
(2009) 03 GUJ CK 0050
In the Gujarat High Court
Case No : Criminal Appeal No. 778 of 1992

State of Gujarat

APPELLANT

Vs

Nirmalaben Ramlal Thakore and Others

RESPONDENT

Date of Decision : 09-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 378, 379
Penal Code, 1860 (IPC) — Section 114, 452, 504, 506

Citation : (2009) 03 GUJ CK 0050

Hon'ble Judges : J.R. Vora, J

Bench : Single Bench

Judgement

J.R. Vora, J.—The instant appeal has been preferred by the State u/s 378 of the Criminal Procedure Code against the judgment and order rendered by the learned Judicial Magistrate, First Class at Valsad on 12th May, 1992 in Criminal Case No. 2599 of 1985 wherein the present respondents being accused of the said Criminal Case, came to be acquitted by the Trial Court for the offences punishable under Sections 452, 504, 506 to r/w. Section 114 of the Indian Penal Code.

2. As per the brief facts of the case, the complainant of the case Jagdinshchandra Ramjilal Jain preferred a private complaint in the Court of learned Judicial Magistrate, First Class at Valsad on 24th June, 1985 and on 29th June, 1985. The learned Magistrate forwarded the said complaint for police investigation u/s 156(3) of the Criminal Procedure Code.

3. As per the facts of the complaint, complainant Jagdinshchandra was residing in room No. 3 Dr. Navnit Chal, Station Road, Valsad and at Mumbai. The complainant had a stall at Railway Station for tea and snack. All the respondents were staying in room No. 1 in the same Chal at Valsad. Room Nos. 1 and 3 of Dr. Navnit Chal were obtained by the father of the complainant from the owner of the premises. Father of the complainant was storing the goods of business in room No. 1 and in room No. 3, father of the complainant as well as his family

members were staying. The rent of both the rooms were paid by the complainant and before that his father. After the death of father of the complainant, husband of respondent No. 1 and father of respondent Nos. 2, 3 and 4 Ramlal Motilal, who was Manager of the stall of the complainant, had been permitted to stay in room No. 1 and all the accused were staying with Ramlal Motilal in the said room. Ramlal Motilal had since died, at the time of the complaint, in room No. 1 all the respondents were staying. Owner of Dr. Navnit Chal, Dr. Ramesh etc. had filed a Civil Suit against the complainant and his family members and upon the Manager, for possession of room No. 1 being Regular Civil Suit No. 84 of 1982. In Regular Civil Suit No. 84 of 1982, deceased Ramlal Motilal was adjudicated as sub-tenant and in other suit i.e. Regular Civil Suit No. 85 of 1982, decree was passed against the complainant and others for possession. Against that order, Regular Civil Appeal No. 21 of 1983 was preferred in the District Court and accordingly, as per the say of the complainant, complainant was the occupier of the said room No. 3 and frequently, he visits room No. 3 from Mumbai and stays there and also pays electricity bill etc. On 16th June, 1985, the complainant came to Valsad and stayed in room No. 3, after visiting his stall at Railway Station. On next day, he locked the room No. 3 and went to Mumbai. On 21st June, 1985, the complainant was informed that the respondents had trespassed in room No. 3, after breaking the lock of the complainant. On 22nd June, 1985, complainant visited Valsad and noticed that in fact, respondents had committed criminal trespass in room No. 3. When respondent Nos. 1 and 2 were tried to persuade by the complainant, complainant met with beating. The household things of the complainant also were misused and abused by the respondents and on persuading, the complainant was pushed and was given abuses.

