitted that he can say after perusing the report of the Forensic Science Laboratory as to whether he was given stupefying

drugs or stupefying substance in the PRASAD. RANCHHODBHAI PW NO. 6 has been examined vide exh. 18 and he has deposed in his testimony that he was working as PSI in July 2002. On receiving Vardhi from v. Hospital on 28/7/2002 he went to v. Hospital and thereafter the complaint which was given by the patient NATVARBHAI was recorded as per his say. He had also prepared the report under section 157 of the Cr. P.C. and forwarded the same to the Charge Officer Rakhial police station. JAGDISH PW NO. 7 has been examined vide exh. 22 and he has been examined with a view to prove that muddamal which was recovered was the same. SHIVNATH PW NO. 8 has been examined vide exh. 26. In his deposition he has stated that he was entrusted the investigation from MR. BARIYA. The panchnama with regard to the muddamal article was prepared by him. The accused were also detained by necessary order with regard to remand was obtained from the honourable court. MANSINH DEVSINHBHAI CHAUDHARI PW NO. 9 has been examined vide exh. 30. He had filed the charge sheet against the accused on the completion of the investigation and that fact is reflected in his deposition.

12. The prosecution has also produced the complaint vide exh 10 wherein NATVARBHAI has stated as to how he was given the PRASAD by the accused and after he became unconscious he was robbed by the accused. The report prepared under section 157 of the Cr.P.C. is produced at exh. 19. I have also perused the panchnama of the place of the incident at exh. 20 and the panchnama with regard to the identification of the accused vide exh. 27 to the present case. The panchnama with regard to the recovery of muddamal produced at exh. 23 is also carefully taken into consideration by me. The other documents such as the receipt given by MAHAJAN Of the MANEKCHAWK at exh. 28 and the weighing of the muddamal carried out by SONI GHANSHYAMBHAI and the receipt given by him vide exh. 29 is taken into consideration by me. The prosecution has also produced the detailed examination of the complainant NATVARBHAI carried out in the v. Hospital vide exh. 16 to the present case. The other documents pertaining to the treatment given to the complainant is also produced along with the certificate issued by v. Hospital. On total perusal of the documentary evidence the stomach wash was not taken of the complainant and the necessary blood sample or the viscera was not sent to the FSL so as to ascertain as to whether the substance which was mixed in the PRASAD had the stupefying effect on the complainant so as to induce sleep and this fact remains unexplained by the prosecution. Even the identification of the accused and their involvement in the commission of offence remains in doubt. When the material aspect is not proved by the prosecution by adducing cogent and convincing evidence, it would be hazardous to convict the accused with the commission of offence with which he has been charged. In the light of the foregoing discussion since the prosecution has not established each and every link connecting the accused with the commission of offence, both the accused in my view are liable to be acquitted forthwith in the matter."

12. I have independently perused the evidence of the material witnesses.

13. The case of the prosecution against the respondents, as has been stated hereinabove, was that they administered a stupefying substance i.e. prasad laced with stupefying substance to the de-facto complainant. As a result, he became unconscious. The respondents took the advantage of the unconsciousness state of the de-facto complainant and took away gold ring worth Rs. 3,500/- from his person. The gold smith Deepak Rajendrabhai Chawkshi (Agrawal) to whom, the respondents alleged to have sold the stolen gold ring of the de-facto complainant, has not supported the prosecution case. Moreover, the learned Sessions Judge has recorded very clear findings on total perusal of the documentary evidence that the stomach wash was not taken of the de-facto complainant and the necessary blood sample of viscera was not sent to the FSL with a view to ascertain as to whether prasad was laced with some stupefying substance so as to render the de-facto complainant unconscious.

14. It is worthwhile to note, at this juncture, that the Investigating Officer had not even care to conduct an identification Parade to get the respondents identified by the de-facto complainant to establish on record that it was none else but the respondents, who had administered stupefying substance to de-facto complainant to make him unconscious and robbed him of his belongings.

15. In view of said evidence, I am of the opinion that prosecution has completely failed to establish first contention that the respondents had administered a stupefying substance to the de-facto complainant and thereafter, since the gold smith, to whom the respondents had alleged to sell the gold ring, has not supported the prosecution case. The learned Trial Judge was justifying in recording the judgement of the acquittal in favour of the respondents.

16. For the foregoing reasons, I do not find any merits in the appeal and the same is therefore, dismissed. The judgement and order of acquittal dated 16/5/2005 passed by learned Principal Sessions Judge, Court No. 1, Ahmedabad City in Sessions Case No. 147 of 2004 is hereby confirmed. R&P be remitted to the Trial Court forthwith.