

(2016) 01 GUJ CK 0010
In the Gujarat High Court

Case No : Criminal Appeal No. 520 Of 1994 and 208 of 1994

State of Gujarat

APPELLANT

Vs

Sahidhussein @ Chiddo

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2016) CriLJ 3617

Hon'ble Judges : Mr. K.S. Jhaveri and Mr. R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Ms. C.M. Shah, APP, for the Appellant No. 1; Mr. Pratik B. Barot, Advocate, for the Opponent/Respondent No. 2; Notice Served, for the Respondents Nos. 1, 3 - 4; Mr. B.A. Surti, Advocate, for the Appellant No. 1; Ms. C.M. Shah, App, for the Opponent/Respon

Final Decision : Dismissed

Judgement

Mr. K.S. Jhaveri, J. (Oral)—This appeal as well as Criminal Revision Application are directed against the judgment and order of acquittal dated 24.3.1994 passed by the learned Additional City Sessions Judge, Court No.9, Ahmedabad in Sessions Case No.123 of 1993. By the impugned judgment, accused no.1 was convicted for offence punishable under Section 326 of the Indian Penal Code (For short, "IPC") and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- and, in default of payment of fine, he was ordered to undergo further rigorous imprisonment for a period of six months. Accused no.3 was convicted for offence punishable under Section 324 of IPC and sentenced to suffer rigorous imprisonment for one and a half year. Accused nos.2 and 4 were acquit of all the charges levelled against them. Accused no.1 was acquit of the charges for offence punishable under Sections 302 and 188 of IPC. Being aggrieved by the order of acquittal of the accused present appeal as well as revision applications are preferred before this Court.

2. The facts in brief giving rise to the filing of present appeal as well as revision application are as under:

2.1 The incident in question occurred on 16.1.1993 at about 10.45 p.m. opposite the house of deceased. It is alleged that the accused were gambling on the road leading to the house of the deceased and when the deceased objected to it, they picked up the quarrel with him. The deceased threatened to report it to the police, therefore, the accused got angry and attacked the deceased after bringing weapons from their house. Accused no.1 gave sword blow to the deceased on the left side of his stomach, accused no.2 gave razor blow on his left cheek, accused no.3 gave a knife blow on his right shoulder and accused no.4 gave gupti blow on thigh and parianal region of the deceased. Therefore, the complaint was filed against the accused persons.

2.2 Thereafter, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, the case was committed to Sessions Court and, ultimately, trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 In order to bring home the charges against the accused persons, prosecution has examined following witnesses.

Sr. No.

Name

Exh.

1

Mahendrabhai Ghenaji.

22

2

Mobin Ahmed Ansari.

24

3

Abdul Razak Janmohamed Ansari.

26

4

Hasmukhbhai Ramanlal Patel.

28

5

Dr. Ravindra S. Bhise.

31

6

Dr. Nitin N. Parmar.

34

7

Mominkhan Badekhan Pathan.

37

8

Sarfaraj Mohmed Sabir Ansari.

38

9

Harshadbhai Kantilal Sanghvi.

39

10

Dr. Rajesh Indulal Shah.

42

11

Head Constable-Faridkhan Mohmedkhan Pathan.

44

12

PSI-Bhimsinh Shivsinh.

47

13

Head Constable-Laljibhai Khatraji.

--

14

Head Constable-Chaturbhai Mulabhai.

50

2.4 The prosecution has also produced following documents in support of its case:-

Sr. No.

Description

Exh.

1

Vardhi from V.S. Hospital.

45

2

Panchnama of the scene of offence.

23

3

Panchnama of the clothes of deceased.

13

4

Inquest panchnama.

14

5

Discovery panchnama.

25

6

Discovery panchnama.

27

7

Injury certificate.

36

8

Postmortem report.

32

9

Letter to FSL.

15

10

Letter to FSL.

16

11

Report of FSL.

17

12

Report of FSL.

18

13

Serological report.

19

14

Serological report.

20

15

Yadi to Executive Magistrate for recording dying declaration.

29

16

Dying declaration recorded by Executive Magistrate.

30

17

Map of the scene of offence.

41

18

Station diary entry.

