

(2015) 10 GUJ CK 0069
In the Gujarat High Court
Case No : Criminal Appeal No. 172 of 2006

The State of Gujarat

APPELLANT

Vs

Sagar Karabhai Devabhai Rathod and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 147, 148, 149, 333, 337

Citation : (2015) 10 GUJ CK 0069

Hon'ble Judges : Rajesh H. Shukla, J.

Bench : Single Bench

Advocate : H.L. Jani, A.P.P., for the Appellant; H.M. Prachchhak, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—Present appeal is directed against the judgment and order rendered in Sessions Case No. 11 of 1996 by the learned Extra Assistant Judge, Porbandar dated 28.02.2005 recording acquittal of the accused persons for the offences punishable under Section 333 , 337 , 504 , 147 , 148 , and 149 of the Indian Penal Code and Section 135 of the Bombay Police Act, on the grounds stated in the judgment.

2. The facts of the case briefly summarized are as follow:

2.1 It is the case of the prosecution that on 29.08.1994 at about 11.00 p.m., the complainant accompanied by other police constable had been patrolling at village Amardar and at about 2.00 a.m. some people were gambling. Therefore, when they saw the complainant and other police constable, the crowd/respondent accused persons ran away. Thereafter, at about 3.00 a.m., when the complainant accompanied by other police constable were returning, there was stone pelting. Thereafter, the respondent accused persons are stated to have assaulted the complainant and the other police constable, for which the complainant lodged

complaint, which has been registered being FIR C.R. No. I-89 of 1994 with Ranavav Police Station.

2.2 After investigation was over, the charge-sheet was filed and as the offence was triable by the court of Sessions, the case was committed to the Sessions Court.

Thereafter, learned Extra Assistant Judge, Porbandar proceeded with the trial.

In order to bring home the charges levelled against the respondent-accused persons, the prosecution examined the witnesses including the complainant and also produced documentary evidence which shall be referred to in the judgment hereinafter.

2.3 After recording the evidence of the prosecution witnesses was over, the learned Extra Assistant Judge, Porbandar recorded the further statement of the accused persons under Section 313 of Code of Criminal Procedure.

2.4 After hearing the learned Advocate APP as well as the learned Advocate for the accused, the learned Extra Assistant Judge, Porbandar recorded the acquittal of the accused.

3. It is this judgment and order which has been assailed on the grounds stated in detail in the memo of appeal, inter alia, that the learned Extra Assistant Judge, Porbandar has committed error in appreciation of material and evidence on the record.

4. Heard learned APP Shri H.L. Jani for the applicant-State and learned Advocate Shri H.M. Prachchhak for the Respondent-accused persons.

5. Learned APP Shri H.L. Jani referred to the charge at Exh. 1, testimony of complainant-P.W. No. 1 at Exh. 19 and his complaint at Exh. 20. He referred to the testimony of other police constable-P.W. No. 2 at Exh. 21. He has referred to the medical evidence in the form of testimony of the P.W. No. 4 Dr. Nathani at Exh. 26 and testimony of Dr. Popat P.W. No. 5 at Exh. 31. Learned APP Shri Jani also referred to these papers and submitted that it is evident from the material and evidence on the record that the complainant has been assaulted with the stick blows. He submitted that complaint has been given and thereafter they have been referred to the hospital and the medical certificate records the history of the assault by the stick. He submitted that as the names of the respondent-accused persons were already stated in the complaint at Exh. 20, it is not specifically mentioned in the case papers while recording the history by the doctor. He submitted that it appears in a given case, the manner in which the details are asked and the person would reply and therefore the names would not have been specifically stated.

6. Learned APP Shri Jani further submitted that the said complainant is injured witness and has specifically stated about the names of the respondent-accused persons. In his version the complainant has stated in the complaint about the

assault with stick is established and corroborated by the medical evidence in the form of testimony of Dr. Nathani at Exh. 26 and Dr. Popat at Exh. 31. He pointedly referred to the medical certificate at Exh. 27 for the complainant and at Exh. 28 for the other constable who had accompanied him. He further submitted that panchnama at Exh. 40 refers to the recovery of the stick and therefore it corroborates the version of the complainant by such evidence.

7. Learned APP Shri Jani submitted that therefore when the incident had occurred and injuries have been sustained by the assault, the Court below has committed error while appreciating the evidence and has observed about discrepancy, while recording the version of the incident stated by the complainant in his testimony at Exh. 19 and in the testimony of P.W. No. 2 at Exh. 21. He submitted that they both have stated about the assault by the accused persons or the crowd and the manner of describing the incident have some difference, but one has to look into the substance and therefore, it cannot be said to be a major discrepancy. Learned APP Shri Jani also submitted that the Court below has failed to appreciate the evidence with regard to the panchnama of the scene of offence that there was stone pelting and small stones were lying scattered and it has been erroneously recorded that as there was monsoon, the incident could not have been occurred where the accused persons were gambling. He therefore, submitted that the present appeal may be allowed.

