

(2022) 01 GUJ CK 0029
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13247 Of 2021 In R/Criminal Appeal
No. 1025 Of 2021

State Of Gujarat		APPELLANT
	Vs	
Samalbhai Chandubhai Vasava		RESPONDENT

Date of Decision : 11-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Indian Penal Code, 1860 — Section 114, 324, 326, 504, 506(2)
Bombay Police Act, 1951 — Section 135
Code Of Criminal Procedure, 1973 — Section 209, 313, 378, 378(1)(3), 379, 384

Citation : (2022) 01 GUJ CK 0029

Hon'ble Judges : S.H.Vora, J;Sandeep N. Bhatt, J

Bench : Division Bench

Advocate : Chetna Shah, Kishore Prajapati

Final Decision : ?Dismissed

Judgement

Sr. No.,Particulars,Exh. No.

- 1,Complaint of the complainant,24
- 2,Panchname of the scene of offence,39
- 3,Chits that are stitched,40
- 4,Panchnama of the physical verification of the accused,42
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- 6,Panchnama of the physical verification of the accused,49
- 7,Treatment certificate of the injured,63&64
- 8,Yadi of the visit of the place of incidence,66
- 9,Primary investigation of the place of incidence,67

10, Treatment certificate of the complainant and witnesses, 69-71

11, Original copy of the E.P.R. Register, 72

12, Yadi of the register of FIR, 74

13, Depute order, 75

14, Original copy of the Station Diary, 76

15, Release Note, 83

16, Receipt of the F.S.L. accepting delivery of muddamal, 84

17, Serological opinion given by F.S.L, 85

18, Public notice, 86

After hearing both the parties and after analysis of the evidence on record before the trial Court, the respondent â?" accused persons came to be",,

acquitted from the charge of offence punishable under sections 326, 324, 504, 506(2), 114 of the IPC and section 135 of the Act by the trial Court by",,

giving benefit of doubt.,,

5. Before discussing the submissions made in the present Appeal, it transpires from the record of present Appeal that original accused â?" opponent",,

No. 4 Kantaben Samabhai Vasava had passed away on 19.06.2021 and therefore, this Court in order dated 18.08.2021 recorded that the matter",,

cannot be proceeded further for deceased opponent No. 4. We have minutely examined the oral as well as documentary evidence adduced by the,,

prosecution before the trial Court. We have heard the submissions of Ms. Chetna Shah, learned APP appearing for the State and Mr. Kishore",,

Prajapati, learned advocate for the respondent â?" accused persons.",,

6. Learned APP has submitted that from the deposition recorded of the complainant, injured witnesses as well as the Medical Officers, the",,

prosecution has sufficiently proved the case against the accused persons and involvement of the accused persons in commission of the said crime. She,,

has also taken us through the deposition of Kadherbhai Mohmadbhai Mansuri at Exh. 2 where he submitted that Samanbhai was having axe in his,,

hand and he has given blow to Firoz and Satishbhai has given blow of axe to himself and Kantaben has given blow of the stick to the complainant and,,

his father Manojbhai also received axe injury by the blow inflicted by Vinodbhai Vasava. He has admitted in his cross-examination that the axe, plough",,

are necessary tools for doing agricultural work but nothing is coming out from his deposition that inspires confidence to implicate the accused persons,,

in the commission of the crime, as other witnesses have not supported the say of the complainant in their deposition. The Medical Officer â?"",,,

Gudiyarani Devkumar Prasadsinh was examined at Exh. 68 and she has admitted that the injuries which are received by the injured persons are of,,

simple nature and the history was given to her by the injured that somebody had attacked them with sharp weapon. The prosecution has also,,

examined the witness at Exh. 77 â?" Firozbbhai Malangbbhai Mansuri and he has admitted in his cross-examination that the accused Shamalbhai Vasava,,

has filed complaint against his father and other and that he cross-case is also going on. He has also admitted in his cross-examination that he had given,,

his history to Dr. Tausif Noormohmad Dabhoiwala that the group of unknown persons have beaten them and had not given the name of the accused,,

before the doctor. The prosecution has also examined the witness Mayuddin Ismail Mansuri at Exh. 34 however, he has not as such supported the",,,

version of the complainant in the complaint but has stated that there dispute had taken place with Shamalbhai Vasava when he went to visit his sister,,

Zubeda. The prosecution has also examined the Medical Officer â?" Dr. Tausif Noormohmad Dabhoiwala who is practicing as General and,,

