
(2009) 10 GUJ CK 0035
In the Gujarat High Court
Case No : Criminal Appeal No. 355 of 1990

State of Gujarat

APPELLANT

Vs

Modi Ukabhai Khetabhai

RESPONDENT

Date of Decision : 01-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 302, 307, 325

Citation : (2009) 10 GUJ CK 0035

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

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; Gaurav Chudasma, appointed as Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The appellant - State of Gujarat has preferred this Appeal u/s 378 of the Code of Criminal Procedure against the Judgment and order of acquittal dated 21.2.1990 passed by the learned Additional Sessions Judge, Banaskantha at Palanpur, in Sessions Case No. 42 of 1989, whereby the learned Judge has acquitted the respondent-accused of the offences under Sections 302 & 307 of I.P. Code. However, the learned Judge has held the respondent - accused guilty for the offence punishable u/s 325 of I.P. Code and awarded sentence to suffer simple imprisonment for one year and to pay fine of Rs. 500/- i/d to undergo SI for three months.

2. The short facts of the prosecution case is that the deceased and the accused are the brothers. There was quarrel between the accused and the deceased. On the date of incident at about 11.00 O'clock when the complainant was proceeding towards his well, his son Shanker came and told that there was quarrel between Mula Uncle and Uka Uncle (accused). Therefore, the complainant proceeded towards the well of deceased. On the way Prahlad met him and told that his brother Uka gave blow on the head of Mula and also beaten

his wife. Thereafter the complainant along with his brother Parkha went to the well of Mula where he saw that his brother Mula was injured and blood was oozing out and brother of his wife Sita was dead. Thereafter, they shifted Mula to the Hospital for treatment. The complaint was filed against the accused for the offences under Sections 302, 307 of I.P. Code.

3. Thereafter, investigation was carried out and on conclusion of investigation, on the basis of material collected against the respondents - accused, since the Investigating Officer found prima facie case against the respondents - accused, he filed charge sheet before the Court of learned Magistrate. As the offences were absolutely triable by a Court of Sessions, the learned Magistrate, has committed the said case to the Court of Sessions, which was registered as Sessions Case No. 42 of 1989.

4. Thereafter, the charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

5. To prove the case against the accused the prosecution has examined the following witnesses:

(1) circle Inspector Aniruddhkumar P. Thakkar, Exh.7;

(2) Jayantibhai Khetabhai, Exh.9;

(3) Vira Bhikha, Exh.10;

(4) Prahlad Sendhaji, Exh.11;

(5) Parkhabhai Khetabhai, Exh.12;

(6) Dr. Dhiraj Devabhai Jaganiya, Exh.19;

(7) Mulabhai Khetabhai, Exh.25;

(8) Hathibhai Valabhai, Exh.26;

(9) Bhikhalal Kanjibhai, Exh.28;

(10) Jayantilal Jethalal Mevada, Exh.32;

(11) Dr. Punmaji Hakmaji Bhati, Exh.33;

(12) Ramsuratsing Mahavirsing, Exh.36;

5.1 The prosecution has also relied upon following documents to prove its case:

(1) Inquest Panchnama, Exh.14;

(2) Panchnama of scene of offence, Exh. 15;

(3) Panchnama of clothes from the dead body, Exh.16;

(4) Panchnama of physical condition of accused, Exh.17;

(5) Panchnama of weapons produced by accused, Ex.27;

- (6) Panchnama of physical condition of witness Modi Mulabhai Exh. 18;
- (7) Injury certificate of Modi Mulabhai, Exh.21;
- (8) Yadi for sending muddamal, Exh.38;
- (9) Receipt of muddamal received, Exh.39;
- (10) Report/opinion of FSL Ex.40;
- (11) Post Mortem, Exh.35;
- (12) Map of scene of offence, Exh.8;
- (13) Report by Medical Officer to PSI, Exh.20;
- (14) Copy of station diary, Exh.29;

6. After appreciating the documentary as well as oral evidence the learned Additional Sessions Judge, Banakantha at Palanpur, has vide Judgment and order dated 21.2.1990, held the accused guilty for the offence u/s 325 of I.P. Code and awarded sentence as mentioned herein above in Para-1 of this Judgment and acquitted the respondent - accused of the offences under Sections 302 & 307 of I.P. Code.

