

(2022) 03 GUJ CK 0082
In the Gujarat High Court
Case No : R/Criminal Appeal No. 412 Of 1999

State Of Gujarat	Vs	APPELLANT
Shimaliya Chhagan Parghi & 1 Other(S)		RESPONDENT

Date of Decision : 28-03-2022

Acts Referred:

Indian Penal Code, 1860 — Section 395, 397
Arms Act, 1959 — Section 25(1)(b)(a), 27
Code Of Criminal Procedure, 1973 — Section 209, 313, 378, 379

Citation : (2022) 03 GUJ CK 0082

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

Bench : Division Bench

Advocate : CM Shah

Final Decision : ?Dismissed

Judgement

S.H.Vora, J

1. Feeling aggrieved and dissatisfied with the judgment and order dated 19.3.1998 passed by the learned Additional Sessions Judge, Panchmahal camp at Dahod in Sessions Case No.230 of 1996 for the offences under sections 395 and 397 of the Indian Penal Code and under Sections 25(1)(b)(a) and 27 of the Arms Act, the appellant-State of Gujarat has preferred the captioned appeal inter alia challenging the judgment and order of acquittal in favour of the respondents-accused.

2. The brief facts of the prosecution case are that on 05/02/1995 between 00:00 to 00:30 hours at Village Rajpur, the respondents-accused alongwith other absconding accused having armed with deadly weapons like revolver got entered into the house of complainant and other witnesses by breaking door and created terror amongst them; fired the pistol and thereby caused death of deceased-Puniyabha, as also caused injuries to witness-Shakariya Maganbhai and committed robbery of live stocks and utensils valued at of Rs.15,950/- and thus committed the aforesaid offences. The complainant lodged the complaint with

regard to the incident before Dahod Police Station, which was registered as I – C.R. No.24 of 1995 for the aforesaid offences.

3. In pursuance of the complaint lodged by the complainant, investigating agency recorded statements of the witnesses, collected relevant evidence and drawn various Panchnamas and other relevant evidence for the purpose of proving the offence. After having found material against the respondents accused, charge-sheet came to be filed in the Court of learned Judicial Magistrate, First Class, Dahod. As said Court lacks jurisdiction to try the offence, it committed the case to the Sessions Court, Dahod as provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, Dahod, learned Sessions Judge framed charge at Exh.2 against the respondents accused for the aforesaid offence. The respondents accused pleaded not guilty and claimed to be tried

5. In order to bring home charge, the prosecution has examined 11 prosecution witnesses and also produced various documentary evidence as narrated in paragraph 6 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondents-accused so as to obtain his explanation/answer as provided u/s 313 of the Code. In the further statement, the respondents-accused denied all incriminating circumstances appearing against them as false. After hearing both the sides and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the respondents-accused of the offences, for which they were tried, as the prosecution failed to prove the case beyond reasonable doubt.

7. We have heard learned APP Ms. Shah appearing for the appellant-State and examined the oral and documentary evidence adduced before the learned trial Court. As per submission of learned APP, complainant-PW 1-Mr.Virsing Daljibhai examined at Exh.6 deposed in his deposition that on 05/02/1995 at about 00:30 hours at Village Rajpur, the respondents-accused alongwith other accused assaulted upon the complainant with clear intention to commit offence of robbery. It is specifically case of the complainant that respondents-accused have fired the gun and thereby committed murder of deceased-Puniyabhai and caused injury to PW 11-Shakkariyabhai Maganbhai and thereby committed robbery of Rs.15,950/- . It is further submitted by learned APP that the learned trial Judge has not properly considered the fact that the complaint at Exh.7 is fully supported by complainant who is examined at Exh.6 which is supported by evidence of PW 2-Devchand Mangaliya. According to learned APP, the learned trial Judge has not properly appreciated the evidence of PW 3-Dr.Rajendrakumar Kishorilal examined at Exh.13 who performed the postmortem on the deceased; wherein it is clearly stated that deceased was died due to the injury caused to him. Learned APP has further submitted that the learned trial Judge has not properly appreciated the evidence of PW 10-Bai Mena Vichhiya who is wife of

deceased and she has clearly deposed that accused-Gorsinh Pargi kept gun in the mouth of her husband and thereafter it was fired; due to which he received injury and such injuries were also supported by medical evidence and therefore, there is no reason to disbelieve the evidence of two vital witnesses in the present case. Lastly, it is submitted by learned APP that the learned trial Judge has not properly considered the evidence of PW 11-Shakkariyabhai Maganbhai examined at Exh.28 who has deposed that respondents-accused alongwith other accused persons arrived at the scene of offence and they were having guns with them for the purpose of creating terror in the village and thereby committed offence of robbery. It is submitted by learned APP that considering the aforesaid evidence the learned trial Court ought to have recorded conviction rather than acquittal of the respondents-accused.

8. In order to re-appreciate the submissions made at bar by learned APP and upon re-assessment and re-analysis, we have found that it is specific case of the prosecution that respondent No.2-accused-Gorsinh Pargi kept the gun in the mouth of husband of PW -10-Bai Mena Vichhiya and; thereafter it was fired; due to which he received the injury and died. With reference to the deposition of PW 10, if we examined the evidence of PW 3, he has specifically deposed before the learned trial Judge to the effect that the injuries suffered by the deceased could cause on account of sharp weapon. The said Doctor has nowhere stated that deceased was suffered any gun shot injury. On the contrary, PW 3 has deposed that he has noticed that injuries suffered by the deceased could be caused either by Dhariya or axe. It is also found by us that evidence of PW 10 and complainant who is brother of deceased did not disclose the aforesaid fact in the complaint at Exh.7; but it is disclosed before the learned Court below for the first time during the course of recording of evidence. Not only that; PW 10 has categorically admitted in her deposition that at the time of incident, there was dark night and she has never seen the accused persons prior to the incident and further she in terms deposed before the learned Court below that in her police statement she has stated that because of darkness in the night, she could not identify the robbers and she was hidden inside the house. Not only that, she has not disclosed the name of any of the accused persons and so it is not disclosed by the complainant. Lastly, we have also found that though there is an allegation that the accused persons and other absconding accused persons committed robbery of Rs.15,950/-; but there is no discovery or recovery of any of the robbed article including the live stock. Thus, considering the aforesaid facts and overall evidence, the learned trial Court has rightly extended the benefit of doubt to the respondents-accused and we also endorse the view/finding of the learned trial Judge leading to the acquittal.

9. It is a cardinal principle 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.

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

"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."

11. 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 is 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.

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 appeal deserves to be dismissed and is accordingly dismissed while confirming the judgment and order of acquittal rendered by the learned Court below.