

(2015) 11 GUJ CK 0007
In the Gujarat High Court
Case No : Criminal Appeal No. 515 of 2008

State of Gujarat

APPELLANT

Vs

Rajesh Shantilal Shah and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1)(3)
Penal Code, 1860 (IPC) — Section 114, 294(b), 302, 323, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2015) 11 GUJ CK 0007

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : C.M. Shah, APP, for the Appellant; P.P. Majmudar, Advocate, 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 25/05/2007 passed by the learned Judge, City Sessions Court No. 5, Ahmedabad in Atrocity Criminal Case No. 13 of 2005, whereby the respondents herein - original accused have been acquitted of the charges levelled against them for the offence punishable under Sections 323 , 394 , 294(b) and 114 of the Indian Penal Code, 1860 (for brevity, "the IPC"), Section 135 of the Bombay Police Act and Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for brevity, "the Atrocities Act").

2. Brief facts of the prosecution case are that on 21/03/2005 at about 21:30 hours, the respondents herein - original accused, in aid and abetment of each other, came in auto-rickshaw in the gulch of Ashok Mill near the gate of Arun Mill where complainant - Naranbhai Punjabhai Rathod was going by walk and stopped

the complainant; they abused him on the count as to why he had filed case of cheque return against original accused No. 1 and beaten him and also gave him filthy abuses related to his castes. The original accused No. 2 also caught hold of the injured - complainant and looted a gold chain worth Rs. 6,000/-. The other two unknown persons, who were accompanying the accused, had also assaulted the injured with razor (astra) on his both the hands and thereby, they 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 City Sessions Court, Ahmedabad.

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 original accused, the prosecution has examined following witnesses and produced following documentary evidence, as under:

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. Ms. Shah, learned Additional Public Prosecutor appearing for the appellant - State has submitted that the trial Court committed an error in releasing the respondents - accused. She contended 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 the fact that 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 ought not to have acquitted the respondents - accused and accordingly, she requested to allow the present appeal in the interest of justice.

4. On the other hand, learned advocate Mr. Vipul Chandroja for Mr. Majmudar, learned advocate for the respondents, supported the impugned judgment and order and submitted that the same having been passed in accordance with law,

does not call for any interference. He submitted that in view of the evidence on record, the injuries caused to the complainant are not proved, no recovery was done and even, nothing is there on record to show that the complainant was serving as watchman with the accused No. 1. It is submitted that the prosecution has failed to prove the case against the respondents beyond reasonable doubt and the learned trial Judge, after taking into consideration all the aspects of the matter, has come to such a conclusion, which is just and proper and has rightly acquitted the accused and accordingly, it is requested that this Court should not interfere in 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 Hon''ble Apex Court in catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , 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 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 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, 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."

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, , 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."

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, and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, . 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, , 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 judgement 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, , 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,]"

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, 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."

5.8 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 20 to 22 of the impugned judgment and order, has very elaborately discussed the evidence adduced before it. Moreover, taking into account the fact that no razor by which the alleged injuries had been caused by the said unknown persons, was seized, nor those persons have ever been identified and/or arrested and the injuries were also not proved, and in the circumstances, it appears that the learned trial Court has rightly concluded in favour of the respondents. 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 25/05/2007 passed by the learned Judge, City Sessions Court No. 5, Ahmedabad in Atrocity Criminal Case No. 13 of 2005 is confirmed. Bail bonds, if any, shall stand cancelled. Registry to return the R&P, if any, to the trial Court forthwith.