
(2016) 04 GUJ CK 0048
In the Gujarat High Court
Case No : Criminal Appeal No. 1767 of 2005

State of Gujarat	Vs	APPELLANT
Ranabhai Vihabhai Rabari and Others		RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156 (3), Section 378 (1) (3)
Penal Code, 1860 (IPC) — Section 302, Section 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1) (10)

Citation : (2016) 04 GUJ CK 0048

Hon'ble Judges : R.P. Dholaria, J.

Bench : Single Bench

Advocate : Rashesh Rindani, AGP, for the Appellant; P.S. Champaneri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Dholaria, J.—1. This is an appeal of acquittal preferred by the State of Gujarat under Section 378 (1) (3) of the Criminal Procedure Code, 1973 against the judgment and order of acquittal dated 30th May, 2005, recorded by the Additional Sessions Judge, Fast Track Court, Banaskantha at Palanpur in Special Case No. 157 of 2001.

2. It is the case of the prosecution that the complainant-Ranchhodbhai Karshanbhai Harijan had filed a complaint before the learned Magistrate which was sent for the investigation under Section 156 (3) of the Criminal Procedure Code, 1973. The Police carried out the investigation and filed a chargesheet. The complainant has alleged that the respondents-accused, in abetment with each other due to their earlier enmities with regard to the ownership of land of village Dhunsol, gave filthy abuses to the complainant-Ranchhodbhai Karshanbhai Harijan in public relating to his caste, more particularly, by saying words like "Sala" "Dhedha" with clear intention to insult the complainant in public at large and thereby committed offence under Section 3(1) (10) of the Schedule Castes

and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. In pursuance of the aforesaid complaint, the Police recorded the statement and after completion of investigation, filed charge-sheet which came to be committed to the learned Sessions Judge and learned Additional Sessions Judge after conclusion of trial and hearing, acquitted the accused from all the charges levelled against them. Therefore, the present appeal.

4. Heard Mr. Rashesh Rindani, APP for the appellant and Mr. P.S. Champaneri, learned advocate for the respondents-accused.

5. This Court has gone through the paper book as well as impugned judgment and order passed by the learned Additional Sessions Judge.

6. 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.*, , (2006) 6 S.C.C. 39, the Apex Court has narrated the powers of 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."

6.1 Further, in the case of *Chandrappa v. State of Karnataka*, , (2007) 4 S.C.C. 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, 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."

6.2 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.

6.3 Even in the case of *State of Goa V. Sanjay Thakran & Another*, , (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 Apex 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."

6.4 Similar principle has been laid down by the Apex Court in the cases of *State of Uttar Pradesh v. Ram Veer Singh & Ors*, , 2007 A.I.R. S.C.W. 5553 and in *Girja Prasad (Dead) by LRs v. State of MP* reported in , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

6.5 In the case of *Luna Ram v. Bhupat Singh and Ors*, , (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

strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem 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 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."

6.6 Even in a recent decision of the Apex Court in the case of Mookkiah and Anr. v. State, rep. by the Inspector of Police, Tamil Nadu, , 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 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 v. Sohan Lal and Others, , (2004) 5 SCC 573]"

7. It is also a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite 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, , AIR 1981, SC 1417, wherein it is held as under:

"...This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary , (1967) 1 SCR 93 : (AIR 1967 SC 1124) that it is not the duty of the Appellate 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."

7.1 Similar principle has been laid down by the Apex Court in the case of Shivasharanappa and others v. State of Karnataka, , JT 2013 (7) SC 66. 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.

8. In the present appeal, it is required to be noted that the original complainant had also preferred a Criminal Revision Application No. 785 of 2005 before this Court which came to be withdrawn by the original complainant stating that the dispute with regard to the land has already been settled outside the Court and consequently therefore, no dispute exists between the parties. Therefore, vide Order dated 9.12.2015 of this Court, the said Criminal Revision Application was disposed of as withdrawn.

9. In light of the aforesaid factual scenario, the learned advocate appearing on behalf of the rival parties have drawn attention of this Court to the depositions of complainant as well as his brother-in-law and Police Head Constable-Pravinbhai Motibhai.

10. The records and proceedings of the present case clearly reveals that there was a dispute with regard to the ownership of land, for which civil litigations were filed before the competent Court by the complainant against the present accused. The evidence on record clearly reveals that mere allegations are made that abusive words relating to the caste of the complainant were spoken by the accused. However, on going through the complaint as well as deposition of brother-in-law of the complainant, it is not forthcoming as to who, out of five accused, spoke such abusive words. It is also seen from the evidence of brother-in-law of the complainant - Kanjibhai Navabhai that he has made certain material improvement during the course of his deposition before the learned Trial Court and consequently therefore, the learned Trial Court did not believe upon his evidence as such.

11. Precisely, the evidence of complainant-Ranchhodbhai Karshanbhai Harijan as well as brother-in-law-Kanjibhai Navabhai are not consistent and suffers from improvement and material contradiction and even it is not specified as to out of five accused who uttered insulting words and who threatened the complainant. In that view of the matter, the learned Trial Court has rightly recorded the findings that the prosecution has failed to prove the allegations made against the accused as such.

12. Over and above aforesaid infirmities in the evidence led by the prosecution, one glaring infirmity is also forthcoming from the records that aforesaid complaint was investigated by Police Head Constable. As per Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, it is mandatory that such offences are investigated by Police Officer not below the rank of Deputy Superintendent of Police.

13. Indisputably, in the present case, the investigation was carried out by Police Head Constable, who is very below the rank of Deputy Superintendent of Police. Consequently therefore, the investigation carried out by Police Head Constable is not in accordance with the provisions of law. For that reason also, no conviction

can be recorded against the present accused.

14. For the reasons recorded above, the present appeal being devoid of any merits deserve dismissal and accordingly stands dismissed and the impugned judgment and order is confirmed. Bail bonds stand cancelled. No order as to costs. The Registry is directed to return the R & P, if any, forthwith to the lower Court.