51

19

Entry in the vardhi book of V.S.Hospital.

49

2.5 Thereafter, after filing of closing purshis by the prosecution, further statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused denied the case of the prosecution and submitted that a false case is filed against them.

3. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge passed the impugned Judgment. Being aggrieved by and dissatisfied with the said judgment and order acquitting the respondents from some of the charges dated 24.3.1994 passed by the learned Additional Sessions Judge, Ahmedabad in Sessions Case No.123 of 1993, the appellant-State as well as the complainant have preferred present appeal and revision application before this Court.

4. At the time of hearing of these matters, it is submitted that accused no.3 has expired on 22.8.2013 and learned advocate for the accused has produced on record his death certificate, which is taken on record. Therefore, this appeal as well as revision application stands abated qua accused no.3.

5. Ms. C.M. Shah, learned APP has taken us through the evidence and contended that the trial Court has committed an error in acquitting the accused in spite of voluminous evidence against them and contended that the trial Court ought not to have acquit the accused. She submitted that though the prosecution has examined 14 witnesses and also produced 19 documents in support of its case, the learned trial Judge has not properly appreciated them and acquit the accused of the charges levelled against them. She submitted that the prosecution has successfully proved its case against the accused persons. She submitted that even the medical evidence supports the case of the prosecution. She submitted that considering the nature of injuries, it can be said that the accused no.1 is guilty of offence under Section 302 of IPC and since other accused have also attacked the deceased along with accused no.1, they were all guilty of the offence in question and learned trial Judge has committed an error in acquitting them. She also submitted that the learned trial Judge has failed to appreciate the evidence on record in its proper perspective, therefore, the impugned judgment is required to be quashed and set aside by allowing present appeal.

6. Mr. Surti, learned advocate appearing for the revisionist has accepted the arguments made by learned APP and prayed that the impugned judgment may be set aside.

7. On the other hand, Mr.Pratik Barot, learned counsel for the respondents-accused submitted that there is no infirmity in the impugned order. He submitted that the lower court has rightly appreciated the evidence on record and acquit the respondent of the charges levelled against them. He submitted that the prosecution could not prove its case beyond reasonable doubt. He has contended

that so far as acquittal appeals are concerned, the law is well settled and by taking us through the impugned judgment, he submitted that this Court may not interfere with the impugned judgment and the appeal may be dismissed.

8. We have heard learned APP for the appellant ? State, Mr.B.A.Surti, learned advocate for the complainant and Mr.Pratik Barot, learned advocate for the respondents-accused. We have gone through the evidence on record. Looking to the charges framed against the respondent accused for the offence under Sections 302 of IPC, the prosecution has to prove its case beyond reasonable doubt. While passing the impugned judgment, learned Sessions Judge has given categorical finding that the evidence shows that the injury in question was not likely to cause death and no internal organ inside the abdominal cavity was injured. Therefore, it is clear that the prosecution has miserably failed in proving the case against the accused. It is also clear that the learned Judge has not committed any error while acquitting the accused of some of the charges levelled against them. It cannot be said that the learned Judge has committed any error while acquitting the accused as the prosecution could not prove its case beyond reasonable doubt.

9. 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."

9.1. 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 emphasise 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.

9.2. 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.

9.3. 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 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 characterised 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."

9.4. 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.

9.5. 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."

9.6. 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, acquit 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 emphasised that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyse 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]"

9.7. 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."

9.8. 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.

10. We have gone through the oral as well as documentary evidence on record and we are in agreement with the view taken by the lower Court. Moreover, learned APP is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude 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 material evidence while acquitting the accused. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondent-accused of the charge levelled against them. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the impugned judgment and, therefore, find no reasons to entertain this appeal and revision application.

11. Since accused no.3 has passed away, this appeal as well as revision application stands abated qua him. For the foregoing reasons, this Criminal Appeal as well as Criminal Revision Applications are dismissed. The impugned judgment and order dated 24.3.1994 passed by the learned Additional City Sessions Judge, Court No.9, Ahmedabad in Sessions Case No.123 of 1993 is hereby confirmed. Bail bond, if any, of the accused shall stand cancelled. Registry to return the R&P, if lying here, to the concerned trial Court forthwith.