
(2015) 05 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 1676 of 2004

State of Gujarat

APPELLANT

Vs

Zala Indrakumar Bachubha and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 417, 418, 423

Penal Code, 1860 (IPC) — Section 397, 452, 504

Citation : (2015) 05 GUJ CK 0030

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : Bhatt, A.P.P., for the Appellant; Devang Vyas, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—The State has preferred this appeal under Section 378 of the Criminal Procedure Code against the judgment and order dated 12.07.2004 rendered by the learned Additional Sessions Judge, 2nd Fast Track Court, Dhrangadhra in Sessions Case No. 90 of 1998. The said case was registered against the present respondent original accused persons for the offence under Sections 397, 504 and 452 of the Indian Penal Code ("IPC" for short) and also under Section 135 of the Bombay Police Act (herein after referred to as "the Act").

2. The case of the prosecution is that the complainant Kanjibhai Valjibhai Patel has filed the complaint to the effect that on 12.10.98 at about 9.45 hrs, when he was present in his shop of pipe and tap, all the accused had come to him. They had come there on the pretext that they wanted to change the pipes purchased from the shop of the complainant or to give their money back and in that regard they started quarreling with the complainant. Their intention was to commit loot in the shop of the complainant. Further, all the accused came to the shop of the

complainant armed with lethal weapons i.e. dhariya, stick, pipe and knife and attacked the complainant as well as one Shankarbhai Pitambarbhai Patel and his son and caused injuries to them. Further, they snatched away the service revolver of PSI Shankarbhai Pitambarbhai Patel. With these allegations, the complaint was filed with the Dhrangadhra City Police Station. The police after investigation charge sheeted the accused for the aforesaid offences. The accused pleaded not guilty to the charge and claimed to be tried.

2.1 In order to bring home the charges against the accused persons, prosecution has examined 12 witnesses and also produced 11 documents in evidence in support of its case.

2.2 Thereafter, after filing closing purshis by the prosecution, further statements of accused persons under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused denied the case of the prosecution and submitted that a false case is filed against them.

2.3 At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned judgment, acquitted the respondents-accused.

3. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 12.07.2004 rendered by the learned Additional Sessions Judge, 2nd Fast Track Court, Dhrangadhra in Sessions Case No. 90 of 1998, the appellant-State has preferred the present appeal before this Court.

4. Ms. Bhatt, learned APP appearing for the State has submitted that the order of acquittal is contrary to law and evidence on record. She submitted that the learned trial Judge has wrongly held that the prosecution has failed to prove its case beyond reasonable doubt. She submitted that the learned trial Judge ought to have accepted and believed all the documentary evidence and evidence of other witnesses who have supported the prosecution case. She submitted that the learned trial Judge ought to have believed the evidence of the complainant Kanjibhai Vanjibhai who was examined at Exh. 23, so far as the incident is concerned. She also submitted that the learned trial Judge ought to have believed the evidence of witness Manishbhai who was examined at Exh. 24. He has also supported the say of the complainant so far as the injuries sustained by him and the complainant due to the incident is concerned. She further submitted that the learned trial Judge ought to have believed the evidence of witness Shankarbhai Pitambarbhai Patel, who was examined at Exh. 32. He is an eye witness to the incident. He has fully supported the prosecution case. It ought to have been appreciated that there is no inimical relation between the accused and this witness. He is also not an interested witness. He has stated in his evidence that during the incident, he and his son Bhalabhai sustained injuries. The evidence of this witness gets corroboration from the complaint. There is no reason to disbelieve the evidence of this witness. That during his cross-examination also he has supported the prosecution case. This witness has also

identified the accused before the Court as assailants. She also submitted that the learned trial Judge ought to have believed the evidence of the witness Bhailal Shankarlal Patel, who was examined at Exh. 33. He has is also an injured eye-witness to the incident. There is no reason to disbelieve the evidence of this witness. This witness has also identified all the accused before the Court. She also submitted that learned trial Judge ought to have believed the evidence of Investigating Officer, Kanaksinh Gagubha Rana, who was examined at Exh. 39 as he has no reason to falsely involve the accused in the present case and allow the real culprits to go scot-free. She submitted that, in view of above, this appeal may be allowed and the judgment of the trial Court may be reversed.

