

(2009) 10 GUJ CK 0057
In the Gujarat High Court
Case No : Criminal Appeal No. 698 of 2002

State of Gujarat

APPELLANT

Vs

Nebha Naran Karmur and Others

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324

Citation : (2009) 10 GUJ CK 0057

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

Bench : Division Bench

Advocate : R.C. Kodekar, APP 1, for the Appellant; None for Opponents 1-2 and 4-12, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—This appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 16.04.2002 passed by the learned Sessions Judge, Jamnagar, in Sessions Case No. 144 of 2000, whereby, the respondents-original accused have been acquitted from the offence punishable u/s 147, 148, 302, 326, 324, 447, 504 r/w. Section 149 IPC.

2. The brief facts of the prosecution case are as under:

2.1 The complainant and his brother with their families were residing in the field bearing Survey No. 113 at Village Kalyanpur, whereas, the respondent-original accused No. 3 was residing in the adjacent field bearing Survey No. 112 at Village Kalyanpur. Both the complainant and the respondent-accused for going to village Hajipur, used to go by the cart track. However, after sometime, the accused objected to use the cart track and put the hedge near the cart track. As the complainant removed the said hedge, the accused had kept grudge against the complainant. The accused after forming unlawful assembly attacked the brother of the complainant with deadly weapons like axe, dharia, knife and caused grievous injuries to the complainant and his brother. On seeing the

complainant, and other persons, the accused fled the place of incident. The injured was thereafter removed to the GG Hospital at Jamnagar, where he succumbed to the injuries.

2.2 Therefore a complaint with respect to the aforesaid offence was filed against the respondents with Kalyanpur Police Station, which was registered as C.R. I- No. 83 of 2000. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, as sufficient material was found against the respondents, they were arrested and, ultimately, charge-sheet was filed against them before the competent Court. As the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, Jamnagar and it was numbered as Sessions Case No. 144 of 2000.

2.3 On production of the respondents, charge was framed but as the accused pleaded not guilty to the charge levelled against them, trial was initiated against the respondents. During the course of trial, the prosecution has examined in all twenty three witnesses viz. PW-1 Dr. Shri Harilal Bhagat at Exhibit-33, PW-2 Dr. C.S. Khera at Exhibit-35, PW-3 K.A. Bela at Exhibit-44, PW-4 Rekhaben Abhebbhai at Exhibit-46, PW-5 Janaben Abhabhai at Exhibit-47, PW-6 Rajiben Ramdebhai at Exhibit-49, PW-7 Shamat Kara at Exhibit-51, PW-8 Ashok Maganlal at Exhibit-52, PW-9 Devshi Naranbhai at Exhibit-53, PW-10 Jinabhai Shamat at Exhibit-54, PW-11 Rameshgar D. at Exhibit-55, PW-12 Barkat Ramjanbhai at Exhibit-56, PW-13 Sureshkumar B. at Exhibit-57, PW-14 Dr. C.B. Jani at Exhibit-58, PW-15 H. Glalchand at Exhibit-60, PW-16 Dr. B.D. Patel at Exhibit-65, PW-17 P.C. Makwana at Exhibit-75, PW-18 S.H. Shah at Exhibit-79, PW-19 B. Galabhai at Exhibit-84, PW-20 J.D. Gadhvi at Exhibit-88, PW-21 J.L. Joshi at Exhibit-91, PW-22 Ramgopal Chakravarti at Exhibit-97 and PW-23 K.N. Gohil at Exhibit-102.

2.4 The prosecution had placed reliance upon several documentary evidence, more particularly, the inquest panchnama at Exhibit-37, the panchnama at Exhibit-38, the PM notes at Exhibit-59, the injury certificate at Exhibit-61, the panchnama at Exhibits-65, 66, 103 & 105, and the FIR at Exhibit-89. At the end of trial and after recording the statement of the accused u/s 313 of Cr.P.C., the learned Sessions Judge acquitted the respondents of all the charges leveled against them, by impugned judgment and order dated 16.04.2002.

2.5 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant - State has preferred the present appeal.

3. It was contended by learned APP that the judgment and order of the Court below is against the provisions of law; the Court below has not properly considered the evidence led by the prosecution and that looking to the provisions of law itself, it is established that the prosecution has proved the ingredients of the offence against the present respondent. Learned APP has also taken this

Court through the oral as well as the documentary evidence available on record.

4. 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 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.

4.1 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 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.

4.2 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.

4.3 Even in a recent decision in the case of *State of Goa v. Sanjay Thakran and Anr.* reported in (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.

4.4 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 S.C.W. 5553 and in *Girja Prasad (Dead) by LRs v. State of M.P.* reported in air 2007 S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

4.5 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 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.

4.6 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.

5. 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 by the trial Court and also considered the submissions made by learned Advocate for the appellant. The trial Court has recorded a finding that the prosecution has failed to establish that the accused had formed unlawful assembly. Apart from that the medical evidence does not support the case of the prosecution, inasmuch the prosecution has failed to prove that the accused had a motive to cause death of the deceased. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

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

6. In the above view of the matter, we are of the considered opinion that the trial Court was completely justified in acquitting the respondent of the charges leveled against him. 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. 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.

7. The appeal is, accordingly, dismissed. Bail bonds, if any, shall stand cancelled. R & P be sent back to the trial Court concerned forthwith.