
(2014) 09 GUJ CK 0080
In the Gujarat High Court
Case No : Criminal Appeal No. 1410 of 1993

State of Gujarat	Vs	APPELLANT
Viothalbhai Shanabhai Solanki		RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2014) 09 GUJ CK 0080

Hon'ble Judges : K.S. Jhaveri, J; Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Nisha Thakore, Addl. Public Prosecutor, Advocate for the Appellant;
Bharat T. Rao and Daxay Patel, Advocate for the Respondent

Judgement

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K.S. Jhaveri, J.—The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 09.08.1993 passed by the Additional Sessions Judge, Vadodara in Sessions Case No. 26 of 1993 whereby the accused has been acquitted of the charges leveled against him by granting him benefit of doubt.

2. The brief facts of the prosecution case are that on 31.03.1992 at around 12.30 pm, the accused inflicted dhariya blow on the head of the deceased which proved to be fatal and the deceased expired. A complaint was therefore registered against the accused and pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Court of Sessions, Vadodara.

2.1 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence. To prove the case against the accused, the prosecution has examined the following witnesses:

2.2 The prosecution has also relied upon the following documentary evidences:

2.3 At the end of the trial and after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Additional Sessions Judge acquitted the respondent of all the charges leveled against him by impugned judgment and order. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court the appellant State has preferred the present appeal.

3. Ms. Thakore, learned APP appearing for the appellant-State has submitted that the trial court committed an error in releasing the respondent-accused. It was contended by Ms. Thakore, that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present respondent. Learned APP has also taken this court through the oral as well as the entire documentary evidence.

4. Mr. Daxay Patel, learned advocate appearing for Mr. Rao for the respondent supported the impugned judgment and order and submitted that the same having been passed in accordance with law does not call for any interference. He submitted that the prosecution has failed to prove the case against the respondent beyond reasonable doubt. He submitted that there are variations in the evidence of witnesses.

5. At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , 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."

5.1 Further, in the case of Chandrappa and Others Vs. State of Karnataka, 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, reappraise 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."

5.2 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.

5.3 Even in a recent decision of the Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, , the 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."

5.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, . Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.5 in the case of Lunaram Vs. Bhupat Singh and Others, , the Apex Court in paras 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 strangled. 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 a running condition.

11. 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."

5.6 Even in a recent decision of the Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, : Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, , 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 appellants 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 reappreciate 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,

5.7 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 reasoning's, 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."

5.8 Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

6. We have examined the matter carefully and gone through the evidence on record. We have appreciated, reappreciated and re-evaluated the evidence on the touchstone of latest decision of the Hon'ble Apex Court. We find that the trial Court while considering the evidence on record, has very elaborately discussed the dying declaration, the history recorded before the doctor, Panchnama and the medical evidence on record. The medical evidence has been extensively dealt with by the learned trial judge. The trial court has granted benefit of doubt to the accused - respondent. It shall not be out of place to mention that the trial court has observed that the defence has been successful in proving that the accused was not present at the scene of offence when the alleged offence took place. The trial court has not believed the evidence of so-called eye witnesses. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order. Even otherwise, the incident is of the year 1992 and we are not inclined to disturb the position which has been prevailing for these many years.

7. We are, therefore, of the considered opinion that the findings recorded by the trial Court in acquitting the accused of the charge levelled against him by granting him benefit of doubt are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are in complete agreement with the reasonings given and the findings arrived at by the trial Court. No interference is warranted with the judgment and order of the trial Court.

8. Accordingly, appeal is hereby dismissed. The judgment and order dated 09.08.1993 passed by the Additional Sessions Judge, Vadodara in Sessions Case No. 26 of 1993 is confirmed qua the acquittal of the respondent under section

302 of Indian Penal Code. Bail bond, if any, shall stand cancelled.