

**(2009) 05 GUJ CK 0054**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 71 of 2009**

State of Gujarat

APPELLANT

Vs

Sanjidabanu Mojibhai Sheikh and Others

RESPONDENT

**Date of Decision :** 12-05-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 378  
Penal Code, 1860 (IPC) — Section 114, 302, 307, 504  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 3(1)(10), 3(2)(5)

**Citation :** (2009) 05 GUJ CK 0054

**Hon'ble Judges :** Z.K. Saiyed, J;K.S. Jhaveri, J

**Bench :** Division Bench

**Advocate :** R.C. Kodekar, APP 1, for the Appellant; None for Opponents 1-3, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 24/10/2008 passed by the learned Additional Sessions Judge, Vadodara in Atrocity Case No. 42 of 2006 whereby the accused were acquitted of the charges leveled against them.

2. The brief facts of the prosecution case are as under:

2.1. Complainant-Mohanbhai Parshottambhai Parmar, resident of Kasamala Kabarastan, Nr. Shrinath Petrol Pump, Vadodara gave a complaint before the Karelibaug Police Station on 2/7/2006 stating that he went for work and returned back in the late night and after taking dinner went to bed. His daughter and son were sleeping in the front side room and wife of complainant was sleeping on the terrace. Thereafter, while closing down the door on the back side room, the wall which was erected by the accused had fallen down and therefore all three accused rushed to the spot and asked to complainant as to why did he do this

and started to give abuses and in furtherance the accused No. 1 took kerosene from the room poured on the complainant and accused No. 3-son of accused No. 1 ignited complainant with matchstick and therefore clothes of complainant started to burn. Thus, the complainant started shouting and in response the son, daughter and wife of complainant rushed to his rescue. His son threw water on him and his daughter came with sheet and tried to save him. The other nearby people gathered and thus the accused persons had run away from the spot. The complaint was lodged against the respondents-accused for the offences punishable under Sections 302, 307, 504 and 114 of the Indian Penal Code and u/s 3(1)(10) and 3(2)(5) of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act, 1989.

2.2. Necessary investigation was carried out, panchanama was drawn and statements of witnesses were recorded. As sufficient evidence to link the accused with crime were found, ultimately, charge-sheet was filed against the respondents-accused for the offences punishable under Sections 302, 307, 504 and 114 of the Indian Penal Code and u/s 3(1)(10) and 3(2)(5) of the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act, 1989.

2.3. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Court of learned 6th Additional Sessions Judge, Vadodara u/s 209 of Criminal Procedure Code. The case was numbered as Atrocity Case No. 42 of 2006. The trial was initiated against the respondent-accused.

2.4. To prove the guilt against the accused the prosecution has examined 26 witnesses and to support the case, the prosecution has produced 41 documents.

2.5. At the end of trial, after recording the statement of the accused persons u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned 6th Additional Sessions Judge acquitted the respondents-accused of all the charges leveled against them by judgement and order dated 24/10/2008.

2.6. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the 6th Additional Sessions Court, Vadodara, the appellant-State has preferred the present appeal.

3. Though served, the respondent-accused has not remained present.

4. Mr. R. C. Kodekar, learned APP contended that the judgement and order of the 6th Additional 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. He submitted that the prosecution witness had clearly deposed in his deposition that the respondents-accused were found committing offence u/s 302, 307, 504 and 114 of the Indian Penal Code and Section 3(1)(10) and 3(2)(5) of

the Prevention of Atrocities (Scheduled Caste and Scheduled Tribes) Act, 1989. He further submitted that there was no reason for the Sessions Judge to disbelieve the prosecution case and to acquit the respondent-accused.

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 Vs. State of Kerala and Another, , 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 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 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 and 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 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 Apex Court in the cases of *State of Uttar Pradesh v. Ram Veer Singh and Ors.* reported in AIR 2007 SCW 5553 and in *Girja Prasad (Dead) by LRs v. state of MP* reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.5. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement 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 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.

5.6. 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.

6. We have gone through the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant.

6.1. While appreciating the oral as well as documentary evidence, the Sessions Court has observed in para-27 that complainant's version is not supported or corroborated by any of the witnesses. In dying declaration Exh.-13, no name was disclosed. Witness examined at Exh.34 has also stated that while issuing certificate, no name was disclosed. Even wife, son and daughter of the victim turned hostile. Victim was suffering from very serious illness and committed suicide. Even no certificate was produced on record and no accused came to the victim and presence of accused persons was doubtful. The prosecution has failed to prove the case against the present accused persons. Therefore the trial court has given the benefit of doubt to the accused persons and we do not find any reason to interfere with the said finding.

6.2. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Mr. R. C. Kodekar, learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

7. In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondents-accused of the charges leveled against them. We find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. Record and Proceedings to be sent back forthwith.