5. Per contra, learned advocates for the respondents-accused have supported the impugned judgment. It is submitted that there is no infirmity in the impugned judgment. It is also submitted that the lower Court has rightly appreciated the evidence on record. It is also submitted that the finding recorded by the lower Court may not be interfered with and the lower court has rightly acquitted the respondents of the charges levelled against them. It is also submitted that considering the evidence on record, the prosecution has failed to prove its case beyond reasonable doubt against the accused. It is, therefore, submitted that the impugned judgment may not be interfered with and it may be confirmed and the appeal may be dismissed.

6. I have heard learned APP for the appellant-State and also learned advocates for the respondents-accused. I have gone through the evidence produced on record. Before deciding the appeal, it is necessary to refer to the relevant provisions of IPC, which are reproduced hereunder:--

"397. Robbery or dacoity, with attempt to cause death or grievous hurt.--If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, so attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

452. House-trespass after preparation for hurt, assault or wrongful restraint.--Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting and person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

504. Intentional insult with intent to provoke breach of the peace.--Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

7. Considering aforesaid provisions of IPC, the prosecution has to prove its case

beyond reasonable doubt. In the present case, can it be said that the accused persons have committed the offences as alleged? In the present case, complainant Kanjibhai, his son Manishbhai and his brother-in-law, Vanmalidas, have not supported the case of the prosecution. Only PSI Shankarbhai Patel and his son Bhailal have supported the case of the prosecution. Though the incident had occurred in 1996, after eight years i.e. in 2004, they have identified the accused persons in the Court, inspite of the fact that they had not seen the accused before the incident and they had seen accused for the second time in the Court. In the present case, even the Test Identification Parade of the accused persons was not carried out and they were identified by these witnesses before the Court. However, these witnesses could not say as to who had attacked them. These witnesses could not describe the specific role of the accused in their statements. Therefore, when the complainant has not supported the case of the prosecution and when the evidence of the other witnesses is not conclusive, learned trial Judge has rightly acquitted the accused of the charges levelled against them. It is found by the trial Court that there are discrepancies in the evidence led by the prosecution and the prosecution has failed to establish its case for offences under Sections 397, 504 and 452 of IPC as well as Section 135 of the Act. It is also found that the witnesses have not supported the case of the prosecution. Therefore, in my view, the prosecution has miserably failed to prove the case against the accused. The evidence on record does not inspire confidence and offence as alleged was not committed by the accused persons. Therefore, learned trial Judge has rightly observed that the prosecution could not prove its case beyond reasonable doubt.

8. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In a recent decision in the case of Satvir Singh Vs. State of Delhi, (2014) AIRSCW 4924 : (2014) 9 SCALE 528 , the Honourable Supreme Court has observed as under:

"19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal. The following two passages from the report in Sheo Swarup adequately sum up the situation:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has "obstinately blundered", or has "through

incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

(emphasis supplied)

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."

20. The principles of law laid down by the Privy Council in Sheo Swarup have been consistently followed by this Court in a series of subsequent pronouncements of which reference may be illustratively made to the following: *Tulsiram Kanu v. State*, *Balbir Singh v. State of Punjab*, *M.G. Agarwal v. State of Maharashtra*, *Khedu Mohton v. State of Bihar*, *Sambasivan v. State of Kerala*, *Bhagwan Singh v. State of M.P.* and *State of Goa v. Sanjay Thakran*."

9. It is settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. On the touchstone of these judgments, the principles enunciated therein go to show that the finding of fact recorded in the impugned judgment cannot be said to be perverse and this view is based on facts and the law of the land. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent - accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal sans merit and is required to be dismissed.

10. In the result, the appeal is hereby dismissed. The impugned judgment and order dated 12.07.2004 rendered by the learned Additional Sessions Judge, 2nd Fast Track Court, Dhrangadhra in Sessions Case No. 90 of 1998, acquitting the respondents-accused, is hereby confirmed. Record and Proceedings, if any, be

sent back to the trial Court concerned forthwith. Bail and bail bond, if any, stands cancelled.