4. In pursuance of the complainant, a charge-sheet came to be filed in the Court of learned Judicial Magistrate, First Class, Valsad for the offences punishable under Sections 452, 504, 506 and 114 of the Indian Penal Code. Vide Ex.4, on 20th August, 1985, learned Trial Judge framed the charge to which each of the respondents pleaded not guilty and hence, the prosecution examined P.W.1 complainant Jagdinshchandra Ramjilal Jain, at Ex.11, P.W.2 Ravjibhai Amirbhai at Ex.65, P.W.3 Rameshbhai Navinbhai Desai at Ex.66, P.W.4 Ranekdrakumar Lakhimal at Ex.69, P.W.5 Gokulbhai Motiram at Ex.70, P.W.6 Babalpraad Dayaprasad at Ex.72 and P.W.7 Jayrajbhai Jivrajbhai Desai, Investigating Officer and P.S.I. at Ex.77. Charge was amended vide Ex.86 and was read over to the accused and vide Ex.89 charge was amended. The witnesses were recalled and cross-examined.

5. After the prosecution evidence was over, learned Magistrate brought incriminating circumstances to the notice of the accused respondents and their defence was that the complaint was false and that they were staying in room Nos. 1 and 3 since long. Thereafter, considering the documentary as well as oral evidence, learned Trial Judge came to the above conclusion and hence, this appeal against the acquittal.

6. Learned APP Mr. L.R.Pujari for the appellant - State was heard in detail, while notices are served upon the respondents. It was submitted by learned APP Mr. L.R.Pujari that the learned Trial Judge came to the conclusion that possession of the premises was of the complainant, but erred in coming to the conclusion that the prosecution failed to prove that the accused committed criminal trespass with intent to annoy, intimidate or insult the complainant. It is also submitted that the complainant has supported the case of the prosecution and it is also proved that the accused insulted and abused to the complainant. The Trial Court did not consider the evidence of complainant in its true perspective. In this view of the matter, it is submitted that this appeal is required to be allowed and accused are required to be convicted for the offences with which they are charged.

7. Learned Trial Judge came to the conclusion in para-63 that from Exs.44 and 46 which were the certified copies of the judgments of Regular Civil Suit No. 5 of 1972 and Regular Civil Appeal No. 21 of 1983, it was though proved that the complainant had, in fact, was in possession of the said premises, but in those cases, the question was whether Gokulbhai Motiram was sub-tenant or not and ultimately, it came to conclusion that complainant was in possession of room No. 3, but that possession was on record. Considering the evidence on record, therefore, the learned Judge came to the conclusion that before alleged crime committed, the complainant was in possession of the premises. Even then, the prosecution failed to prove that with criminal intention the accused committed criminal trespass after breaking the lock opened as stated by the complainant nor it could be proved that the complainant was pushed and abused by the accused. Except complaint, there is no such evidence. None from the neighbourhood has been examined. P.W.2 Ravjibhai Amirbhai did not say anything about this; P.W.3 Rameshbhai Navnitbhai Desai is the owner and he also did not say anything about criminal trespass or the incident, while P.W.4 Rajendrakumar Lakhimal did not support the incident, that is also the case with P.W.5. P.W.6 Babalprasad Gayaprasad was the panch of panchnama of scene of offence and he stated to the extent that the goods of the complainant was shown by the complainant and the goods of the accused was shown by the accused. P.W.7 - Jayrajbhai Jivrajbhai Desai is the Investigating Officer and P.S.I.

8. In view of the insufficient evidence led by the prosecution, this Court is of the considered opinion that no illegality is committed by the Trial Court in acquitting the accused of the offences with which they are charged and this Court is in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the Trial Court, as, in view of this Court, no other conclusion is possible except the one reached by the Trial Court.

9. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi Vs. State

of Gujarat, In the instant case, the learned APP has not been able to point out to this Court as to how the findings recorded by the learned Trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

10. In the case of Ram Kumar Vs. State of Haryana, Supreme Court has held as under:

The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.

11. It may be noted that this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned trial Judge. As this Court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for acquittal and in my view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial Judge and this is so, in view of the decisions rendered by the Hon''ble Supreme Court in the case of Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, and State of Karnataka Vs. Hemareddy Alias Vemareddy and Another,

12. From the above, it is clear that there is no reason to take different view than the view taken by the Trial Court of acquitting the accused as the view taken by the Trial Court is possible view could be taken from the evidence recorded during the trial.

13. In this view of the matter, the appeal stands dismissed.