
(2022) 09 GUJ CK 0095
In the Gujarat High Court
Case No : R/Criminal Appeal No. 744 Of 1996

State Of Gujarat	Vs	APPELLANT
Popatji Valji Thakore		RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 313, 378
Indian Penal Code, 1860 — Section 34, 302, 323, 324, 352
Bombay Police Act, 1951 — Section 135

Citation : (2022) 09 GUJ CK 0095

Hon'ble Judges : S.H.Vora, J;Rajendra M. Sareen, J

Bench : Division Bench

Advocate : CM Shah, Shivam H Choksh

Final Decision : Dismissed

Judgement

Rajendra M. Sareen, J

1. Present Criminal Appeal has been preferred by the appellant – State of Gujarat under Section 378 of the Criminal Procedure Code, 1973 against the judgment and order dated 30/05/1996 passed by the learned Additional Sessions Judge, Ahmedabad Rural in Sessions Case No.183 of 1995 acquitting the respondent Nos.1 to 4 – original accused Nos.1 to 4 from the offence punishable under sections 302, 323, 324, 352 and 34 of Indian Penal Code and under section 135 of Bombay Police Act.

It is pertinent to note that at the time of admission of the present appeal, the Co-ordinate Bench of this Court dismissed the appeal qua respondent Nos.2 to 4 and admitted the present appeal qua respondent No.1 only, vide order dated 27/11/1996. Hence, we are concerned with the respondent No.1 – original accused No.1 only in the present appeal.

2. Facts of the case, in brief, are as under:-

The complainant Manuji Valaji Thakore lodged the complaint alleging that on the

day of the incident, he along with his elder brother Dolaji and Sonaji had gone in the agricultural field of one Labhshankar Trivedi for agricultural labour work and Dolaji had gone from the road of the agricultural field and Sonaji Rajibhai Pandya had gone from the road going towards the well. They had to go to the field of Labhshankar Trivedi. It is the case of the prosecution that Sonaji plucked the proceeds from the field of Raju Pandya and hence there was quarrel with the accused No.1 and he had inflicted fist blow on the face of Popatji and Sita had inflicted stick blow on the head. Sonaji had informed the complainant Manuji about the incident and hence the complainant Manuji and deceased Dolaji had gone to scold the accused persons and at that time, sister of the complainant – Amratben and sister-in-law Lilaben had come and at that time, Raysingji came with Danti in his hand and Popatji Valaji had come with knife and Popatji Valji inflicted knife blow to his deceased brother Dolaji on his right ribs and Sita had inflicted a stick blow to Sonaji and Champaben wife of Raysangji bite the Lilaben on her right hand. It is alleged that Dolaji died while he was taken to the hospital.

Thus, it is the case against the accused that on 14/06/1995 at about 8 O'clock in the sim of village Randheja, all the accused keeping vengeance of earlier dispute and to achieve their common intention, beaten the deceased and accused No.1 had inflicted a blow of Gupti on the right ribs of the deceased Dolaji. Hence the complainant lodged the complaint before the Pethapur Police Station for the aforesaid offences.

3. On the basis of the said complaint, investigation was started, statement of witnesses were recorded, inquest panchnama was carried out, panchnama of scene of offence was carried out, muddamal weapon was recovered, muddamal weapon was sent to the Forensic Science Laboratory, postmortem report was obtained and after through investigation, as there was sufficient evidence against the the accused, Chargesheet was filed before the learned Judicial Magistrate, First Class, Gandhinagar. As the offence committed by the accused persons was exclusively triable by the Court of Sessions as per the provisions of Section 209 of Criminal Procedure Code, the learned Judge was pleased to commit the case to the Court of Sessions and the case was transferred and placed for trial in the court of learned Additional Sessions Judge, which has been numbered as Sessions Case No.183 of 1995. Thereafter, Charge was framed against the accused for the offence punishable under sections 302, 323, 324, 352 and 34 of Indian Penal Code and under section 135 of Bombay Police Act. The accused persons pleaded not guilty to the Charges and claimed to be tried. The prosecution, therefore, laid evidence, oral as well as documentary. After the evidence was over, Further Statement of the respondents – accused were recorded under section 313 of the Code of Criminal Procedure and arguments were heard. At the conclusion of the trial, the learned Additional Sessions Judge was pleased to acquit the all the accused for the charges levelled against them. Hence, the appellant - State of Gujarat has preferred the the present Criminal Appeal challenging the judgement and order of acquittal.

