
(2009) 04 GUJ CK 0037
In the Gujarat High Court

Case No : Criminal Appeal No. 1251 of 2008, Criminal Revision Application No. 191 of 2008 and Criminal Miscellaneous Application No. 2854 of 2008 in Criminal Revision Application No. 191 of 2008

State of Gujarat

APPELLANT

Vs

Patel Bhagabhai Trikambhai

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Citation : (2009) 04 GUJ CK 0037

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

Bench : Division Bench

Advocate : H.L. Jani, Addl Public Prosecutor No. 1, for the Appellant; None, for the Respondent

Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 29.12.2007 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 74 of 2007, whereby the accused has been acquitted from the charges leveled against him.

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

2.1 On 30.04.2007, at about 8.00 pm, while the complainant was at his home, his son received a call and came to know therefrom that his uncle received injuries on head and is lying at the outskirts of the field of one Shri Naranbhai Patel. The complainant and his son immediately went to the said place and they saw the dead body of the victim. They also found a bamboo stick, charging light, slippers of the deceased and some blood at the scene of offence. The complainant and his son on investigating further came to know that the victim on the previous night at about 10.00pm, had gone to Limbudivala field and had not returned since.

2.2 Therefore a complaint with respect to the aforesaid offence was filed with Vijapur Police Station which was registered as C.R. No. I- 100/2007. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, charge-sheet was filed against him. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.3 The trial was initiated against the respondent and during the course of trial the prosecution examined 16 witnesses as oral evidences and also examined 54 documents as documentary evidences. At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondent of all the charges leveled against him by judgement and order dated 29.12.2007.

2.4 Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the appellant Sate has preferred the present appeal.

3. It was contended by Mr. Jani, learned APP that the judgement 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 evidence against the present respondent. Learned APP has also taken this Court through the oral as well as the entire documentary evidence.

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 judgement 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.

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, reappraise 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.

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 of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. Reported in (2007)3 SCC 75, 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 judgement 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 SCW 5553 and in Girja Prasad (Dead) by LRs v. state of MP reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

4.3 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement or to give fresh reasons, 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.

4.5 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 judgement and order passed by the trial court as well as the R & P called for from 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.

5.1 The trial court has gone through the evidence in detail and has observed that the entire case of the prosecution is based on circumstantial evidence. The prosecution has miserably failed to prove that any of the witnesses has seen the accused and the deceased together. In other words, there is no material evidence on record either by way of oral or documentary evidence to establish the role of the accused in the offence alleged against him.

5.2 On an overall appreciation of the evidence, it is borne out that the dead body of the victim was found on a public road. There is also no evidence to establish that the accused had been to the scene of offence on that very day. There is also no direct evidence on record to show the nexus between the alleged offence and the accused.

5.3 As a result of perusal of records, it is also borne out that the panchnama was prepared prior to the arrest and there are also certain corrections in the said panchnama. In that view of the matter, the trial court has rightly not believed the case of the prosecution and thereby acquitted the present accused. Moreover, the medical report in the form of Serological report does not establish the use of the alleged weapon in the offence.

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. Hence the appeal is hereby dismissed.

7. The judgement and order dated 29.12.2007 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 74 of 2007 acquitting the respondent-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P to be sent back forthwith.

8. The 30 days delay in filing the criminal revision application is hereby condoned and Civil Application No. 2854 of 2008 is allowed thereby. Civil Application stands disposed of accordingly.

9. In view of the order passed in the aforesaid Criminal Appeal, no order is required to be passed in revision application. Criminal Revision Application No. 191 of 2008 stands disposed of accordingly.