

(2015) 11 GUJ CK 0046

In the Gujarat High Court

Case No : Criminal Appeal Nos. 918 and 1553 of 2009

State of Gujarat

APPELLANT

Vs

Manojkumari

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 201, 302, 34

Citation : (2015) 11 GUJ CK 0046

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : L.R. Pujari, APP, for the Appellant; Ramnandan Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Both these Criminal Appeals are preferred against judgment and order dated 26.2.2009 passed by learned Additional Sessions Judge, Vadodara in Sessions Case No. 87 of 2008. By the said judgment, accused No. 1 was convicted for offences punishable under Sections 302 and 201 of the Indian Penal Code, while accused No. 2 was acquitted of the charges levelled against her. For offence punishable under Section 302 of IPC, accused No. 1 was ordered to undergo rigorous imprisonment for life and ordered to pay fine of Rs. 1,000/- and in default, simple imprisonment for 15 days was imposed; for offence punishable under Section 201 of IPC, one years" rigorous imprisonment was awarded with fine of Rs. 500/- and in default, he was ordered to undergo further simple imprisonment for ten days. Being aggrieved by the impugned judgment, accused No. 1 has preferred Criminal Appeal No. 1553 of 2009, while Criminal Appeal No. 918 of 2009 is preferred by the State against acquittal of accused No. 2.

2. As these appeals are arising out of the same judgment rendered in connection with the same incident and the evidence is also common in all these appeals, the

same are taken up for hearing together.

3. The case of the prosecution is that the accused persons were residing at house No. 63/B, Shrinagar Society, Vadodara, which was of the ownership of the deceased and the accused were tenant. The accused were paying rent of Rs. 500/- per month. The deceased was working at Gorva and on account of closure of the company, he went to his native place at Uttar Pradesh and, he used to come to collect the rent from the accused as there was arrears of Rs. 15,000/-. On 15.9.2007, both the accused in connivance with each other committed the offence and killed the deceased by strangulating his neck with nylon rope and threw the dead body of the deceased near boundary wall of Uma Tiles Company. Information was received by the police on 15.9.2007 that one dead was found near the aforesaid place in a gunny bag. Therefore, an accidental death case was registered.

3.1 Thereafter, investigation was carried out and role of the accused was revealed and the accidental case was converted into C.R. No. 310 of 2007. Thereafter, charge sheet was submitted against the accused persons in the Court of learned Magistrate for offences punishable under Sections 302 and 201 read with Section 114 of IPC. However, as the case was exclusively triable by the Court of Sessions, the same committed to Sessions Court. Thereafter, charge was framed against the accused persons. The accused persons pleaded not guilty and claimed to be tried.

3.2 During the trial, the prosecution had examined following witnesses;

3.3 The prosecution has also produced and relied upon following documentary evidence:--

3.4 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order awarding the sentence, as aforesaid. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals are preferred before this Court.

4. Mr. Ramnandan Singh, learned advocate for accused No. 1, appellant of Criminal Appeal No. 1553 of 2009 has taken us through the evidence and submitted that the prosecution has miserably failed to prove its case against the appellant. It is also submitted that the prosecution has not proved the chain of circumstances and as this is a case based on circumstantial evidence, the trial Court has committed an error in convicting the accused for offence punishable under Section 302 and Section 201 of IPC. It is submitted that even the majority of the panchas have not supported the case of the prosecution. He also submitted that the evidence on record is not sufficient to convict accused No. 1 for offence punishable under Section 302 of IPC, therefore, benefit of doubt should have been given to him. He also submitted that when the trial Court has acquitted accused No. 2 by granting benefit of doubt to her, accused No. 1 also should have been acquitted. He also submitted that there was no eye witness to

the incident, therefore also the learned trial Judge committed an error in convicting the accused. He also contended that there is no cogent or reliable evidence to convict accused no. 1. In support of his submissions, Mr. Singh has relied upon the following decisions of the Supreme Court.

"(i) Mohd. Aman, Babu Khan and another Vs. State of Rajasthan,

(ii) Mustkeem @ Sirajudeen Vs. State of Rajasthan,

(iii) Sunil Mahadev Jadhav v. State of Maharashtra, (2013) 15 SCC 177."

