

(2016) 04 GUJ CK 0025
In the Gujarat High Court
Case No : Criminal Appeal No. 852 of 1994

State of Gujarat

APPELLANT

Vs

Vajesing Prabhatsing Parmar and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, Section 302, Section 304(B), Section 306,
Section 34

Citation : (2016) 04 GUJ CK 0025

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

Bench : Division Bench

Advocate : C.M. Shah, Additional Public Prosecutor, for the Appellant; Pravin Gondaliya, 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 12.05.1994 passed by the learned Additional Sessions Judge, Ahmedabad Rural in Sessions Case No. 109/1993 whereby the respondents were acquitted for the offences punishable under Sections 306, 304(B) and 114 of the Indian Penal Code.

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

"2.1. The complainant's daughter - Kailashben was married with the accused No. 2 and was living at her matrimonial home at Sanand. It is alleged that there was a demand of Rs. 30,000/- from the complainant but the complainant agreed to provide Rs. 10,000/- only looking to his financial capacity. It is alleged that the accused lost Rs. 30,000/- on account of gambling activities. Prior to 15 days from the date of incident, the complainant's daughter had come to her parental home that her in-laws were pressurizing to bring various ornaments after the birth of her child and also used to give her taunts in this regard. However, the complainant pacified his daughter and sent her back to her matrimonial home.

On 17.06.1991 at around 11.00 am, Bhagwatsinh came to Village Nesda and informed that Kailashben had received burn injuries as the gas cylinder had burst and she was shifted to v. Hospital, Ahmedabad for treatment. The complainant rushed to v. Hospital but he came to know that his daughter had expired and the body was sent for post mortem. It is alleged that the signature of the complainant was taken on the papers and the body of the deceased was handed over but the in-laws of the deceased did not allow the complainant to see his daughter's face and the last rites were performed.

2.2. On the basis of the complaint filed, the investigation commenced. Charges were led against all the original accused in the Court of the learned Judicial Magistrate First Class. Sanand. Since it was a Sessions triable case, the learned Judicial Magistrate First Class committed the case to the Court of Sessions.

2.3. At the time of the trial, the prosecution examined the complainant - Sursangbhai Samantbhai, Kamlaben Sursangbhai, Pratapsinh Sursangbhai, Agarsinh Sursangbhai, Witness - Fulabha Manubahi, Ranjitsinh Vajesinh, Abdul Rajab Abdulkadar, Dr. Shripal Chinubhai, Mrs. Anita Atul Karwal and Uday Narendra Malvi.

The prosecution also relied upon various documentary evidences.

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 for the appellant - State has taken this Court to the medical evidence as also the evidence led by the complainant - Sursangbhai. It is further submitted that learned Judge has erred in discarding the evidence of the complainant whose evidence gets corroboration from the First Information Report which was lodged after the accident. It is further submitted that the prosecution has successfully proved its case beyond reasonable doubt. 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 the acquittal of the respondents should be upturned by this Court.

4. On the other hand, learned Advocate appearing for the respondents accused Mr. Pravin Gondaliya has stated that there are several discrepancies in the evidence led by the complainant. It is further submitted that the medical evidence adduced also does not support the case of the prosecution and the complaint was filed at a belated stage and therefore, this Court should not interfere in the well reasoned judgment and order of the learned Additional Sessions Judge. Learned Advocate for the respondents accused has also relied on

the decisions of the Hon"ble Apex Court which are detailed hereunder:--

"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 M.P.* 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 including the post mortem report of the deceased. While going through the well reasoned judgment and order of the learned Sessions Judge, it is clearly held that the complaint was filed at a belated stage, and after the complainant took advice from a lawyer. It is also held that there is no conclusive proof led with regard to the demand of ornaments made by the in-laws of the deceased. We are of the view that the learned Judge has given cogent and convincing reasons to arrive at the acquittal of the accused. Apart from that, the 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. In that view of the matter, we are in complete agreement with the

reasons recorded by the learned trial court and 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 is dismissed accordingly. The judgment and order of acquittal dated 12.05.1994 passed by the learned Additional Sessions Judge, Ahmedabad Rural in Sessions Case No. 109/1993 is hereby confirmed. Bail bond, if any, shall stand cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.