

(2015) 10 GUJ CK 0093
In the Gujarat High Court
Case No : Criminal Appeal No. 1312 of 2006

The State of Gujarat

APPELLANT

Vs

Samat Jetha Bhutiya and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 114, 302, 323, 325, 34

Citation : (2015) 10 GUJ CK 0093

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

Bench : Division Bench

Advocate : C.M. Shah, Additional Public Prosecutor, for the Appellant

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Heard learned Additional Public Prosecutor Ms. C.M. Shah for the appellant - State and learned Advocate Mr. Pratik B. Barot for the respondents.

2. By way of this Appeal, the Appellant - State has felt aggrieved by the judgment and order of acquittal dated 31.07.2004 of the learned Additional Sessions Judge, Fast Track Court No. 4, Porbandar in Sessions Case No. 48/1999 whereby the respondents herein were acquitted of the offences punishable under Sections 302 , 325 , 323 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. The case in brief and the incident which occurred on 08.06.1999 are as under:-

3.1. It is the case of the prosecution that all the accused persons keeping grudge of old enmity with deceased Balubhai Bhuthiya went to the field of deceased at Namaru of Village Derodar. The accused No. 1 and 3 possessed with spades and the handles of spades respectively and the accused No. 2 possessed with an iron tomy, attacked the deceased causing grievous hurt and intentionally caused injuries on various parts of the body and thereby caused the death of the

deceased, who expired during treatment at the hospital. On the basis of the information given by the complainant (the son of the deceased), a First Information Report was filed against the accused persons for the above cited offences.

3.2. Pursuant to complaint, investigation was carried out and after completion of investigation, the Investigating Officer filed chargesheet against the accused persons for the above cited offences. The matter was committed to the Sessions Court where it was registered as Sessions Case No. 48/1999. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution therefore, led the evidence.

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

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

3.4. At the conclusion of the trial, the learned Sessions Judge acquitted the respondents of all the offences.

4. Learned Additional Public Prosecutor Ms. C.M. Shah has submitted that the learned Judge ought to have appreciated that the complainant herein is the son of the deceased. It is further submitted that the deceased had very clearly stated to his son as to how the incident had taken place and who were the assailants and the learned Judge ought to have considered the statement made by the deceased to his son as a dying declaration when the case of the prosecution is based on circumstantial evidence. It is also submitted that by not doing so, the learned Judge committed a grave error in acquitting the accused persons by not believing the case of the prosecution. Considering the above, it is submitted that this is a fit case which requires interference of this Court and the judgment and order of the learned Judge be upturned.

5. Learned Advocate for the respondents Mr. Pratik B. Barot has relied on the various judgments of the Hon"ble Supreme Court which are detailed hereinbelow and also on another decision of the Hon"ble Supreme Court in the case of Raj Singh and Others Vs. State of Haryana and Others . He further submitted that by way of well reasoned judgment and order, the learned Sessions Judge acquitted the accused and that there is no case for interference by this Court:

5.1. 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."

5.2. 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."

5.3. 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.

5.4. 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."

5.5. 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.

5.6. In the case of Lunaram Vs. Bhupat Singh and Others, , 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 strangulated. 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."

5.7. Even in a recent decision of the Apex Court in the case of Mookiah 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 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,]."

5.8. 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."

5.9. Similar principle has been laid down by the Apex Court in the case of Shivasharanappa and Others Vs. State of Karnataka, .

6. We have heard learned Advocates for the parties and perused the records of the case. It is of importance to note the statement given by the widow the deceased - Lakhiben at Exhibit 12 who has clearly stated that there was no eye witness to the entire incident. Besides, there are no independent witnesses also. The learned Sessions Judge has given cogent and convincing reasons to arrive at the acquittal of the accused especially in Paragraphs 15 to 21. Hence, this Court is in full agreement with the reasons given and findings recorded by the Trial Court while acquitting the accused and adopting the said reasons. Apart from that, the learned Additional Public Prosecutor Ms. C.M. Shah for the appellant - State is not in a position to show any evidence to take a contrary view in the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record. In that view of the matter, we are in complete agreement with the reasons recorded by the learned trial court and in our view, the impugned Judgment is just, legal and proper and requires no interference by this Court.

7. The Appeal is devoid of merits and stands dismissed. The judgment and order of acquittal dated dated 31.07.2004 of the learned Additional Sessions Judge, Fast Track Court No. 4, Porbandar in Sessions Case No. 48/1999 stands confirmed. Bail and bail bond, stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.