4.1 In view of above, he submitted that this appeal may be allowed by acquitting accused No. 1.

5. On the other hand, Mr. L.R. Pujari, learned APP appearing for the State has submitted that the order of conviction recorded against accused No. 1 is just and proper and he has supported the conviction recorded by impugned judgment. So far as Criminal Appeal No. 918 of 2009 is concerned, which is preferred against acquittal of accused No. 2 from charges of offence under Sections 302 and 201 of IPC, he has taken us through the evidence and contended that the trial Court has committed an error in acquitting accused No. 2 inspite of voluminous evidence against her and contended that the trial Court ought not to have acquitted her from the charges levelled against her. He submitted that the prosecution has examined 19 witnesses and also produced 23 documents in support of its case, however, the learned trial Judge has not properly appreciated the same and acquitted accused No. 2. He submitted that PW-4, PW-10, PW-16 all have supported the case of the prosecution. He also submitted that the trial Court has committed an error in not believing the statements of the witnesses and considering the evidence on record, it can be said that accused No. 2 is also guilty of offence under Section 302 of IPC, and therefore, she should have been convicted for the same. He submitted that this is a fit case for reversing the acquittal of accused No. 2 under Sections 302 and 201 of IPC. He also submitted that since chain of circumstances is established, the accused No. 2 should be held guilty for offence punishable under Section 302 of IPC. Therefore, he submitted that Criminal Appeal No. 918 of 2009 may be allowed and accused No. 2 should be convicted for the offences, as alleged.

6. We have heard learned advocate Mr. Ramnandan Singh, for the accused and learned APP, Mr. Pujari for the State. We have also gone through the impugned judgment as well as evidence on record. As per the evidence of Dr. Bijoysinh Ganpatsinh Rathod, in view of ligature marks and abrasion and the cause of death mentioned in the postmortem report, it is clear that the deceased died due to strangulation and it was not a natural death. Therefore, we find that it was due to culpable homicide amounting to murder. As per the evidence of Dr. Bhavesh Manubhai Naik, there was an injury on the index finger of accused No. 1 and this is one of the circumstance which has gone against accused No. 1. In view of the evidence of widow of the deceased, Chandravati Ramsagar, it is clear that the deceased was the owner of the premises and there was outstanding

towards rent from the accused. PW-14, Udasha Hariram Yadav, clearly stated that he had seen the deceased on the previous night in the said premises which was given on rent to the accused. PW-13 has clearly stated that for his legitimate dues, cheque was issued in favour of the deceased by the company. PW-12 is the person who has found the dead body of the deceased. Taking into consideration the above evidence, it is rightly held by the trial Court that the deceased was found in the premises where the accused was seen along with him. It is also held that the rent of the premises was outstanding and the deceased was demanding it from the accused, therefore, the motive was also clear. Not only that the blood stains of the blood group of the deceased were found in the premises of the accused. Therefore, the chain of circumstances is established. So far as the decisions relied on by the learned advocate Mr. Ramnandan Singh are concerned, the same cannot be applied in the facts of the present case as the blood stains of the blood group of the deceased were found on the bicycle of the accused and the accused could not explain it. Therefore, the prosecution has successfully proved its case against accused No. 1 and the trial Court has not committed any error in convicting accused No. 1 for the offences as alleged.

7. So far as Criminal Appeal No. 918 of 2009 filed by the State against acquittal of accused No. 2 for offences under Sections 302 and 201 of IPC is concerned, 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 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 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."

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 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."

7.4 Similar principle has been laid down by the Apex Court in the 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.

7.5 In the case of Lunaram Vs. Bhupat Singh and Others, , 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 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 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 Vs. Sohan Lal and Others,]"

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 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."

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. Therefore, we find that accused No. 2 is rightly acquitted by the learned trial Judge for the charge of offence punishable under Sections 302 and 201 of IPC. 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 accused No. 2 from the charge of offences under Sections 302 and 201 of IPC. 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 appeal of the State and this appeal is also required to be dismissed.

8. In view of above, both these Criminal Appeals are dismissed. Impugned judgment and order dated 26.2.2009 passed by learned Additional Sessions Judge, Vadodara in Sessions Case No. 87 of 2008 is confirmed. Bail bonds, if any, of the accused stand cancelled. Since accused No. 1 is on bail, he shall surrender before the jail authorities within a period of ten weeks from today to serve out the remaining period of sentence. Record and proceedings, if lying here, be sent to the Court below forthwith.