
(2015) 01 GUJ CK 0028
In the Gujarat High Court
Case No : Criminal Appeal No. 2279 of 2004

State of Gujarat

APPELLANT

Vs

Natwarbhai Bhudabhai Bariya

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 306, 34, 498(A)

Citation : (2015) 01 GUJ CK 0028

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : C.M. Shah, Public Prosecutor, for the Appellant; V.A. Mansuri, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—By way of this appeal, the appellant- State has challenged the judgment and order of the learned Sessions Judge, Kheda at Nadiad, Dated: 21.05.2004, rendered in Sessions Case No. 265 of 2003, whereby, the learned trial Court acquitted the original accused - the Respondent, herein, of the charges under Sections 498(A) and Section 306 of the Indian Penal Code.

2. The brief facts of the case of the prosecution, as set out before the trial Court, are that the deceased-Sangitaben, who was the daughter of the younger brother of the complainant, was married to the accused before three years of the alleged offence. Out of the said wedlock, the deceased also gave birth to a female child, namely Rinku. It is stated in the complaint that the accused used to beat the deceased frequently over the issue of household work and thereby used to cause mental and physical harassment to her. It is, further, stated in the complaint that the deceased used to complaint to her parents that the accused used to say that he did not like her and that he does not want to stay with her and that he wanted to marry someone else. It is also stated in the complaint that the accused had relationship with one Manjula and on account of that the deceased

used to go to her parents complaining about the same, frequently. It appears that just before two months of the alleged offence, being fade-up with the extra-marital affair of the accused and his beating, the deceased went to her parent's house. On 17.08.2003, the complainant got a telephone call from his uncle that the deceased was in pain and when the complainant along with his wife reached Rojva, i.e. the maternal house of the deceased, he was informed by his daughter Kokilaben, who has been married to the brother of the accused, that the deceased had consumed poison on account of the harassment on the part of the accused. Hence, the complainant lodged the complaint in question. On registration of the offence, police carried out the investigation and on finding sufficient evidence, a charge-sheet was filed against the accused.

3. At the time of trial, the prosecution, in support of its case, examined eight witnesses.

4. Apart from that the prosecution also produced as many as 15 documents to strengthen its case, viz. the complaint, P.M. note, panchnama of place of offence etc.

5. After recording the evidence of the witnesses and perusing the material on record, the trial Court passed the impugned order. Hence, the present appeal.

6. Learned APP for the appellant-State, vehemently submitted that the trial Court committed a grave error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective. She, submitted that taking into consideration the evidence of the witnesses examined by the complainant as well as the documentary evidences produced by the prosecution, the trial Court ought to have held the accused guilty of the charges leveled against him. She, therefore, prayed that the appeal be allowed.

7. On the other hand, Mr. Mansuri, learned Advocate for the accused-Respondent, opposed the appeal and submitted that the trial Court acquitted the accused after perusing the entire material on record, and hence, no interference is called for at the hands of this Court and the appeal be dismissed.

8. I have heard learned APP for the appellant-State as well as the learned Advocate for the original accused and perused the material on record with their assistance.

9. The case of the prosecution before the trial was that, since, the accused had an affair with one Manjula, he used to harass the deceased mentally and physically, on account of which the deceased committed suicide. To prove its case, the prosecution examined the doctor, who had performed PM on the body of the deceased as P.W.-1. P.W.-1 in his deposition(Exhibit-8) stated that there was neither any external injury nor any fracture found on the body of the deceased. According to this witness, the cause of death of the deceased was due to consumption of poisonous substance. It is not the case of the prosecution that the deceased was forcefully made to consume poisonous substance, and hence,

the trial Court, rightly held that the deceased committed suicide. Now, to prove the allegations with regard to the mental and physical harassment to the deceased, the prosecution examined the complainant as P.W.-2. P.W.-2, in his deposition (Exhibit-14), stated that the accused used to harass the deceased mentally and physically, saying that he wanted to marry Manjula and on account of that the deceased had come to her parent's house 2-3 times. P.W.-3 is the cousin of the deceased. P.W.-3, in her deposition (Exhibit-16), stated that the accused had affair with one Manjula and on account of that he used to harass the deceased. P.W.-3 stated that on the date of the alleged offence, she had gone to fetch the water and when she returned, she found that the accused, the parents of the accused and his brother, i.e. her own husband, were beating the deceased and blood and foam was coming out from the nostrils of the deceased. According to P.W.-3, the accused and others beat up the deceased with stick and also tried to strangulate her. Now if we examined the evidence of P.W.-1, P.W.-1 in his evidence has clearly stated that, at the time of PM, no external injury mark or fracture found on the body of the deceased. The trial Court, hence, rightly not believed the evidence of P.W.-3. The evidence (Exhibit-21) of the father of the deceased, i.e. P.W.-5, are not of much importance, since, he had gone to supply milk at other village, and then, on receiving the news of the tragedy, had directly gone to Government Dispensary at Virpur. This witness stated that last time when the deceased was sent to her maternal home some writing was done on the Stamp Paper. However, in the said writing it is not mentioned as to why the deceased and the accused used to quarrel frequently. Thus, from the oral as well as documentary evidence, though, it can definitely be said that the deceased died due to consumption of poisonous substance, but, there is no material on record to suggest that it was due to mental and physical harassment, if at all meted out by the accused to the deceased, or it was due to affair of the accused with one Manjula that the deceased took her own life. From the evidence of the relatives of the deceased, no cause is clearly coming out in proximity of the incident, on the basis of which the accused can be held guilty for the charges leveled against him. In above view of the matter, this Court has to look into the matter from the touchstone of the decisions of the Hon'ble Apex Court.

10. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in 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 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 view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below." 11. 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."

12. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/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.

13. 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." 14. Similar principle has been laid down by the Apex Court in 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.

15. 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 strangulated. 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."

16. 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 reappreciate 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, " 17. It is also a settled legal position that in acquittal appeals, 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." 18. In a recent decision, the Hon''ble Apex Court in Shivasharanappa and Others Vs. State of Karnataka, has held as under;

"That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence." 19. Further, in the case of State of Punjab Vs. Madan Mohan Lal Verma, , the Apex Court has held as under;

"The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convincing the accused person." 20. The aforesaid decisions will not permit this Court to take a different view. In this case it is not

proved beyond doubt that the original accused-Respondent, herein, was perpetrator of the death of the deceased. Hence, the present appeal deserves to be dismissed.

21. In the result, this appeal fails and is DISMISSED. The judgment and order of the trial Court, Dated: 21.05.2004, stands CONFIRMED. Bail bonds of the accused, if any, on bail, stands discharged. R and P be sent back to the concerned trial Court, forthwith.