

(2022) 01 GUJ CK 0116

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 2197 Of 2022 In R/Criminal Appeal
No. 226 Of 2022

State Of Gujarat

APPELLANT

Vs

Thakor Gopalji Chhanaji

RESPONDENT

Date of Decision : 31-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 323, 391, 395, 397, 504, 506(2)

Gujarat Police Act, 1951 — Section 135

Code Of Criminal Procedure, 1973 — Section 209, 313, 378, 378(1)(3), 379

Citation : (2022) 01 GUJ CK 0116

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

Bench : Division Bench

Advocate : CM Shah

Final Decision : ?Dismissed

Judgement

Sr.No.,Documents,Exh.

1,Medical certificate of complainant â?" Shri Mathurji,15 / 16.

2,"Original case papers, total 56 and 12 X-ray plates.",17

3,Medical certificate of witness â?" Sanjayji.,18

4,"Original case papers, total 4 and 2 X-ray plates.",19

5,Medical certificate of witness â?" Sureshji.,20

6,"Original case papers, total 1 and X-ray plate.",21

7,Panchnama of scene of offence.,23

8,Panchanam of recovery of weapon.,26

9,Panch slip of Muddamal article no.1.,27

10,Panchanam of recovery of weapon.,30

11,Panch slip of Muddamal article no.2.,31

12,Complaint.,34

13,Xerox copy of page no.29 of original station diary of Vadnagar Police Station.,39

14,Depute order.,40

15,Vardhi of dispensary.,41

evidence of complainant's son " Shri Sanjayji, he has not made any allegation with regard to dacoity or robbery. Similarly, no any injury is",,

noticed by the Doctor on the complainant's right ear, as it is alleged that earring was snatched. Learned Trial Judge upon appreciation of evidence",,

found that major part of evidence with regard to occurrence of incident does not stand proved and no reliance can be placed so as to believe,,

occurrence of incident. On our re-assessment and re-appreciation of evidence adduced on record, we also find that major part of the prosecution case",,

does not inspire confidence in our mind and so we do not find any infirmity in the finding recorded by the learned Trial Judge leading to acquittal of the,,

respondents accused.,,

8. We have noticed number of infirmities in the prosecution witnesses, more particularly, complainant's son who does not utter a word with regard",,

to dacoity / robbery and allegation of snatching gold ornaments as alleged by the complainant. To secure conviction of charge on dacoity, the",,

prosecution is required to establish two elements viz (i) that the dacoity as defined in section 391 of IPC has been committed (b) that it was committed,,

by the accused persons. In assessing liability to accused person for offence of dacoity, the word "co-jointly" has an important significance.",,

According to section 391 of IPC, dacoity is robbery committed by five or more persons. Essential element of offence of dacoity under section 395 is",,

that five or more persons must have participated in the offence of dacoity. No such evidence is coming on record so as to infer that respondent nos.3,,

to 6 actually participated in committing offence of dacoity. On our re-assessment of evidence, there is no iota of evidence noticed by us so as to hold",,

that prosecution succeeded in providing essential ingredients of section 395 of IPC. Under the circumstances, we have not found any compelling",,

reason so as to interfere with the finding recorded by the learned Trial Judge and learned APP could not point out any reliable evidence so as to infer,,

that respondents have committed offence as provided under sections 395, 397 and 323 of IPC. Under the circumstances, the learned Trial Judge has",,,

rightly acquitted the respondents accused for the elaborate reasons stated in the impugned judgment and we also endorse the view / finding of the,,

learned Trial Judge leading to the acquittal.,,,

9. The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the,,

presumption of his innocence. Keeping in mind the evidence adduced by the trial Court and also settled principle as to scope of appeal against the,,

acquittal order there are no good reasons to interfere with the findings of the trial court as there is no iota of evidence to infer that the respondent-,,

accused has committed offence as alleged. Since independent witnesses have not been examined, the prosecution case cannot be believed as to",,,

occurrence of the incident in the complainant's shop.,,,

10. 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.",,,

11. 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."""",,,

12. 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 in 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.",,,

13. 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.",,,

14. In view of the above and for the reasons stated above, present application for leave to appeal being Criminal Misc. Application No.2197 of 2022",,,

fails and same deserves to be dismissed and is accordingly dismissed. In view of dismissal of the application for leave to appeal, Criminal Appeal",,,

No.226 of 2022 also deserves to be dismissed and is accordingly dismissed.,,,