

(2012) 02 GUJ CK 0107
In the Gujarat High Court
Case No : Criminal Appeal No. 672 of 1991

State of Gujarat		APPELLANT
	Vs	
Thakor Ishwarji Chaturji and 11		RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Citation : (2012) 02 GUJ CK 0107

Hon'ble Judges : R.R. Tripathi, J;G.B. Shah, J

Bench : Division Bench

Advocate : L.R. Pujari, apps 1, for the Appellant; Banna S. Dutta for Opponent(s) 1-3, 5-8, Abated for Opponent(s) 4 and Mr K.R. Raval for Opponent(s) 9-12, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G.B. Shah

1. Present appeal U/s. 378 of the Code of Criminal Procedure, 1973 is directed against judgment and order dated 7th June 1991 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) (hereinafter referred to as "the learned Sessions Judge") in Sessions Case No. 109 of 1989, whereby, the learned Sessions Judge was pleased to acquit all the accused persons of all the charges levelled against them.

2. Learned Additional Public Prosecutor Mr. LR Pujari states that appeal qua respondent no. 4 has abated vide order dated 4th February 1993. He further submitted that following respondents - accused have expired on the dates mentioned against each. He places on record the Death Certificates of the said respondents:

Name

Respon-dent No.

Original accused No.

Expired on

Thakor Becharji Mohatji

2

2

02.08.2009

Thakor Ramaji Mohatji

7

7

29.10.2006

Thakor Kanaji Ramaji

9

9

20.06.1994

2.1. The Appeal stands abated qua aforesaid respondents - accused also.

3. Brief facts of the prosecution case are that the respondents- accused, on 22nd March 1989 at about 10:00 a.m., formed the unlawful assembly and attacked the complainant - Thakor Baldevji Amraji with deadly weapons. It is also the case of the prosecution that the respondent No. 1 had with him stick, respondent No. 5 had with him axe and attacked the complainant - Baldevji Amraji. The accused Nos. 2 to 4 and 6 to 12 had also abetted in the said offence and thereby committed the offence.

3.1. A complaint was filed and the respondents - accused were arrested. After the investigation was completed, charge-sheet was filed. The accused were produced before the learned Sessions Judge at Ahmedabad (Rural). The accused pleaded not guilty to the charge, consequently, the learned Sessions Judge conducted the trial.

3.2. To prove the guilt against the accused, the prosecution has examined in all 19 witnesses. In order to support the case, the prosecution has produced on record several documentary evidence.

3.3. At the end of trial, after recording the statements of the accused U/s. 313 of the Code of Criminal Procedure and hearing the arguments on behalf of the prosecution and the defence, the learned Sessions Judge acquitted the respondents -accused of all the charges levelled against them by judgment and order dated 7th June 1991.

4. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned Sessions Judge, the appellant -State has preferred the present appeal.

5. We have heard learned Additional Public Prosecutor Mr. LR Pujari. The learned Additional Public Prosecutor vehemently submitted that the learned Sessions Judge has erred in appreciating the evidence of complainant - injured witness viz. Baldevji Amraji. According to his evidence, the prosecution has proved the case beyond reasonable doubt and thereby, the learned trial Judge has erred in discarding the evidence of the injured witness. The learned Additional Public Prosecutor further submitted that the learned trial Judge ought to have held the respondents - accused guilty in view of the evidence of the injured complainant, whose evidence is also further corroborated with the medical evidence viz. Evidence of Dr. Narayanbhai Rambhai Pardeshi, exh. 26, evidence of Dr. RM Mehta, exh. 40 and evidence of Dr. SM Shah, exh. 42 and ought to have convicted the respondents - accused. The learned Additional Public Prosecutor further submitted that the learned trial Judge has erred in appreciating the evidence of the prosecution witnesses and thereby acquitting the respondents - accused, which has resulted into miscarriage of justice. He also submitted that the learned trial Judge has erred in appreciating the documentary evidence on the record of the case. Last but not least, the learned Additional Public Prosecutor submitted that the judgment and order of acquittal passed by the learned Sessions Judge is erroneous and is required to be quashed and set aside.

6. We have carefully considered the submissions made by the learned Additional Public Prosecutor and perused the oral as well as documentary evidence forthcoming on the record. We have also gone through the judgment and order dated 7th June 1991, impugned in this appeal, passed by the learned Additional Sessions Judge, Ahmedabad (Rural) at Mirzapur. Exh. 49 is the F.I.R. dated 22nd March 1989, lodged by the injured Baldevji Amraji Thakor and accordingly, said Baldevji is the complainant. The deposition of this witness, who is the injured and the eye-witness of the incident in question is at exh. 22. He has stated in his deposition in Para 10 thus:

