
(2009) 10 GUJ CK 0016
In the Gujarat High Court
Case No : Criminal Appeal No. 921 of 1990

State of Gujarat	Vs	APPELLANT
Prabhudas Haribhai Patel and Others		RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Citation : (2009) 10 GUJ CK 0016

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

Bench : Division Bench

Advocate : M.L. Shah, app, for the Appellant; A.D. Shah, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

Org. Accused No. 5 has expired during the pendency of this appeal. In support thereof, his Death Certificate has been produced on record. In view of the same, this appeal qua him stands abated.

1. This appeal, u/s 378 of the Code of Criminal Procedure, 1973 is directed against the judgment and order dated 20.07.1990 passed by the learned Addl. Sessions Judge, Court No. 5, Ahmedabad in Sessions Case No. 07/1990, whereby, the respondents have been acquitted of all the charges leveled against them.

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

2.1 Accused No. 1 was running a business in the name and style of "Ganesh Engineering Works" in Mathur Master's Estate area of Ahmedabad City. There was some dispute between accused No. 1 and Jagdish @ Jakshi Gordhanbhai Panchal with regard to a piece of land situated adjacent to the place of business of accused No. 1. Accused No. 2 is the maternal uncle of accused No. 1 and accused Nos. 3 & 4 are his brother-in-law. Accused No. 5 (deceased) was an

employee of accused No. 1.

2.2 On 29.09.1989 while said Jagdish was passing near Ganesh Engineering Works in a motor-cycle, along with a pillion rider, he was intercepted by the accused persons, who were armed with deadly weapons like swords, spears, iron-pipes, etc. Said Jagdish immediately got down off his motor-cycle and thereafter, tried to run away from the said place. However, the accused followed him and caught hold of him at a certain distance. Thereafter, they assaulted him and subsequently, poured acid on him and then fled the scene of offence. Later, a scooterist, who was passing through the nearby area, took the victim to the Hospital. However, during the course of treatment, the victim succumbed to the injuries.

2.2 A complaint with respect to the aforesaid offence was filed against the respondents. Necessary investigation was carried out and statements of several witnesses were recorded. Ultimately, charge-sheet was filed against them before the concerned Magistrate Court. However, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court and trial was initiated.

2.3 To prove the case against the respondents, the prosecution had examined nineteen witnesses, viz. PW-1 Dr. M.H. Shah at Ex.32, PW-2 Dr. Y.B. Deshmukh at Ex.36, PW-3 Govindlal Natvarlal at Ex.39, PW-4 Ramanbhai Bhalchandra at Ex.42, PW-5 Dr. R.B. Toprant at Ex.46, PW-6 Jesing Jivanbhai at Ex.48, PW-7 Natvarlal N. Parmar at Ex.49, PW-8 Gandabhai Khodidas at Ex.50, PW-9 Champaben Jagdish at Ex.51, PW-10 Dr. N.B. Gohel at Ex.52, PW-11 Dr. J.F. Rana at Ex.53, PW-12 Rajendrakumar Nathubhai at Ex.55, PW-13 Natvarbhai Chhotabhai at Ex.56, PW-14 Laxman Bhikhubhai at Ex.58, PW-15 Jehaji Dahyaji at Ex.59, PW-16 Dipusinh Jesing at Ex.61, PW-17 Bharatsinh M. Vaghela at Ex.65, PW-18 K.C. Bawa at Ex.69 and PW-19 Dr. Dharmila G. Shah at Ex.67.

2.4 The prosecution had also placed reliance upon several documentary evidence, more particularly, the FSL Reports at Exs. 21 to 24, the complaint at Ex.66, the discovery panchnamas at Exs. 13 to 16, the PM Report at Ex.38, the dying declaration at Ex.41 and the medical certificate at Ex.68.

2.5 At the end of trial, the Court below acquitted the respondents of all the charges leveled against them, by impugned judgment and order. 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, it is established that the prosecution has proved the ingredients of the offence against the respondents beyond doubt. Learned APP has taken us through the oral as well as the documentary evidence available on record.

4. Learned Advocate for the respondent-accused, has submitted that the prosecution had failed to establish the guilt of the respondents beyond doubt. He has submitted that on close scrutiny of the evidence of the witnesses, it is evident that the same do not support the case of the prosecution. Hence, the Court below was completely justified in acquitting the respondents and no interference is called for from this Court in this appeal.

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 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.

5.1 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 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 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

6. 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 before the Court below and also considered the submissions made by learned Counsel for the respective parties. After appreciating the evidence on record, the Court below found the dying declarations to be unreliable and non-trustworthy. In fact, the mere recording of the same appeared to be doubtful in view of the medical evidence on record which showed that the deceased was not in a proper condition to give such statements. Apart from that the injuries sustained by the deceased does not appear to have been caused by muddamal weapon - article No. 17. So far as the oral evidence on record is concerned, the same also does not fully support the prosecution case. There were serious discrepancies in the evidence led by PW-8 Natvarlal Naranbhai at Ex.49, whom the prosecution claimed to be eye-witness to the alleged incident. Thus, from the evidence on record, it is established that the prosecution has not proved its case beyond reasonable doubt.

7. Learned APP 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.

8. In above view of the matter, we are of the considered opinion that the Court below was completely justified in acquitting the respondents of all the charges. We find that the findings recorded by the Court below 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.

9. The appeal is, accordingly, dismissed. Bail bonds, if any, shall stand cancelled.