As stated above, present appeal was dismissed qua respondent Nos.2 to 4 and present appeal is admitted qua respondent No.1, at the time of admission. Hence, we are required to consider the present appeal qua respondent No.1 only.

4. Heard Ms.C.M. Shah, learned APP for the State and Mr.Shivam H. Chokshi, learned advocate for the respondent No.1 – original accused No.1.

5. Ms.C.M. Shah, learned APP for the appellant State has vehemently argued that the Sessions Judge has wrongly acquitted the respondent No.1 from the charge for which he was charged and the acquittal order is against the law and evidence on record. There is no proper appreciation of evidence done by the trial court. She has further argued that the Sessions Judge has committed a grave error in not believing the deposition of the witnesses examined by the prosecution and evidence adduced by the prosecution. It is further argued that the prosecution has proved that the respondent No.1 has committed offence under sections 302, 323, 324, 352 and 34 of Indian Penal Code and under section 135 of Bombay Police Act. It is further submitted that Sessions Judge has acquitted the respondent No.1 merely on some minor contradictions and omissions in the evidence of the prosecution witnesses. It is further argued that the Sessions Judge has erred in not believing the evidence of the investigating officer and complainant who had no reason to implicate the respondent No.1 falsely in the case. It is further argued that the offence punishable under sections 302, 323, 324, 352 and 34 of Indian Penal Code and under section 135 of Bombay Police Act, is made out, however, the same is not believed by the Sessions Judge. It is further argued that though the prosecution witnesses have supported the case of the prosecution, the Sessions Judge erroneously not believed their evidence and acquitted the respondent No.1 – original accused No.1. It is further argued that the Sessions Court has erroneously held that the prosecution has failed to prove the case beyond reasonable doubt and has requested to allow the present appeal.

6. Mr.Shivam Chokshi, learned advocate for the respondent No.1 has submitted that there is hardly any substance in the submissions of learned APP. There is no admissible evidence on record connecting the respondent No.1 with the commission of the offence. There are material contradictions and omissions in the evidence of the prosecution witnesses. The prosecution has not proved the case beyond reasonable doubt. No error or illegality has been committed by the trial court in acquitting the original respondent No.3. He has requested to dismiss the present appeal.

7. Heard the learned advocates for the respective parties at length and perused the impugned judgement and order of acquittal passed by the trial court as well as the entire record and proceedings.

8. It would be worthwhile to refer to the scope in Acquittal Appeals. It is well settled by a catena of decisions that an appellate Court has full Power to review, re-appreciate and consider the Evidence upon which the Order of Acquittal is founded. However, the Appellate Court must bear in mind that in case of

Acquittal, there is prejudice 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 reaffirmed and strengthened by the trial Court.

9. We have gone through the entire record and proceedings. We have re-appreciated the evidence on record. On re-appreciation of the evidence, it appears that the prosecution has examined eye witnesses namely complainant Manuji Valaji Ex.18, Sonaji Valaji Ex.21, Amratben Valaji Ex.23 and Leelaben Dolaji at Ex.32.

10. Leelaben Dolaji - Ex.32, who happens to be the widow of the deceased Dolaji has deposed in her examination-in-chief itself that her husband had quarreled with some unknown persons wherein her husband had sustained injuries. She denied that the accused had caused injury to her husband. She specifically denied that accused No.1 – Popatji Valaji – respondent No.1 herein had inflicted a Gupti blow to her husband. She was declared as hostile witness. In cross examination, she has stated that at the time of incident she was alone at her house and her Brothers-in-law Manji and Sonaji and Sister-in-law Amratben had gone for labour work in the field of Labhshankar Trivedi. She has further admitted that some unknown persons were beating her husband and the accused had rescued him and they had taken her husband to the hospital. Thus, this main witness widow of the deceased, has not supported the case of the prosecution.

11. If the evidence of eye witnesses namely complainant Manuji Valaji Ex.18, Sonaji Valaji Ex.21 and Amratben Valaji Ex.23 is considered, there is reason to believe the evidence of Leelaben Dolaji – Ex.32 - widow of the deceased Dolaji, that Leelaben was alone at home at the time of incident.