That on 22nd March 1989, it was festival of Dhuleti and he had gone to village Giyod from Dahegam by bus at 8:15 for offering prayer (Mataji na Darshan) and reached between 9:00 and 9:30. According to him, in the bus-stand of Giyod, there is a Pan Shop of one Patel, where he smoke cigarette. One Haribhai Punjabhai met him there and after some talk with him, he went to his old house, as he had to worship there. It is important to note that the prosecution has not examined this witness - Patel, where, the complainant had smoked the cigarette. Moreover, the prosecution has also not examined Haribhai Punjabhai who met the complainant and they had a talk. The complainant further states that he had gone to his new house from the old one at about 10:15, where all accused persons met. At that time accused No. 7 said that Baldev was to be finished on that day. As per the say of Baldevji, the accused No. 7 was with him a wooden

log, by which he beat him first on left leg and then on left upper arm. The accused No. 5 was having an axe, by which he beat the complainant on left leg and then on right upper arm. The rest of the accused beat him on different parts of the body with the wooden article. The complainant - Baldevji further states that, as he thought that all the accused persons would kill him, he pretended to be unconscious and fell down and hence, the accused felt that he died. Then the accused No. 6 poured liquor into his mouth, whereas, accused No. 7 poured liquor on his face, however, the liquor could not be swallowed. Baldevji also states that, then all the accused took him by skidding near the house of one Chaturji Joitaji and left there. At that time, he became unconscious. His brother - Bakaji Amraji came there with police and shifted him to the hospital and admitted him as an indoor patient for getting treated.

6.1. It is further stated in Para 10 that:

...The complainant in his deposition has accepted that before this incident occurred, the criminal cases were filed and there was rivalry between them. In the circumstances, the deposition of complainant - Baldevji is required to be appreciated carefully, as it might happen that due to the rivalry, the complainant may implicate the accused. Mr. Parmar, Police Sub-inspector (PSI), who is the main Investigating Officer, has deposed vide exh. 50 that the brother of Baldevji - Bakaji Amraji had given an application -exh. 52 and on receiving that application, he, along with PSI Shri Bhatt, went to village Giyod. The complainant - Baldevji was found in unconscious condition and there were injuries found on his body. Thus, it can be inferred that when firstly Shri Parmar along with Bakaji Amraji had seen Baldevji, he was found in unconscious condition. Then, as stated by Shri Parmar - PSI, he went to Civil Hospital, Gandhinagar, where Baldevji Amraji was admitted for treatment and at about 15:30, he registered the complaint given by Baldevji Amraji. Now, complainant - Baldevji states in his cross-examination that, he regained consciousness at about 6:00 hours and then he registered the complaint. The complainant also states that the police had registered his complaint at about 6:00 hours on that day itself. Likewise, the brother of the complainant - Bakaji also states in his examination in chief at exh. 24 that, his brother regained consciousness in the hospital at 6:00 hours and stated him that accused No. 7 and others had beaten him. Thus, on considering the depositions of the complainant and Bakaji it appears that if Baldevji, after shifted to the hospital, regained consciousness at 6:00 hours, how come the F.I.R. could have been registered at 3:30 hours...

6.2. The brother of the complainant - Bakaji Amraji has been examined vide exh. 22. He has very specifically stated that his brother had regained consciousness at 6:00 p.m. and then, his brother stated that accused No. 7 etc. had beaten him. In fact, if the incident had occurred, as per the case of the prosecution, the complainant must have narrated the same to his brother but it appears that the brother of the complainant - Bakaji Amraji has not supported the complaint, exh. 49. In Para 12 and 13 of the judgment, the trial Court has narrated in detail how

the medical evidence is not supporting the case of the prosecution. The Dying Declaration recorded by the Executive Magistrate on 22nd March 1989 at about 10:00 p.m. is at exh. 56. Referring the F.I.R. at exh. 49 and the Dying Declaration at exh. 56 it is clear that the same has been recorded subsequent to the F.I.R. It is surprising to note that in the said Dying Declaration, Baldevji has simply stated that he had old disputes and certain persons of Thakor community had assaulted on him and beaten him. If we compare this Dying Declaration in line of complaint at exh. 49, it creates doubts on the case put forward by the prosecution and the prosecution has failed to bring home the charge levelled against the accused. Hence, we are of the considered view that the learned trial Judge has rightly acquitted the accused as referred above and we find ourselves in agreement with the same.

7. It is well settled that in acquittal appeal, where there is a possibility of two views, the one favourable to the accused should be adopted. It is also well settled principles of law that the Appellate Court would be slow to interfere in an order of acquittal until and unless the judgment of the trial court is perverse or demonstrably unsustainable. In the present Appeal, we find that the reasons given by the learned trial Court are plausible, cogent and convincing. Thus, in light of the evidence on record, it cannot be said that the learned trial Court has committed any error in acquitting the accused.

7.1. 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 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 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.

7.2. Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower Court, then the detailed discussion of evidence is not necessary.

8. In view of the aforesaid discussion, this Court finds no substance in the appeal. The appeal fails and is dismissed. The impugned judgment and order dated 7th June 1991 passed by the learned Additional Sessions Judge, Mirzapur, Ahmedabad in Sessions Case No. 109 of 1989 is confirmed. Bail Bonds stand cancelled.

8.1 The office shall send back the Record & Proceeding to the trial Court forthwith, after following the due procedure.