

(2015) 10 GUJ CK 0115
In the Gujarat High Court
Case No : Criminal Appeal No. 528 of 2006

State of Gujarat	Vs	APPELLANT
Niranjan Harkishanbhai Patel and Others		RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1)(3)
Penal Code, 1860 (IPC) — Section 114, 302, 307, 34, 452

Citation : (2015) 10 GUJ CK 0115

Hon'ble Judges : K.S. Jhaveri, J;G.B. Shah, J

Bench : Division Bench

Advocate : L.R. Pujari, A.P.P, for the Appellant; B.P. Munshi and N.L. Patel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J—The present appeal, under section 378(1)(3) of the Code of Criminal Procedure, 1973 (for brevity, "the Code") is directed against the judgment and order dated 17/12/2005 passed by the learned Presiding Officer, 8th Fast Track Court, Surat in Sessions Case No. 124 of 1998, whereby all the accused have been acquitted of the charges levelled against them for the offence punishable under Sections 452, 307, 302, 504 r/w. 114 of the Indian Penal Code, 1860 (for brevity, "the IPC").

2. The brief facts of the prosecution case are that on 10/03/1998 at about 19:00 hours, when complaint - Manjulaben and witness Lalitaben were there at home, Lalitaben asked the accused to get the other door installed for commutation as there was a common access for the houses of the complainant and the accused, due to which, the accused got excited and abused the complainant and Lalitaben and thereafter, in abetment of each other, set both, the complainant as well as Lalitaben ablaze by pouring kerosene due to which, they sustained sever burn injuries and ultimately, the complaint, after some days and Lalitaben after one day, succumbed to the injuries. Accordingly, the accused committed the alleged

offence for which, a complaint came to be lodged against them.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Sessions Court, Surat.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 In order to bring home the charge against the respondents - original accused, the prosecution has examined as many as 17 witnesses and also produced several documentary evidence.

2.4 At the end of the trial and after recording the Further Statements of the accused under Section 313 of Code and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondents of all the charges levelled against them by impugned judgment and order.

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

3. Mr. L.R. Pujari, learned Additional Public Prosecutor appearing for the appellant - State has submitted that the trial Court committed an error in releasing the respondents - accused. It was contended by Mr. Pujari, learned Additional Public Prosecutor, that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the offence against the present respondents. The learned Additional Public Prosecutor has also taken this Court through the oral as well as the entire documentary evidence and submitted that, in view of Dying Declarations recording by the Executive Magistrate - PW-14 - Kantilal Ramubhai Patel, whose deposition is recorded at Exh. 41, though the prosecution has proved the case against the accused beyond reasonable doubt and the prosecution witnesses have supported the case of the prosecution in clear terms, the learned Sessions Judge has committed error in acquitting the accused and accordingly, he requested that present appeal deserves to be allowed in the interest of justice.

4. The matter was earlier fixed on 28/09/2015 and following order was passed:

"At the request of learned advocate Mr. B.P. Munshi for the respondents, the matter be adjourned to 8th October, 2015.

Learned advocate Mr. B.P. Munshi states that he has no instructions to appear for the respondents accused; however, we are of the view that once the Vakalatnama is filed by learned advocate Mr. B.P. Munshi, he is bound to appear

before the Court under the Advocates Act."

4.1 In spite of above, today Mr. Munshi, learned advocate for the accused, is not present and has filed Sick Note. The matter is of 2006 and peremptorily fixed today and hence, we heard Mr. Pujari, learned Additional Public Prosecutor.

5. 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 Hon"ble Apex Court in catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6 CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp : (2006) AIRSCW 4652 : (2006) 5 Supreme 547 , the Hon"ble 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 Hon"ble 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."

5.1 Further, in the case of Chandrappa and Others Vs. State of Karnataka, (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630 the Hon"ble Apex Court has 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."

5.2 Thus, it is a settled principle that while exercising appellate powers, 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.

5.3 Even in a recent decision of the Hon'ble Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , 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 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."

5.4 Similar principle has been laid down by the Hon'ble Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.5 In the case of Lunaram Vs. Bhupat Singh and Others, (2009) CriLJ 1899 : (2009) 3 JT 155 : (2009) 3 SCALE 363 : (2009) 3 SCC 749 : (2009) 3 SCR 706 :

(2010) AIRSCW 298 : (2009) 7 Supreme 103 , the Hon"ble 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 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 a 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."

5.6 Even in a recent decision of the Hon"ble Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1 Supreme 88 , the Hon"ble 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 levelled 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 Vs. Sohan Lal and Others, (2004) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480 Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404]"

5.7 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 Hon"ble Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981) 2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 wherein it is held as under:

"...This court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, AIR 1967 SC 1124 : (1967) 1 SCR 93 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."

5.8 Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

6. We have examined the matter carefully and gone through the evidence on record. We have re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon"ble Apex Court. We find that the trial Court while considering the evidence on record, in paras 11, 12, 13 and 14 of the impugned judgment and order, has very elaborately discussed the evidence adduced before it and given cogent reasons. The trial Court has mainly believed that both the Dying Declarations (DDs) are verbatim and stereotype, which is not possible. Besides, there appears nothing on record that while recording the DDs, the deceased were conscious enough to get their DDs recorded. Moreover, it has come on record that while the Magistrate had recorded the DDs, no doctor was available there so as to suggest that the victims were conscious enough to give their DDs. Moreover, as per the deposition of PW-15 - Dr. Kiran Ratilal Pensuriya, Exh. 48, it was the case of 100% burn. Further, the son of complainant - Manjulaben has stated that it was a case of accident. Thus, there appears material omissions and lapses in the prosecution case. Further, the learned Additional Public Prosecutor is not in a position to show any evidence to take a contrary view in the matter or 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 the material evidence on record. In that view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

7. We are, therefore, of the considered opinion that the findings recorded by the trial Court in acquitting the accused of the charge levelled against them are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are in complete agreement with the reasonings given and the findings arrived at by the trial Court. No interference is warranted with the judgment and order of the trial Court.

8. In view of the aforesaid discussion, present appeal fails and is dismissed

accordingly. The impugned judgment and order dated 17/12/2005 passed by the learned Presiding Officer, 8th Fast Track Court, Surat in Sessions Case No. 124 of 1998 is confirmed. Bail bonds, if any, shall stand cancelled. Registry to return the R & P, if any, to the trial Court forthwith.