12. The complainant has stated in his complaint that the accused No.1 had caused the fatal injury on the right side with knife. However, he has stated in his deposition Ex.18 that the accused No.1 had caused injury to his deceased brother with Gupti. Thus, there is major contradiction so far as the weapon is concerned. Both the weapons are quite different. The incident had happened in broad day light, therefore, there is no reason not to identify the weapon. This aspect is suggestive of the fact that he was not present at the time of incident and he had not witnessed the incident and he is not an eye witness. Furthermore, even he has also admitted in his cross-examination that he has stated in his complaint Ex.40 that Popatji had beaten him with fist blow but in evidence, the complainant stated that Popatji had not beaten him. From the aforesaid two aspects, it is clear that this witness does not know anything about the incident. His presence at the time of incident is not proved. His evidence is not trustworthy and the evidence of this witness cannot be relied upon and rightly not relied by the learned trial judge.

13. Even the presence of Amratben Valjibhai Ex.23 at the place of incident is also doubtful. As per the case of the prosecution accused Sita had inflicted stick blow to witness Sonaji Valaji and accused Champaben has beaten the witness Leelaben, however, this witness in her deposition has denied that other witness has sustained any injury. Had the said witness was present at the time of incident, she could have seen the injury caused to the deceased. She is not stating anything about the injury caused to the deceased. As per her evidence, no injury was caused to any other person except Sonaji and Lilaben. Thus, this witness is also not trustworthy.

14. The prosecution has produced list of document vide Ex.9 which contains Ex.42 which is injury certificate of the accused No.1 and Ex.41 which is injury certificate of the accused No.3. As mentioned in both the certificates, the injuries were simple and recent and the same were apparent. There is no explanation of the said injuries from the prosecution. Even it is not the case of the prosecution that the accused had caused injury by himself. Even there are different version on the aspect that the complainant side had gone to the accused for scolding.

15. Though the incident happened at the place where there are adjoining field, no independent witness has been examined.

16. Sonaji Valaji is examined at Ex.21 but witness Leelaben – widow of the deceased has specifically stated that in her evidence Ex.32 that she was alone at the time of incident. Hence, the evidence of Sonaji is doubtful. Thus, there are two set of facts coming on record.

17. Considering the entire evidence on record oral as well as documentary, we are of the opinion that the prosecution has failed to prove the case against the accused by leading cogent and convincing evidence. The judgement delivered by the Sessions Judge is sound on the aspect of law and facts. The evidence brought on record by the prosecution before the trial court has been rightly appreciated by the trial court. No apparent error on the face of the record is found from the judgement. The judgement does not suffer any material defect or cannot be said to be contrary to the evidence recorded.

18. It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons. A beneficial reference of the decision of the Supreme Court in the case of State of Rajasthan versus Ram Niwas reported in (2010) 15 SCC 463 be made in this regard. In the said case, it has been observed as under:-

“6. This Court has held in Kalyan v. State of U.P., (2001) 9 SCC 632 :

“8. The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as

envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial court. Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. In *Kali Ram V. State of Himachal Pradesh*, (1973) 2 SCC 808, this Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court further observed:

"27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:

"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of *Shivaji Sahebrao*, (1973) 2 SCC 793, as is clear from the following observations:

"Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure

considerations."

"9. The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact; (ii) the noninterference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court."

8. In *Arulvelu and another versus State* reported in (2009) 10 Supreme Court Cases 206, the Supreme Court after discussing the earlier judgments, observed in para No. 36 as under:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

19. As observed by the Hon'ble Supreme Court in the case of *Rajesh Singh & Others vs. State of Uttar Pradesh* reported in (2011) 11 SCC 444 and in the case of *Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh* reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

20. Scope of appeal against acquittal is well laid down in case of *Chandrappa and ors. vs. State of Karnataka* reported in (2007) 4 SCC 415, it was observed:

"42. From the above decisions, in our considered view, the following general principles regarding powers of 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 emphasize 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 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."

21. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

22. In view of the above and for the reasons stated above, present Criminal Appeal deserve to be dismissed and is accordingly dismissed qua respondent No.1.