
(2015) 10 GUJ CK 0079
In the Gujarat High Court
Case No : Criminal Appeal No. 76 of 2006

State of Gujarat

APPELLANT

Vs

Shivdan Bhurabhai Gadhvi and Others

RESPONDENT

Date of Decision : 19-10-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 10 GUJ CK 0079

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : C.M. Shah, APP, for the Appellant; Nayana V. Panchal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—This appeal is directed against the judgment and order of acquittal dated 23/05/2005 passed by the learned Additional Sessions Judge, Junagadh in Sessions Case No. 14 of 2002, whereby the respondents-original accused were acquitted of the charges under Sections 147 , 148 , 149 , 307 , 323 and 324 of the Indian Penal Code and Section 135 of the Bombay Police Act.

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

"2.1 On 22.7.2001 at about 15.30 hours, the complainant had gone for the purpose of engagement of his younger brother Raghu at Aerodram Road, Nr. Court, Keshod, at that time, the respondents-accused persons came there in a rickshaw and had given a stroke on the foot of the father of the complainant and, therefore, the father of the complainant fell down. Thereafter, all the respondents came out from the rickshaw and accused Nagajan inflicted a sword blow on the father of the complainant. The respondent-Shivdan inflicted a sword blow on the complainant. Thereafter, on hearing the shouts from the complainant and his father, other respondents-Shamla and Ramesh also came there with sticks and

started beating them. On hearing the hubbub, the uncle of the complainant Keshubhai Bhurabhai and Rajubhai Naranbhai came to the rescue of the complainant, where the respondent-accused had beaten up Keshubhai Bhurabhai and Rajubhai Naranbhai. The respondent-accused Shivdan also inflicted a sword blow near the left eye of Rajivbhai. The respondent-accused Devshubhai inflicted a stick blow on the head of uncle of the complainant. Thereafter, on hearing the shouts, the respondents-accused ran away from the scene of offence. On these allegations, the complaint was filed against the respondents.

2.2 Thereafter, investigation was carried out and the accused persons came to be arrested. Investigation was carried out and the accused persons 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.

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

2.5 Thereafter, after filing of closing purshis by the prosecution, further statements of the accused persons 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 vide impugned Judgment, acquitted the respondents. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 23/05/2005 passed by the learned Additional Sessions Judge, Junagadh in Sessions Case No. 14 of 2002, the appellant-State has preferred the present appeal before this Court.

4. Ms. C.M. Shah, learned APP appearing for the State has taken us through the evidence and contended that the trial Court has committed an error in acquitting the accused inspite of voluminous evidence against them and contended that the trial Court ought not to have acquitted the accused. She submitted that the trial Court has committed an error in not believing the evidence of doctors, who have supported the case of the prosecution. She also submitted that even the prosecution witnesses have supported the case of the prosecution and there was no reason to dis-believe their version. She, therefore, prays that this appeal may be allowed by setting aside the impugned judgment.

5. On the other hand, learned counsel for the respondents-accused has contended that the trial Court has rightly appreciated the evidence on record and acquitted the accused persons of the charges levelled against them. It is also

submitted 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.

6. We have heard learned APP appearing for the appellant-State as well as learned advocate for the respondents. We have also gone through the oral as well as documentary evidence on record. From the evidence record and particularly the medical evidence, it is clear that the injuries were caused to the victim and as per the medical evidence, such injuries are sufficient to cause death. Therefore, causing of injuries is not in dispute, however, PW-5 and PW-6 have admitted in their deposition that they are not knowing the accused persons. In the medical history also, names of the accused persons were not given. It has also come in evidence that names of the accused persons have been given by the complainant on the say of his father and he was not knowing the accused persons. It has also come on record that though independent witnesses were available, they were not examined by the prosecution. Therefore, it cannot be said that the prosecution has proved its case beyond reasonable doubt against the accused persons. In our view, there is no substantial piece of evidence to prove that the accused have committed the offence alleged against them. Therefore, the trial Court has rightly acquitted the accused persons of the charges levelled against them. In view of this and considering various decisions of Honourable Apex Court, when two views are possible, this Court should not interfere with the order of acquittal recorded by the trial Court. It is also 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 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."

6.1 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, 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 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."

6.2 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.

6.3 Even in the case of *State of Goa Vs. Sanjay Thakran and Another*, , 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 characterized 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."

6.4 Similar principle has been laid down by the Apex Court in the cases of *State*

of Uttar Pradesh Vs. Ram Veer Singh and Others, and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, . Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

6.5 In the case of Lunaram Vs. Bhupat Singh and Others, , 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."

6.6 Even in a recent decision of the Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, , 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, acquitted the accused in respect of the charges leveled 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,]"

6.7 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 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 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.

7. 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. 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 persons. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondents 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.

8. In view of the aforesaid discussion, this Criminal Appeal is dismissed. The impugned judgment and order dated 23/05/2005 passed by the learned Additional Sessions Judge, Junagadh in Sessions Case No. 14 of 2002 is hereby confirmed. Bail bond, if any, shall stand cancelled. Registry to return the R&P, if lying here, to the concerned trial Court forthwith.