

(2016) 02 GUJ CK 0127
In the Gujarat High Court

Case No : Criminal Appeal Nos. 406, 785 and 786 of 2005

The State of Gujarat

APPELLANT

Vs

Jayantibhai Gopalbhai Patel

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section (C), Section (D), Section 120, Section 302, Section 34, Section 489(A), Section 489(C)

Citation : (2016) 02 GUJ CK 0127

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

Bench : Division Bench

Advocate : Hardik Soni, Additional Public Prosecutor, for the Appellant; Yogesh S. Lakhani, Senior Counsel and R.K. Mansuri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. Heard learned Advocates appearing for the respective parties.

2. All the above Appeals are directed against the judgement and order of conviction and sentence dated 31.01.2005 passed by the learned Additional Sessions Judge, 5th Fast Track Court, Sabarkantha at Himmatnagar in Sessions Case No. 107/2004 whereby the original accused No. 1 (Jayantibhai Gopalbhai Patel) was convicted for the offence punishable under Section 489(C) of the Indian Penal Code and sentenced to undergo rigorous imprisonment of five years and a fine of Rs. 10,000/-, in default of payment of fine, rigorous imprisonment for a further period of one year.

3. Accordingly, Criminal Appeal No. 785/2005 is an Appeal preferred by the appellant - State for enhancement of sentence qua accused No. 1 whereas Criminal Appeal No. 406/2005 is an Appeal preferred by the original accused No. 1 - the respondent herein against the judgment and order of conviction as aforesaid. Criminal Appeal No. 786/2005 is an Appeal preferred by the State against the acquittal of the other accused i.e. original accused Nos. 2 to 7 - Jigneshbhai Valjibhai Patel, Vijaybhai Karamshibhai Patel, Hitendrasinh alias Jitu

Narsinh Solanki, Chaturbhai alias Chandubhai Parshottambhai, Bavkubhai alias Babubhai Abhalbhai Basiya and Osman alias Usman alias Taklo Hasambhai Kureshi.

4. The case in brief is as under:-

4.1. It is the case of the prosecution that complainant Mr. P.M. Parmar, Police Sub Inspector, RRL, Gandhinagar Range, Gandhinagar disclosed before the Police Sub Inspector, LCB, Himmatnagar on 07.04.2004 that he received an information from his personal sources that the present accused, resident of Yogeshwar Saw Mill, Near Motipura Canal, Himmatnagar would be going on his Scooter bearing registration No. GJ-9-C-7407 keeping therein fake currency notes in the denomination of Rs. 100/- which would be given at cheaper rates in the Naroda area of Ahmedabad. On receiving such an information, he went to Motipura at Himmatnagar and disclosed the said facts to the Police Inspector, LCB, Himmatnagar, who alongwith other police personnel, came near Motipura ST Bus Stand and called the panch witnesses. The panch witnesses were made aware of the facts of the information so received. Therefore, starting from 06.04.2004 from 20.00 hours, the complainant and the panch No. 1 kept a watch opposite Yogeshwar Saw Mill, Near Motipura Canal. At about 21.00 hours, a person was seen going from Yogeshwar Saw Mill on the aforesaid scooter towards Motipura. Therefore, they followed him on the government vehicle and informed the Police Inspector, LCB, Himmatnagar and others about the said fact. All of them followed the said scooter and when they came near Sabar Diary three roads, they overtook the said scooter and stopped said person. On enquiry, he stated his name as Jayantibhai Gopalbhai Patel, resident of Yogeshwar Saw Mill, Motipura, Himmatnagar. The registration number of the said Scooter was GJ-9-C-7407. On the upper portion of the number plate of the scooter, the word "Payal" was written and on the bottom portion of the number plate, the word "Yogesh" was written. On conducting a search of said Jayantibhai, 5 notes of Rs. 100/- denomination were found, out of which three notes had the same serial number, i.e. 6 QB 627889 and the other two notes had the same serial number, i.e. 7 TT 683976 which were found in the pocket of his shirt. When the panchas examined the said notes, they found that colour of the notes appeared to be lighter than the original currency note, there was no emblem on the water mark and the quality of the paper was also poor and rough. A search of the storage space (dickey) of the scooter was made but since it was locked, the accused open the same with the key. Inside the dickey, there was a black coloured plastic purse and on opening the same, 10 bundles of notes of Rs. 100/- denomination were found. In the presence of the panchas, the bundles were checked with the help of the lights of the government vehicle. The number of the notes were found bearing the same serial number and the details of the same were noted. On enquiring about five notes seized from the person of the accused and 894 notes valued at Rs. 89,400/-, the accused told that his nephew Jigneshkumar Valjibhai Patel, had given. It was further stated by the accused that on giving 10 bundles, he was to receive an amount of Rs. 50,000/- and then he would give the fake

