

(2016) 04 GUJ CK 0015
In the Gujarat High Court
Case No : Criminal Appeal No. 592 of 1994

State of Gujarat

APPELLANT

Vs

Narendra Bhulchand and Others

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

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

Citation : (2016) 04 GUJ CK 0015

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Shruti Pathak, Addl. Public Prosecutor, for the Appellant; K.B. Anandjiwala, Sr. Advocate and Kunal Shahi, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. The State has challenged the impugned judgment and order of acquittal passed by the learned Assistant Sessions Judge, Bhuj - Kutch in Sessions Case No. 82/1993 dated 08.03.1994 whereby, the respondents, original accused, have been acquitted of all the charges framed against them.

2. The facts in brief are as under;

"Devki @ devi, daughter of Asharambhai and Laxmiben, was married to original accused No. 1 before about 2 ? years from the date of alleged incident. It is the case of the prosecution that at the time of marriage the parents of Devki had given sufficient amount as dowry to the family of original accused No. 1. Despite that Devki was mentally as well as physically tortured for want of dowry. When Devki could not tolerate the cruelty meted out by the accused persons, on 19.07.1993 at around 1500 hrs., she committed suicide in the matrimonial house by setting herself ablaze after pouring kerosene."

2.1 Therefore, a complaint in respect of the aforesaid incident was lodged with Gandhidham Police Station. Necessary investigation was done and the accused

came to be arrested. At the end of investigation, charge-sheet was filed against the accused before the trial Court. However, since it was a sessions triable offence, the case was committed to Sessions Court and ultimately, trial was initiated.

3. During the trial, the prosecution examined the following witnesses;

4. The prosecution had produced and relied upon several documentary evidence, particularly, the post mortem report at Exh. 12 and inquest panchnama at Exh. 16.

5. At the end of trial, the Court below recorded further statement of accused u/s. 313 of Cr.P.C. and thereafter, passed the impugned judgment and order, which has led to the filing of present appeal.

6. 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 v. State of Kerala & Anr.*, , (2006) 6 S.C.C. 39, 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."

6.1 Further, in the case of *Chandrappa v. State of Karnataka*, , (2007) 4 S.C.C. 415, 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."

6.2 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.

6.3 Even in the case of *State of Goa V. Sanjay Thakran & Another*, , (2007) 3 S.C.C. 75, 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."

6.4 Similar principle has been laid down by the Apex Court in the cases of *State of Uttar Pradesh v. Ram Veer Singh & Ors*, , 2007 A.I.R. S.C.W. 5553 and in *Girja Prasad (Dead) by LRs. v. State of M.P.* reported in , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

6.5 In the case of *Luna Ram v. Bhupat Singh and Ors*, , (2009) SCC 749, 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."

6.6 Even in a recent decision of the Apex Court in the case of Mookkiah and Anr. v. State, rep. by the Inspector of Police, Tamil Nadu, , AIR 2013 SC 321, 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 v. Sohan Lal and Others, , (2004) 5 SCC 573]"

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 v. Hemareddy, , AIR 1981, SC 1417, wherein it is held as under:

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

7.1 Similar principle has been laid down by the Apex Court in the case of

Shivasharanappa and others v. State of Karnataka, JT , 2013 (7) SC 66. 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.

8. We have heard learned counsel for both the sides and perused the documents on record. After appreciating the evidence, the Court below recorded the finding that witnesses who possessed necessary information regarding the alleged incident, did not disclose any facts in support of the prosecution story. In fact, they deposed irrelevant facts, which took the prosecution story nowhere. Considering the prosecution case in its entirety, the Court below had no other option but, to acquit the respondents by granting them benefit of doubt.

9. 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 persons. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondents-accused persons of the charges framed against them. 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 this appeal.

10. For the foregoing reasons, the appeal is dismissed and the impugned judgment and order is confirmed. Bail bonds stand cancelled. Record and proceedings, if lying here, be sent to the Court below forthwith.