
(2015) 10 GUJ CK 0024
In the Gujarat High Court
Case No : Criminal Appeal No. 874 of 2006

State of Gujarat	Vs	APPELLANT
Natubha Chatursinh Gohil		RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 10 GUJ CK 0024

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

Bench : Division Bench

Advocate : Nisha M. Thakore, Additional Public Prosecutor, for the Appellant;
Ketan A. Dave, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Heard learned Additional Public Prosecutor Ms. Nisha M. Thakore for the appellant - State and learned Advocate Mr. Ketan A. Dave for the respondents No. 1 - 3.

2. By way of this Appeal, the Appellant - State has felt aggrieved by the judgment and order of acquittal dated 30.04.2005 of the learned Sessions Judge, Bhavnagar, in Sessions Case No. 144/1999 whereby the respondent herein was acquitted of the offences punishable under Section 302 of the Indian Penal Code.

3. The case in brief and the incident which occurred on 11.10.1991 are as under:--

"3.1. At about 10.00 hours in the night, Near Press Road, Small Sadak, Bhavnagar, the respondent - a Police Constable is alleged to have fired on the neck of the deceased Bipinbhai from his revolver and committed murder of the deceased. The complainant - Jayshreeben is the wife of the deceased Bipinbhai. The deceased had lodged a complaint against the present respondent and others for assaulting him. A criminal case No. 4229/87 was registered against the police

officer and due to lodging of this complaint, it is alleged that the respondent herein had an enmity with the deceased. Further, it is alleged that with a view to take revenge on the deceased, the respondent on the ground of maintaining law and order situation, fired on the neck of the deceased. A complaint was lodged with the Police Station, but the same was not recorded. Thereafter, on 01.02.1992, a complaint was lodged with the Court of the learned Chief Judicial Magistrate, Bhavnagar and it was registered as Misc. Criminal Case No. 11/1992. After lodging of this complaint, the learned Chief Judicial Magistrate, Bhavnagar ordered an enquiry under Section 202 of the Code of Criminal Procedure, 1973. At the end of the enquiry, the complaint was lodged against the respondent for the offences punishable under Section 302 of the Indian Penal Code.

3.2. At the time of the trial, the prosecution examined the following witnesses:--

The prosecution also relied upon various documentary evidence, some of them are:--

3.3. At the end of the trial, the learned Sessions Judge, Bhavnagar, in Sessions Case No. 144/1999 passed the order as above."

4. Learned Additional Public Prosecutor Ms. Nisha M. Thakore has submitted that the learned Judge has not properly appreciated the oral as well as documentary evidence on record of the case and thereby committed an error in acquitting the respondent for the offence punishable under Section 302 of the Indian Penal Code. It is also submitted that the learned Judge has failed to appreciate the oral testimony of the wife of the deceased PW1 - Jayshreeben at Exhibit 12, PW2 - Prafulbhai at Exhibit 17, PW3 - Dharmendra at Exhibit 18, PW4 - Hareshbhai at Exhibit 19 in its proper perspective and thereby committed an error in acquitting the respondent. Further, it is submitted that the learned Judge has committed an error in giving undue advantage of self defence to the respondent herein on the ground that the deceased had caused injuries on many persons and hence, the respondent had fired on the deceased. There were many remedies available with the respondent, like calling extra police force. Considering the above, it is submitted that this is a fit case which requires interference of this Court and the judgment and order of the learned Judge be upturned.

5. Learned Advocate for the respondents No. 1-3 Mr. Ketan A. Dave has relied on the various judgments of the Hon'ble Supreme Court which are detailed hereinbelow and has further submitted that looking to the well reasoned order and judgment of the learned Sessions Judge, no interference is called for by this Court.

6. 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 judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

7. 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 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."

8. 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.

9. 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."

10. 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.

11. 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 post-mortem 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.

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."

12. 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 appellant 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,]."

13. 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 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."

14. Similar principle has been laid down by the Apex Court in the case of Shivasharanappa and Others Vs. State of Karnataka, .

15. We have heard learned Advocates for the parties and perused the records of the case, i.e. the complaint and the post mortem note which were the only documents available. The learned Sessions Judge has given cogent and convincing reasons for arriving at the acquittal of the respondent. Hence, this Court is in full agreement with the reasons given and findings recorded by the Trial Court while acquitting the accused and adopting the said reasons as well as the reasons aforesaid, in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court.

16. The Appeal is devoid of merits and stands dismissed. The judgment and order of acquittal dated 30.04.2005 of the learned Sessions Judge, Bhavnagar, in Sessions Case No. 144/1999 stands confirmed. Bail and bail bond, stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.