

(2015) 09 GUJ CK 0044
In the Gujarat High Court
Case No : Criminal Appeal No. 873 of 2006

State of Gujarat APPELLANT
Vs
Sanjivkumar Kanubhai Bariya and Others RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 114, 302, 304-B, 306, 34

Citation : (2015) 09 GUJ CK 0044

Hon'ble Judges : K.S. Jhaveri, J;G.B. Shah, J

Bench : Division Bench

Advocate : L.R. Pujari, APP, for the Appellant; Vijay Patel for H.L. Patel
Advocates, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J—The present appeal, under section 378 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") is directed

against the judgment and order dated 15/02/2006 passed by the learned Additional Sessions Judge, Fast Track Court No. 1, Panchmahals @

Godhra in Sessions Case No. 46 of 2005, whereby all the accused, the respondents herein have been acquitted of the charges levelled against

them for the offence punishable under Sections 498-A, 304-B and 306 r/w. Section 114 of the Indian Penal Code, 1860 (for brevity, "the IPC").

2. Brief facts of the prosecution case are that marriage of the deceased sister of the complaint and the respondent No. 1 herein - accused No. 1

had been solemnized as per the Hindu rites and rituals and out of the said wedlock, they have a son and a daughter. The other respondents -

original accused are the in-laws of the deceased. It was the case of the

prosecution that the deceased was being physically and mentally harassed by the accused for dowry and when the same became unbearable, on 08/09/2003, the deceased committed suicide by setting herself ablaze by pouring kerosene and for the same, a complaint came to be lodged against the accused for the offence punishable under Sections 498-A, 304-B, 306 r/w. Section 114 of the IPC.

2.1 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 Sessions Court, Panchmahals @ Godhra. 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. In order to

bring home the charge against the respondents - original accused, the prosecution has examined as many as 18 witnesses and also produced

several documentary evidence. At the end of the trial and after recording the Further Statements of the accused under Section 313 of Code and

hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondents of all the charges levelled

against them by impugned judgment and order. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions

Court, the appellant - State has preferred the present appeal.

3. We have heard Mr. L.R. Pujari, learned Additional Public Prosecutor, for the appellant - State and Mr. Vijay Patel, learned advocate for the respondents - original accused.

3.1 Mr. Pujari, learned Additional Public Prosecutor for the appellant - State contended that in view of the evidence of PW-1 - Savitaben

Dolatsinh Parmar, the mother of the deceased, exh. 27, the evidence of complaint - Rajendrasinh Dolatsinh Parmar, the brother of the deceased,

exh. 31, the evidence of Kapilaben Dhirubhai Chauhan, the sister of the deceased, exh. 36 and the evidence of Jashodaben Amarsinh Parmar,

another sister of the deceased, exh. 39, the trial Court ought to have convicted the accused for the offence punishable under Section 306 of the

IPC as the deceased was compelled to commit suicide. The learned Additional Public Prosecutor for the appellant - State also took us to the

evidence of neighbours and other prosecution witnesses and contended that

though prosecution succeeded in proving the charge against the accused, the learned trial Judge has committed an error in acquitting the accused. Making above submissions, he requested to allow the present appeal in the interest of justice.

4. Whereas, Mr. Patel, the learned advocate for the respondents - original accused supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that the prosecution has failed to prove the case against the respondents beyond reasonable doubt. It is also submitted that the prosecution case is based on the circumstantial evidence and there are material contradictions and improvements in the evidence of the prosecution witnesses. He further submitted that in view of the fact that two crucial witnesses viz. the daughter and the son of the deceased are not examined besides the complaint had been lodged after about five days of the incident in question had occurred and the learned trial Judge, after taking into consideration all the aspects of the matter, more particularly, para 15 of the impugned judgment and order, has come to such a conclusion, which is just and proper and the learned trial Judge has rightly acquitted the accused and accordingly, it is requested that this Court should not interfere in appeal.

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 Hon''ble Apex Court in catena of decisions. In the case of M.S.

Narayana Menon @ Mani Vs. State of Kerala and Another, AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6

CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp :

(2006) AIRSCW 4652 : (2006) 5 Supreme 547 , the Hon''ble 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 Hon''ble 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 views 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*, (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007)

4 SCC 415 : (2007) 2 SCR 630 the Hon'ble Apex Court has 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 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.

5.2 Thus, it is a settled principle that while exercising appellate powers, 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 Hon''ble Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007)

3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , 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 Hon''ble Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR

2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in

Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC

625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers which this Court may exercise against an order of acquittal are well

settled.

5.5 In the case of Lunaram Vs. Bhupat Singh and Others, (2009) CriLJ 1899 : (2009) 3 JT 155 : (2009) 3 SCALE 363 : (2009) 3 SCC 749 :

(2009) 3 SCR 706 : (2010) AIRSCW 298 : (2009) 7 Supreme 103 , the Hon''ble

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 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 judgement 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 Hon"ble Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil

Nadu, AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1

Supreme 88 , the Hon"ble 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 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

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 Vs. Sohan Lal

and Others, (2004) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480

Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404]

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 Hon"ble Apex Court in the case

of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981)

2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 wherein it is held as under:

...This court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, AIR 1967 SC 1124 : (1967) 1 SCR 93 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 re-appreciated and re-evaluated the evidence on the

touchstone of the latest decisions of the Hon"ble Apex Court. We find that the trial Court while considering the evidence on record, has very

elaborately discussed the evidence adduced before it. Further, the learned Additional Public Prosecutor is not in a position to show any direct or

any other 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. Moreover, in view of the Dying Declaration of the

deceased at exh. 69 wherein, the deceased has clearly stated that she had committed suicide since her husband did not like to food and hence, she

felt bad and took such a step, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and

order. Moreover, looking to the marriage span, which is more than seven years, presumption as to abetment of suicide under Section 113A of the

Evidence Act would be out of place. We are, therefore, of the considered opinion that the findings recorded by the trial Court in acquitting the

accused of the charge levelled against them 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.

7. In view of the aforesaid discussion, present appeal fails and is dismissed accordingly. The impugned judgment and order dated 15/02/2006

passed by the learned Additional Sessions Judge, Fast Track Court No. 1, Panchmahals @ Godhra in Sessions Case No. 46 of 2005 is

confirmed. Bail bonds, if any, shall stand cancelled. Registry to return the R&P, if any, to the trial Court forthwith.