currency notes. The said fake currency notes, black coloured plastic purse and the scooter, were seized for the purpose of investigation and the necessary panchnamas were prepared.

4.2. Therefore, an offence was registered at LCB Police Station, Himmatnagar and investigation was taken over by PSI-M.C. Patel, LCB, Himmatnagar and the accused Nos. 1 and 2 were arrested and some currency notes were also seized from them in the presence of the panchas. The said currency notes were sent for further investigation to State Bank of India and an opinion was obtained from them. The same were also sent to the General Manager, Reserve Bank of India, Ahmedabad for investigation and necessary opinion was also received. After obtaining necessary approval, they were sent to Hyderabad for further investigation. In the presence of the panchas, the photocopy machine, lamination machine and the paper cutting machine were seized from Darshan Villa Flats of one - Vijay. Both Vijay and Hitendra were also arrested. Thereafter, a Guide Book, a vehicle and others machines were also seized from another accused - Osman.

4.3. After completion of the investigation, a chargesheet was filed for the offences punishable under Section 489(A), (C), (D) read with Section 120 of the Indian Penal Code. Thereafter, the matter was committed to the Sessions Court and the case was registered as Sessions Case No. 107/2004. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution therefore led evidence.

4.4. At the time of the trial, the prosecution examined the following witnesses:-

The prosecution also relied upon various documentary evidence, some of them are:-

4.5. At the end of the trial, after recording the further statements 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 appeals have been filed, as aforesaid.

5. While supporting the judgment and order so far as conviction qua original accused No. 1 is concerned, learned Additional Public Prosecutor Mr. Hardik Soni has contended that when the offence is already proved by the prosecution against the said accused beyond reasonable doubt, the trial Court has committed an error in imposing lesser punishment to the accused No. 1. Moreover, he submitted that looking to the provisions of relevant law itself and the gravity of the offence, maximum sentence, provided for the offence punishable under Section 489(C) of the IPC i.e. imprisonment of seven years, was required to be imposed upon the accused No. 1 and accordingly, the trial Court has committed error in awarding lesser punishment of rigorous imprisonment for five years for such a grave offence, without assigning any cogent and sufficient reasons. Our attention is also drawn to the recent judgment in the case of Raj Bala v. State of Haryana and Others etc. in Criminal Appeal Nos. 1049 to 1050 of 2015, decided

on 18/08/2015, more particularly, para 1 and 2, which reads as under:-

"1. In *Gopal Singh v. State of Uttarakhand*, while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

"Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometime lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, there are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

[Emphasis added]

2. Seven years prior to that, in *Shailesh Jasvantbhai v. State of Gujarat*, it has been held that:-

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be

the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this court in *Sevaka Perumal v. State of T.N.*"

[Emphasis supplied].

And again:-

"The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society"s cry for justice against the criminal".

5.1. So far as acquittal of other accused viz. Original accused Nos. 2 to 7 are concerned, the learned advocate for the State contended that the judgment and order of the trial Court is against the provisions of law and contrary to the evidence on record. He took us through the oral as well as documentary evidence on record, more particularly, the evidence of the Investigating Officer and also the crucial three panchnamas by which, the involvement of all the accused has been proved beyond reasonable doubt and contended that when the prosecution has proved its case bereft of any doubts against all the accused, the trial Court has committed a grave error in acquitting the original accused Nos. 2 to 7 for the offences charged against them.

5.2. Making the above submission, learned Additional Public Prosecutor Mr. Hardik Soni for the State submitted that this is a fit case which calls for interference at the hands of this court and requested to allow the appeals for enhancement of sentence against original accused No. 1 and against acquittal

against original accused Nos. 2 to 7 by upturning and/or modifying the impugned judgment and order.

