

(2015) 10 GUJ CK 0089
In the Gujarat High Court
Case No : Criminal Appeal No. 307 of 2006

The State of Gujarat

APPELLANT

Vs

Raval Rameshbhai Govabhai

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34, 498(A)

Citation : (2015) 10 GUJ CK 0089

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

Bench : Division Bench

Advocate : C.M. Shah, APP, for the Appellant; N.P. Chaudhary and Tushar Chaudhary, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—This appeal is directed against the judgment and order of acquittal dated 19.10.2005 passed by Additional Sessions Judge, Fast Track Court No. 1, Patan in Sessions Case No. 377 of 2002, whereby the respondent-original accused was acquitted of the charges under Sections 498(A) and 302 of the Indian Penal Code.

2. The facts in brief giving rise to the filing of present appeal are as under:

2.1 The complainant was serving in security at GGS-1, ONGC, Lanva. He has six brothers and three sisters. The elder sister of the complainant was married at village-Sipor. That Manguben, the deceased, was married to the accused twelve years prior to the incident. Father of the complainant had died sixteen years ago. That his mother Shantaben is staying with the youngest brother of the complainant, i.e. Babubhai. That Manguben had two sons and two daughters. That father-in-law of Manguben had died three years ago and mother-in-law of the deceased stayed separately. That Manguben was residing with the accused and their children. The deceased Manguben used to visit her parental house as and when the occasions come. That the accused did not do anything and he was

in a bad habit of gambling and drinking wine. Therefore, the deceased used to tell the accused to stop such habits, but the accused did not listen. The accused used to beat the deceased Manguben and thereby giving her mental and physical harassment. Therefore, the deceased used to come at her parental house with agony. However, on thinking about the future of the children, the complainant sent the deceased back at her matrimonial home. The complainant and his family members also persuaded the accused to stop bad habits, however, the accused did not change. On 12.9.1999 or 13.9.1999 at about 4 p.m., the deceased after annoying with her husband, the accused, came to her parental home and told that the accused used to beat her often. Manguben stayed there for about four days. On 16.9.1999, the accused came and took the deceased with an assurance that he will keep her well. On 19.9.1999, the complainant received information that the deceased got severe burn injuries and she was taken to Government Dispensary, Patan. Therefore, the complainant went there. The police recorded the statement of the deceased and her statement was also recorded before the Executive Magistrate. Thereafter, she was shifted to Government Dispensary, Mehsana, where she succumbed to the injuries during treatment. On these allegations, the complaint was given to the police against the accused.

2.2 Thereafter, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, the case was committed to Sessions Court and, ultimately, trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 In order to bring home the charges against the accused persons, prosecution has examined following witnesses.

2.4 The prosecution has also produced following documents in support of its case:-

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

3. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned Judgment, acquitted the respondent. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 19.10.2005 passed by Additional Sessions Judge, Fast Track Court No. 1, Patan in Sessions Case No. 377 of 2002, the appellant-State has preferred the present appeal before this Court.

4. Ms. C.M. Shah, learned APP appearing for the State has taken us through the evidence and contended that the trial Court has committed an error in acquitting the accused inspite of voluminous evidence against him and contended that the trial Court ought not to have acquitted the accused. He submitted that the

prosecution has successfully proved its case through the evidence on record. He submitted that the trial Court ought to have believed the dying declaration of the deceased of the deceased. He also submitted that the prosecution witness gets corroboration from medical evidence and, therefore, it may not have been discarded by the trial Court. He also submitted that even the prosecution witnesses have supported the case of the prosecution and there was no reason to dis-believe their version. He, therefore, prays that this appeal may be allowed by setting aside the impugned judgment.

5. On the other hand, learned counsel for the respondent-accused has contended that the trial Court has rightly appreciated the evidence on record and acquitted the accused persons of the charges levelled against him. It is also submitted that so far as acquittal appeals are concerned, the law is well settled and by taking us through the impugned judgment, he submitted that this Court may not interfere with the impugned judgment and the appeal may be dismissed.

6. We have heard learned APP appearing for the appellant-State as well as learned advocate for the respondent. We have also gone through the oral as well as documentary evidence on record. From the evidence record, it is clear that there are contradictions in the statement of the deceased. She has stated in her statement that the injuries received by her are accidental and even the medical opinion is that such injuries are accidental. From the evidence on record, it is also not established that the deceased was at her maternal home and she was taken by three persons back to her matrimonial home as statement of no such person is recorded. Therefore, it cannot be said that the prosecution has proved its case beyond reasonable doubt against the accused. In our view, there is no substantial piece of evidence to prove that the accused has committed the offence alleged against him. Therefore, the trial Court has rightly acquitted the accused persons of the charges levelled against him. In view of this and considering various decisions of Honourable Apex Court, when two views are possible, this Court should not interfere with the order of acquittal recorded by the trial Court. It is also 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 the powers of 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."

6.1 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, 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.

6.2 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.

6.3 Even in the case of State of Goa Vs. Sanjay Thakran and Another, , 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."

6.4 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.

6.5 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 strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem 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.

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."

6.6 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, , 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 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,]"

6.7 It is also a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite 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 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 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.

7. Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower Court, then the discussion of evidence is not necessary. Moreover, learned APP is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude 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 material evidence while acquitting the accused. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondent of the charge levelled against him. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the impugned judgment and, therefore, find no reasons to entertain this appeal.

8. In view of the aforesaid discussion, this Criminal Appeal is dismissed. The impugned judgment and order dated 19.10.2005 passed by Additional Sessions Judge, Fast Track Court No. 1, Patan in Sessions Case No. 377 of 2002 is hereby confirmed. Bail bond, if any, shall stand cancelled. Registry to return the R & P, if lying here, to the concerned trial Court forthwith.