7. Being aggrieved and dissatisfied with the said Judgment and order dated 21.2.1990 passed by the learned Additional Sessions Judge, Banaskantha at Palanpur, in Sessions case No. 42 of 1989, the appellant - State of Gujarat has preferred the above mentioned Criminal Appeal.

8. We have heard learned A.P.P. Mr. R.C. Kodekar, appearing on behalf of appellant - State of Gujarat and learned Counsel Mr. Gaurav Chudasma, appointed as amicus curiae, appearing on behalf of respondent - accused, We have also gone through the papers and the Judgment and order passed by the trial Court.

9. Learned A.P.P. Mr. R.C. Kodekar, for the appellant - State has taken us through the evidence of prosecution witnesses and the documentary evidence and submitted that from the above evidence it is established that the prosecution has successfully proved its case beyond reasonable doubt that the accused has committed an offence under Sections 302 of I.P. Code of committing murder of deceased and u/s 307 of I.P. Code of causing serious injuries to the witness. He has contended that the witnesses have supported the case of the prosecution and the learned Judge has committed grave error in disbelieving and discarding the evidence of witnesses. He also contended that the learned Judge has not properly appreciated the overall facts and circumstances of the case and also the evidence available on the record of the case which is sufficient to prove that the respondent has committed the offence under Sections 302 & 307 of I.P. Code as alleged against him. He, therefore, contended that the Judgment and order passed by the learned Judge of acquitting the respondent - accused of the offence under Sections 302 & 307 of I.P. Code is without appreciating the facts

and evidence on record.

10. Learned Counsel Mr. Gaurav Chudasma has supported the Judgment and order passed by the trial Court. He contended that the learned Judge has properly considered the facts and circumstances of the case and no interference is called for and, therefore, the Appeal filed by the State requires to be dismissed.

11. We have gone through the Judgment of the trial Court. We have also perused the reasons assigned by the learned Sessions Judge.

12. 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.

13. 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.

14. 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.

15 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.

16. 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.

17. 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 reasoning, 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.

18. 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.

19. 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 before the trial court and also considered the submissions made by learned Advocate for the appellant.

20. The trial court has, after appreciating the oral as well as documentary evidence, has found that there are material contradictions in the evidence of prosecution witnesses. The trial Court has also found that the recovery of weapon was after belated stage. The learned Judge has also observed that the doctor has not properly examined the injuries received by the victim. The doctor has also opined that the injury can be caused due to hard and blunt substance. The learned Judge has also found that the story put-forward by the prosecution is not believable. The trial Court has also found that there are serious lacunae in the evidence of the witnesses and the same is not supported by the medical evidence. Nothing is produced on record to rebut the concrete findings of the trial Court.

21. Thus, the appellant could not bring home the charge against the respondent - accused in the present Appeal. The prosecution has miserably failed to prove the charge of Section 302 & 307 of I.P. Code against the appellant - accused. Thus, from the evidence itself it is established that the prosecution has not proved its case of Section 302 & 307 as alleged against the accused beyond reasonable doubt.

22. Mr. Kodekar, learned APP is not in a position to show any evidence to take a contrary view in 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.

23. In 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. 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.

24. 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.

25. In view of above the Appeal is dismissed. The judgment and order dated

21.2.1990 passed by the learned Additional Sessions Judge, Banaskantha at Palanpur, in Sessions Case No. 42 of 1989 acquitting the respondents - accused of the offence under Sections 302 & 307 of I.P. Code is hereby confirmed. Bail bonds, if any, shall stand cancelled.

Record & Proceeding may be sent back to the trial Court.