

(2016) 03 GUJ CK 0125
In the Gujarat High Court

Case No : Criminal Appeal No. 157 of 1996 and Criminal Revision Application No. 238 of 1995

State of Gujarat

APPELLANT

Vs

Thakor Popatji Javanji and Others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2016) 03 GUJ CK 0125

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

Bench : Division Bench

Advocate : C.M. Shah, Additional Public Prosecutor, for the Appellant; Umang H. Oza, 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 03.05.1995 of the learned Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 93/1993 whereby the respondents herein were acquitted of the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

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

"2.1. The original accused No. 1 - Thakore Popatji Javanji is the husband of the original accused No. 3 - Puriben. The original accused No. 2 - Ratanji Jeevanji is the son of the Puriben's brother - Jeevanji and is thus, the nephew of the original accused No. 1 and 2. It is the case of the prosecution that sister of the original accused No. 2 used to reside with Puriben and her husband and used to run an Aanganwadi. It is alleged that this sister of the original accused No. 2 had some illicit relations with the deceased. The original accused No. 1 was a teacher in the high school at Ramsang Village whereas the deceased was also employed as a teacher at the same village. Prior to one year of the alleged incident, a

quarrel had taken place between the deceased and the original accused No. 1 regarding playing of a tape recorder and this quarrel had later subsided.

2.2. On 25.01.1993 in the morning hours outside Village Ramsang, in the land of Kharaba, which was used by the villagers for answering the call of nature, the deceased had also gone. It was observed by the deceased that the accused were armed with weapons and had come to the field also. It is alleged that original accused No. 1 had a dharia with him, original accused No. 2 had a stick and original accused No. 3 with a kosh. The accused No. 1 gave a dharia blows on the head and waist of the deceased, accused No. 2 gave stick blows on the body of the deceased and accused No. 3 gave kosh blows on the legs and other parts of the body of the deceased. The deceased started shouting for help and hence, Ketandas Gulabdas Sadhu, Hamidji Chagganji Thakkar and Popatlal Dolatram all heard the shouts of the deceased and rushed to the place of incident and saw that the deceased was being beaten up by the accused. All the above persons intervened, got the deceased released from the clutches of the accused and then the accused walked away from the scene of incident with the respective weapons. The deceased fell to the ground and hence, the witnesses brought a jeep and brought the deceased to the Civil Hospital at Deesa where he was treated. However, as the condition of the deceased was of a very serious nature, he was shifted to the Civil Hospital at Palanpur where he was treated but was referred to the Civil Hospital at Ahmedabad. The deceased died during the course of treatment at Civil Hospital, Palanpur. The father and uncle of the deceased were called to the Civil Hospital, Palanpur and the uncle of the deceased lodged a complaint at Agathala Police Station which was the concerned Police Station and 50 Kms. away from Palanpur. The accused were arrested and were chargesheeted.

2.3. At the time of the trial, the prosecution examined 13 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 respondents 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 Appeal has been filed by the State, as aforesaid."

3. Learned Additional Public Prosecutor Ms. C.M. Shah has submitted that the learned Judge has committed a grave error on point of law in not relying on the deposition of the two eye witnesses namely Hamidji Thakore and Popatlal Daulatram Trivedi as these witnesses are impartial and independent witnesses and were also present at the place of offence. It is further submitted that the opinion regarding the cause of death of the deceased is "shock and haemorrhage

due to multiple injuries received". It is also submitted that the acts of accused would amount to culpable homicide and 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 qua acquittal of the accused be upturned.

4. Learned Advocate for the respondents No. 1-3 Mr. Umang H. Oza has relied on the various judgments of the Hon'ble Supreme Court which are detailed hereinbelow and has further submitted that 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.

5. 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."

6. 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."

7. 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.

8. 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."

9. 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.

10. 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."

11. 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]."

12. 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."

13. 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.

14. 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 clear that evidence adduced has been considered thread bare and on that basis, the benefit of doubt has been granted to the respondents. 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. Apart from that, learned Additional Public Prosecutor Ms. C.M. Shah for the appellant - State is not in a position to show any evidence to take a contrary view in the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

15. The Appeal is devoid of merits and stands dismissed. The judgment and order of acquittal dated 03.05.1995 of the learned Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 93/1993 stands confirmed. Bail and bail bond, stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.

Criminal Revision Application No. 238/1995 also stands dismissed.