Laparoscopy Surgeon in his own private hospital and he has submitted that in the history given by the injured persons before him, nobody has given",,,

any names of the persons who had inflicted those injuries on them. Mr. Ashok Popatlal Jani who is serving at Forensic Science Laboratory was also,,

examined but nothing much came out from his disposition to support the case of the prosecution. Therefore, as cross-cases are going on between the",,,

complainant and the accused persons and the dispute with regard to civil nature also occurred amongst them, the trial Court has rightly inferred that",,,

the prosecution has failed to establish its case beyond reasonable doubt. None of the witnesses has given any name before both the doctors though,,

they are knowing the accused persons very well and hence this creates doubt about the story of the prosecution. Hence, the trial Court has rightly",,,

acquitted the respondent - accused persons by giving benefit of doubt. We found not illegality or infirmity with the findings given by the trial Court and,,

hence, we confirm the judgment and order passed by the trial Court, as no interference of this Court is required by exercising powers under section",,,

378 of the Code.,,

7. Before the evidences are further scrutinized, it is necessary that prosecution is required to prove the case in the criminal proceedings by leading",,

cogent and convincing evidence and the charge leveled against the accused persons should be proved beyond reasonable doubt. In the present case,",,

the complainant and the other injured persons have not disclosed the names of the persons who have inflicted the injuries to the injured persons which,,

is creating suspicion about the involvement of the accused persons in the commission of the alleged crime. On re-appreciation of the evidence we,,

have noticed that the complaint of the complainant is an attempt to give flavour of criminality to the Civil disputes which are going on between the,,

parties. We have also found from the record that the prosecution has failed miserably in establishing the offence against the respondent - accused,,

persons by not leading cogent and convincing evidence which can be proved beyond reasonable doubt.,,

8. It is a cardinal principal of criminal jurisprudence that in an acquittal appeal if other view is possible, then also the appellate Court cannot substitute",,

its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably",,

wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the",,

learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on",,

record, palpably wrong, manifestly erroneous or demonstrably unsustainable.",,

9. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:",,

â??The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under,,

Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is",,

desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility,,

of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the",,

slowness of appellate Court in justifying a finding of fact arrived at by a Judge

who had the advantage of seeing the witness. It is settled,,
law that if the main grounds on which the lower Court has based its order
acquitting the accused are reasonable and plausible, and the",,,
same cannot entirely and effectively be dislodged or demolished, the High Court
should not disturb the order of acquittal."",,,
10. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh &
Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and,,
in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya
Pradesh reported in (2011) 6 SCC 394, while dealing with the",,,
judgment of acquittal, unless reasoning by the learned trial Court is found to be
perverse, the acquittal cannot be upset. It is further observed that High",,,
Court's interference in such appeal in somewhat circumscribed and if the view
taken by the learned trial Court is possible on the evidence, the High",,,
Court should stay its hands and not interfere in the matter in the belief that if it
had been the trial Court, it might have taken a different view.",,,
11. In the very recent judgment reported in 2021 (15) SCALE Pg. 184 in the case
of Mohan @ Srinivas @ Seena @ Tailor Seena V/s. State of,,
Karnataka, the honâ??ble Apex Court has observed the scope of section 378 of
the Code as under:-",,,
â??Section 378 CrPC enables the State to prefer an appeal against an order of
acquittal. Section 384 CrPC speaks of the powers that,,
can be exercised by the Appellate Court. When the trial Court renders its decision
by acquitting the accused, presumption of",,,
innocence gathers strength before the Appellate Court. As a consequence, the
onus on the prosecution becomes more burdensome as",,,
there is a double presumption of innocence. Certainly, the court of first instance
has its own advantages in delivering its verdict, which",,,
is to see the witnesses in person while they depose. The Appellate Court is
expected to involve itself in a deeper, studied scrutiny of",,,
not only the evidence before it, but is duty bound to satisfy itself whether the
decision of the trial Court is both possible and plausible",,,
view. When two views are possible, the one taken by the trial court in a case of
acquittal is to be followed on the touchstone of liberty",,,
along with the advantage of having seen the witnesses. Article 21 of the
Constitution of India also aids the accused after acquittal in a,,

certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while",,

dealing with a case of an acquittal.,,

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of,,

evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of,,

courts in dealing with cases. An Appellate Court shall not expect the trial Court to act in a particular way depending upon the,,

sensitivity of the case. Rather it should be appreciated if a trial Court decides a case on its own merits despite its sensitivity.,,

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the",,

one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The",,

district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own",,

merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a,,

decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a",,

degree of caution before making any remark.â??,,

12. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of,,

appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.",,

13. In view of the above and for the reasons stated above, present application for leave to appeal being Criminal Misc. Application No. 13247 of 2021",,

fails and same deserves to be dismissed and is accordingly dismissed. In view of dismissal of the application for leave to appeal, Criminal Appeal No.",,

1025 of 2021 also deserves to be dismissed and is accordingly dismissed.,,