

(2016) 04 GUJ CK 0049
In the Gujarat High Court
Case No : Criminal Appeal No. 935 of 1994

State of Gujarat	Vs	APPELLANT
Surabhai Ramabhai Bharwad and Others		RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 302, Section 323, Section 34

Citation : (2016) 04 GUJ CK 0049

Hon'ble Judges : K.S. Jhaveri and Biren Vaishnav, JJ.

Bench : Division Bench

Advocate : C.M. Shah, Additional Public Prosecutor, for the Appellant; Kaivan K. Patel, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. By way of this Appeal, the Appellant - State has felt aggrieved by the judgment and order of acquittal dated 02.05.1994 of the learned Additional Sessions Judge, Kheda, Camp : Anand in Sessions Case No. 193/1993 whereby the respondents herein were acquitted of the offences punishable under Section 147, 148, 302, 323 read with Sections 34 and 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. The case of the prosecution is as under:--

"2.1. The complainant - Bhalabhai Mohanbhai resides at Khambolaj and on 17.01.1993, he was supposed to take the cattle of Maheshbhai Gordhanbhai (resident of Village Od) for grazing. Hence, at 9.00 in the morning the complainant alongwith Jesingbhai Merabhai, Hamabhai Jeevanbhai and Virabhai Chhaganbhai came out from the pastures of Khambolaj and passing through the Od Road reached the well of Muljibhai Mangalbhai Patel. The rent decided for the tractor of Muljibhai was Rs. 70/= and hence, all the four took the tractor to the

fields of Maheshbhai Gordhanbhai. The complainant alongwith Jesingbhai, Hamabhai and the deceased Virabhai Maheshbhai took the bundle of banana stems from the fields and hence, Maheshbhai took the tractor right to the fields. All the four tied up the bundle of banana stems, filled it in the trolley and the tractor was halted on the main road. A matador came and stopped on the main road and from the matador all the accused alighted with sticks. The accused objected to taking of the bundle of banana stems from their village and threatened the complainant and others to which it was replied that a way was needed for the cattle to go. The accused took out the sticks to beat the complainant and his party but they managed to jump from the tractor and run towards the well but the accused chased them with sticks. The deceased - Virabhai could not run any further and the accused - Surabhai Ramabhai ran behind him and inflicted a stick blow, because of which Virabhai gave a loud shout and fell down. The other accused - Mela Lakha, Vana Mana and Batha Hara went near Virabhai and inflicted blows to the deceased on the legs, hands and other parts of the body. The complainant, Bhalabhai Jesingbhai and Hemabhai implored the accused not to attack them but in the middle of the commotion, the accused - Kalu Gaga and Jala Vama also came there and the accused Kalu Gaga inflicted stick blows on the stomach of Jesingbhai. Another accused Jala Vama is alleged to have inflicted stick blows to the witness - Hama Jeevan. The injured shouted for help and hence, the accused fled away from the scene. Bhalabhai went near Virabhai Chhaganbhai and saw blood oozing out on account of the head injuries received by Virabhai and he was not able to speak. The information was received by the Od Police Out Post and therefore the police arrived at the scene of incident and Virabhai was shifted to the Dispensary at Od Village but the doctor declared Virabhai Chhaganbhai to be dead on arrival.

2.2. A complaint in this regard was lodged by Bhalabhai at Khambholaj Police Station which was registered as I-C.R. No. 8/83 and the investigation commenced. Charges were led against the accused in the Court of the learned Judicial Magistrate First Class. However as it was a sessions triable case, it was committed to the Court of Sessions.

2.3. At the time of the trial, the prosecution examined the following witnesses:--

The prosecution also relied upon various documentary evidence, some of them are:--

2.4. At the end of the trial, further statement of the accused under Section 313 of the Code of Criminal Procedure was recorded in which the accused pleaded not guilty and stated that they have been falsely implicated in the offence. Thus, after recording the further statement of the accused and hearing the arguments of both the sides, the learned Additional Sessions Judge passed the above judgment and order. Being aggrieved by the same, the present appeals have been filed, as aforesaid."

3. Learned Additional Public Prosecutor Ms. C.M. Shah has taken this Court to the

evidence led by the complainant and other witnesses and has submitted that the medical evidence supports of the case of the prosecution inasmuch as it reveals that there were fractures in the skull as well as the ribs of the deceased. It is further submitted that PW1 - Dr. Naranbhai Chaudhary has stated in detail the injuries received and the certificate so issued supports the case of the prosecution. Considering the above, it is submitted that this is a fit case which requires interference of this Court and the judgment and order of the learned Judge be upturned qua the acquittal of the accused.

4. Learned Advocate for the respondents accused Mr. Kaivan K. Patel has relied on the various judgments of the Hon"ble Supreme Court which are detailed hereinbelow and has submitted that it is on appreciation of evidence that the learned Judge has granted benefit of doubt to the respondents accused. It is further submitted that considering the evidences led by various witnesses, the prosecution has miserably failed to prove its case beyond reasonable doubt and the learned Judge has given cogent and convincing reasons to arrive at the acquittal of the accused. Hence, it is submitted that the judgment and order of the learned Sessions Judge requires no interference by this Court.

In the case of M.S. Narayana Menon @ Mani v. State of Kerala & Anr, reported in , (2006) 6 S.C.C. 39, 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 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."

Further, in the case of Chandrappa v. State of Karnataka reported in , (2007) 4 S.C.C. 415, 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."

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.

Even in the case of *State of Goa V. Sanjay Thakran & Anr.* reported in , (2007) 3 S.C.C. 75, 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."

Similar principle has been laid down by the Apex Court in the cases of *State of Uttar Pradesh v. Ram Veer Singh & Ors* reported in , 2007 A.I.R. S.C.W. 5553 and in *Girja Prasad (Dead) by LRs v. State of MP* reported in , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

In the case of *Luna Ram v. Bhupat Singh and Ors*, reported in , (2009) SCC 749, the Apex Court in para 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 strangulated. 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 running condition.

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."

Even in a recent decision of the Apex Court in the case of Mookkiah and Anr. v. State, rep. by the Inspector of Police, Tamil Nadu, reported in , AIR 2013 SCC 321, 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 appellant 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 v. Sohan Lal and Others, , (2004) 5 SCC 573]."

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 Apex Court in the case of State of Karnataka v. Hemareddy, reported in , AIR 1981, SC 1417, wherein it is held as under:--

"This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary , (1967) 1 SCR 93:(AIR 1967 SC 1124) 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."

Similar principle has been laid down by the Apex Court in the case of Shivasharanappa and Ors v. State of Karnataka, reported in , JT 2013(7) SC 66.

5. We have heard learned Advocates for the parties and perused the records of the case. While going through the well reasoned judgment and order of the learned Sessions Judge, it is clearly held that the prosecution has failed to prove its case beyond reasonable doubt. In this regard, it is relevant to refer to Paragraphs 47, 48, 49 and 50 of the judgment and order of the learned Sessions Judge wherein all the evidences led have been scrutinized minutely to arrive at the acquittal of the accused. Hence, this Court is in full agreement with the reasons given and findings recorded by the Trial Court while acquitting the accused and adopting the said reasons as well as the reasons aforesaid, in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court.

6. The Appeal is devoid of merits and stands dismissed. The judgment and order of acquittal dated 02.05.1994 of the learned Additional Sessions Judge, Kheda, Camp : Anand in Sessions Case No. 193/1993 stands confirmed. Bail and bail bond, stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.