6. On the other hand, learned Senior Counsel Mr. Yogesh S. Lakhani appearing with learned Advocate Mr. R.K. Mansuri appearing for the respondent - original accused No. 1 has submitted that the alleged fake currency notes were recovered from the scooter of the respondent herein on 06.04.2004 at 9.00 pm and the same were sent to State Bank of India, Himmatnagar for ascertaining whether the same were genuine or not without putting a seal on them. The same remained without seal till 07.04.2004 at 3.00pm. Therefore, it is submitted that when the fake currency notes which were seized from the scooter of the appellant - original accused No. 1 and sent to the SBI, Himmatnagar for ascertaining whether the same were genuine or fake, without it being sealed, benefit of doubt is required to be given to the accused No. 1 and he is required to be acquitted of the charges levelled against him. It is further submitted that the Police Sub Inspector, RRL, Gandhinagar Range, Gandhinagar had left the office without recording any entries in the records namely in the Log Book, Vehicle Diary etc. It is also submitted that this official did not even inform the highest officer prior to or subsequently and therefore, it transpires that the accused No. 1 has been falsely involved in this case with an ulterior motive. It is further contended that there are serious lapses on the part of the prosecution and more particularly, that the currency notes ought to have been sealed at every stage which was admittedly not done, as is admitted by the Investigating Officer. It is also submitted that there are some statements recorded in the panchnama and on the basis of these statements, the prosecution has tried to prove the case against the present accused which is not permissible under law. Considering the evidence on record, it is submitted that this is a case where the accused No. 1 is to be granted benefit of doubt and the accused could not have been convicted under the provisions of the Code as stated above and hence, the Appeal preferred by the accused No. 1 challenging his conviction and sentence should be allowed. So far as Appeal against the acquittal of original accused Nos. 2 to 7 is concerned, learned Senior Counsel Mr. Yogesh Lakhani supported the impugned judgment and order and submitted that the same having been passed after due appreciation and evaluation of the evidence on record and dealing with each and every aspect of the matter in detail, this Court may not interfere in the Appeal. Eventually, he requested to dismiss the Appeals filed by the State.

7. We have heard learned Advocates appearing for the respective parties and perused the records of the case. Before proceeding any further, it is necessary to state that the incident is of the year 2004 and almost 12 years have elapsed from the date of incident. The prosecution has relied on three panchnamas which were carried out at the scene of offence, the factory and other premises. Taking into account, the evidence of the complainant and other witnesses and also that of the Investigating Officer, we are of the view that the prosecution has been able to prove its case successfully qua the original accused No. 1 (i.e. the respondent accused herein) only.

8. Qua the other accused who have been acquitted, we are of the view that the benefit of doubt granted by the learned Sessions Judge should not be disturbed in view of the following judgments as referred hereinunder:-

In the case of M.S. Narayana Menon @ Mani Vs. 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 Vs. 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 Vs. Ram Veer Singh & Ors* reported in 2007 A.I.R. S.C.W. 5553 and in *Girja Prasad (Dead) by LRs Vs. 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 Vs. 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 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 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. Vs. 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 vs. 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 Vs. 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 Vs. State of Karnataka, reported in , JT 2013(7) SC 66.

9. Criminal Appeal No. 406/2005 preferred by the original accused No. 1 stands partly allowed. In the facts and circumstances of the case and to secure the ends of justice, we deem it just and proper to reduce the sentence of the above accused under Section 489(C) of the Indian Penal Code to a period of three years. The accused shall surrender before the Trial Court to serve the above period of sentence within a period of twelve (12) weeks from today, failing which, the concerned Trial Judge shall issue a non-bailable warrant against the accused to serve the period of sentence. The period of sentence already undergone by the accused shall be considered for remission and set off in accordance with law. Bail bond of the accused shall stand cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.

The judgment and order of conviction and sentence dated 31.01.2005 passed by the learned Additional Sessions Judge, 5th Fast Track Court, Sabarkantha, Himmatnagar in Sessions Case No. 107/2004 stands modified to the above extent.

Criminal Appeals No. 785/2005 and 786/2005 preferred by the State stand dismissed.