

(2016) 03 GUJ CK 0132
In the Gujarat High Court
Case No : Criminal Appeal No. 138 of 1996

State of Gujarat

APPELLANT

Vs

Rameshbhai Shanabhai Machhi

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 378
Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2016) 03 GUJ CK 0132

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

Bench : Division Bench

Advocate : Shruti Pathak, Addl. Public Prosecutor, for the Appellant; Mrudul M. Barot, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 10.11.1995 passed by the Additional Sessions Judge, Vadodara in Sessions Case No. 192 of 1994 whereby the accused has been acquitted of the charges leveled against him.

2. The brief facts of the prosecution case are that on 11.01.1994, at around 09.00 pm while the complainant was sitting on the sit-out near his house, his sister - prosecutrix went to attend natural call. However, since she did not return after quite some time, he started frantic searches for her. It is the case of the prosecution that the next day they came to know that the accused was also missing from his house. Finally the accused and prosecutrix were traced by the relatives of prosecutrix from Ambay bus stand. It is the case of the prosecution that the accused ran away but the prosecutrix told them that the accused had given him false promises of marriage and had sexual intercourse with her. A complaint was therefore lodged against the accused. 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 Court of Sessions.

2.1 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. To prove the case against the accused, the prosecution has examined the following witnesses:

2.2 The prosecution also relied upon the following documents as documentary evidences which have been perused by us:

2.3 At the end of the trial and after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Additional Sessions Judge acquitted the respondent of all the charges leveled against him 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. Ms. Pathak, learned APP appearing for the appellant-State has submitted that the trial court committed an error in releasing the respondent-accused. It was contended by Ms. Pathak 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 evidence against the present respondent. Learned APP has also taken this court through the oral as well as the entire documentary evidence.

3.1 Ms. Pathak has drawn the attention of this Court to the complaint and the evidence of the complainant, father of the prosecutrix and other oral evidence and contended that the prosecutrix was minor and therefore the trial court ought to have convicted the accused. She submitted that the prosecution has successfully proved that the age of the girl was less than 16 years and therefore the trial court has wrongly acquitted the accused. She submitted that the trial court has ignored the school leaving certificate and the certificate issued by the Talati-cum-Mantri and merely on the basis of certificate produced at Ex. 24 where the doctor has certified the age of the prosecutrix to be between 17 - 19, the trial court has acquitted the accused.

4. Mr. Mrudul Barot, learned advocate appearing for the respondent 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 the prosecution has failed to prove the case against the respondent beyond reasonable doubt.

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 v. State of

Kerala & Anr, reported in , (2006)6 SCC, 39, 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 judgment 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 v. State of Karnataka, reported in , (2007)4 SCC 415 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."

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

5.5 In the case of Luna Ram v. Bhupat Singh and Ors. reported in , (2009) SCC 749, the 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 strangulated. 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 judgment 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 Apex Court in the case of Mookiah and Anr. v. State rep. By the Inspector of Police, Tamil Nadu reported in , AIR 2013 SC 321, the 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 leveled 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 reappreciate 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 v. Sohan Lal and Others*, , (2004) 5 SCC 573]"

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 Apex Court in the case of *State of Karnataka v. Hemareddy*, reported in , AIR 1981 SC 1417 wherein it is held as under:

"... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary* , (1967)1 SCR 93: (AIR 1967 SC 1124) 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 appreciated, reappreciated and re-evaluated the evidence on the touchstone of latest decision of the Hon"ble Apex Court.

6.1 We find that the trial Court while considering the evidence on record, has very elaborately discussed the evidence on record. It is required to be noted that the prosecution has not been successfully able to prove the cause and reason for inordinate delay in lodging the complaint. Not even a missing complaint was filed in that regard. It is also required to be noted that the prosecutrix has admitted in the cross examination that the clothes which were produced and sought to be identified in the court were not the ones which she had worn at the relevant time. Moreover, going by the medical evidence, it is evident that no injuries were

found on the body of the prosecutrix or the private part of the prosecutrix. The medical evidence clearly states the prosecutrix to be aged between 17 - 19 years. Moreover, the prosecution has not been able to successfully prove that the prosecutrix was taken against her will. In that view of the matter, the trial court has acquitted the accused.

7. We are not inclined to disturb the findings of the trial court as the prosecution has not been able 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. Even otherwise, it shall not be appropriate to take a contrary view merely on surmises after a period of 22 years. In above view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

8. We are, therefore, of the considered opinion that the findings recorded by the trial Court in acquitting the accused of the charge levelled against him 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.

9. Accordingly, appeal is hereby dismissed. The judgment and order dated 10.11.1995 passed by the Additional Sessions Judge, Vadodara in Sessions Case No. 192 of 1994 is confirmed qua the acquittal of the respondent. Bail bond, if any, shall stand cancelled.