8. Learned Advocate Shri H.M. Prachchhak referred to the papers and testimony of the witnesses as well as the medical evidence as stated above. Learned Advocate Shri Prachchhak submitted that the Court below has discussed in its judgment at Para No. 30 to 33 about the reasons for the acquittal. He emphasized about the incident itself. He submitted that there is difference in the versions as to what has transpired as stated by the complainant in his testimony at Exh. 19 and P.W. No. 2 in his testimony at Exh. 21, who had accompanied him. In any case, he submitted that they were not knowing the accused persons, then they could have not known the name of at least Accused No. 1, which they have given. He submitted that if they have not known the accused persons, the Test Identification parade ought to have been held and as there is no Test Identification parade was held raises doubt with regard to the identity of the accused persons, which has been considered. He further submitted that the medical evidence in the form of testimony of Dr. Nathani at Exh. 26 clearly refers to the fact that a person could receive such injury, if he fell down. He submitted that as stated and as it appears from the record, the complainant had also fallen down and therefore, he could have received such injuries, when the stones were admittedly lying there as stated in the panchnama. He therefore submitted that apart from the discrepancies in the versions, the identification of the accused persons has not been clearly established and as there is no Test Identification parade held, the judgment and order recording acquittal is just and proper. He further submitted that the Hon'ble Apex Court has laid down the principles with regard to the approach while dealing with such acquittal appeals and therefore also the findings of acquittal may not be disturbed, if the view taken by the Court

below is a plausible view.

9. In view of these rival submissions and having perused the material and evidence it is evident that the complainant accompanied by other police constable P.W. No. 2 have received injuries, which cannot be disputed. Further, as stated by them that they have been assaulted by the stick, which is also stated in the injury certificate at Exh. 27 and Exh. 28. Therefore, the fact that they have been assaulted is corroborated by the medical evidence. However, the aspect of the manner in which the incident occurred or the identification of the accused persons is not clearly established. Admittedly, there is no Test Identification parade held. As stated by the complainant himself that they were not knowing the accused persons and therefore the name of the respondent accused No. 1 could not have been given. Further, the incident occurred during late night and at the early hours of morning and there could be a darkness and there is no discussion about proper light and identification of the accused persons, even if one is known to the complainant. One more aspect, which is required to be considered is that the complainant in his testimony at Exh. 19 has stated that after they were assaulted, they have gone to the place of one Hamirbhai, whereas the P.W. No. 2 constable who had accompanied him stated that they had not gone to the place of Hamirbhai. The son of Hamirbhai has stated to have taken them to the hospital through jeep. The prosecution has not examined Hamirbhai or his son who could have at least corroborated the version of the complainant with regard to the incident or the identity of the accused persons.

10. Therefore, as there is no such clear evidence, the benefit of doubt which has been given, cannot be ruled out as a possibility. It is in these circumstances, it is required to be considered whether the present appeal deserves consideration or not. The Court below may have while appreciating the evidence considered the discrepancies in the versions regarding the incident, which is not going to the root of the matter and the discrepancies in the testimony of the complainant and the P.W. No. 2 on the aspect of the incident may not be relevant. Learned APP is right when he has stated that there might be a difference in stating or narrating the manner in which the incident had occurred. However, the moot question is about the identification particularly when there was darkness coupled with the fact that admittedly the accused persons were not known and when there is no Test Identification parade was held, it raises doubt about the involvement of the respondent-accused persons. The Court below while recording the acquittal may not have been focused properly on such broad aspect which has been raised, as there is also a possibility which cannot be ruled out.

11. Further, the Hon''ble Apex Court in catena of judicial pronouncement has laid down the broad guidelines with regard to the scope of Section 378 while dealing with the acquittal appeals. The Hon''ble Apex Court in a judgment reported in Chandrappa and Others Vs. State of Karnataka, , has laid down broad guidelines suggesting that the parameters or the aspects which need

to be considered before reversing the order of acquittal, as the order of acquittal reinforced the presumption of innocence of the accused. Thus, in this context while considering the appeal, the Court has to consider whether the view taken by the Court below is plausible view. Merely because the Appellate Court arrived at other view on appreciation of material and evidence, would not justify disturbing the order of acquittal. Further, the same view has also been reiterated by the Hon"ble Apex Court and reconsidered again in a subsequent judgment including observations made in a judgment reported in Murugesan and Others Vs. State through Inspector of Police, as well as in a judgment reported in Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, , has dealt with this aspect and it has been observed that,

"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."

It has also been observed referring to the scope of Section 378 of the Code of Criminal Procedure that if need be, the Appellate Court can re-appreciate the evidence but should not interfere only because there could be a different view. It has been observed that,

"The High Court is 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."

12. In the facts of the case and as discussed herein above, on appreciation and scrutiny of evidence, the Court below has recorded the reasons for the acquittal, which cannot be said to be erroneous. This Court is in complete agreement with the findings and conclusion arrived by the Court below on appreciation of material and evidence and it does not called for any interference in the present appeal.

13. It is in these circumstances, present appeal cannot be entertained and deserves to be dismissed and accordingly stands dismissed. Record and proceedings, be sent back to the Court below forthwith.