

(2009) 02 GUJ CK 0024
In the Gujarat High Court
Case No : Criminal Appeal No. 504 of 1988

The State of Gujarat

APPELLANT

Vs

Shriram Alias Sheriya Dada and Another

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 114, 302, 307, 504

Citation : (2009) 02 GUJ CK 0024

Hon'ble Judges : Z.K. Saiyed, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; E.E. Saiyed, for Opponents 1 - 2, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 This appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the common judgment and order dated 03.03.1988 passed by the learned City Sessions Judge, Ahmedabad in Sessions Case No. 56/1987 & 141/1987, whereby, the respondents, original accused in Sessions Case No. 56/1987, were acquitted from the charges leveled against them.

1.1 The appellant-State had also preferred an appeal, being Criminal Appeal No. 505/1988, u/s 378 of the Cr.P.C., challenging the impugned common judgment and order passed by the Court below in Sessions Case No. 141/1987. However, the said appeal came to be dismissed on the ground of non-prosecution vide order dated 21.02.1990. It appears that pursuant to the said order passed by this Court, no attempt was made by the appellant-State to restore the said appeal being Criminal Appeal No. 505/1988. Hence, the said order has achieved finality.

1.2 In view of the above, this appeal is heard only qua the judgment and order delivered by the Court below in Sessions Case No. 56/1987 and only qua original accused No. 1 & 2, respondents.

2.0 The facts in brief giving rise to the filing of the present appeal are as under;

2.1 On 15.08.1986, at around 1430 hrs., while the complainant, Ravinarayan Madrasi and his nephew, Dashrath @ Jaswant were passing near the house of one Gopal Madrasi, the respondents and two other accused persons stopped them and started to hurl abuses at the complainant in connection with an earlier criminal case, wherein, the complainant was an accused and respondent No. 1 a prosecution witness. As a result thereof, some altercation took place between the parties.

2.2 During that period, respondent No. 2 and another accused person caught hold of the complainant and pushed him on the ground. Thereafter, respondent No. 1 took out a knife from his possession and inflicted knife blows on the abdomen, shoulder and thigh region of the body of the complainant and fled the scene of offence. As a result thereof, the complainant sustained severe bodily injuries and was taken to a nearby Hospital for necessary treatment. As his condition appeared to be serious, his dying declaration was also recorded by the concerned Executive Magistrate.

2.3 A complaint with respect to the aforesaid incident was filed against the respondents and other accused persons with Saherkotda Polic Station vide I-C.R. No. 394/1986 u/s 307, 504 & 114 IPC and Section 135 of the Bombay Police Act. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, as sufficient material was found against the respondents, they were arrested and, ultimately, charge-sheet was filed against them, As the case was exclusively triable by the Sessions Court, the same was committed to the City Sessions Court, Ahmedabad and it was numbered as Sessions Case No. 56/1987. Trial was initiated against the respondents.

2.4 During the course of trial, the prosecution had examined as many as eight witnesses and had placed reliance upon several documents, more particularly, the evidence in the form of complaint at Exhibit - 15, the panchnama of the production of clothes of the complainant at Exhibit - 16, the Medical Certificate of the complainant at Exhibit - 21, the dying declaration at Exhibit - 23, the panchnama of the scene of offence at Exhibit - 26 and the F.S.L. Report at Exhibit - 34.

2.5 At the end of trial and after recording the statement of the accused persons u/s 313 of Cr.P.C., the learned Sessions Judge acquitted the respondents of all the charges leveled against them. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant - State has preferred the present appeal.

3.0 Mr. R.C. Kodekar, learned APP, has contented that the impugned judgment and order of the Court below is against the provisions of law; the Court below has not properly considered the evidence led by the prosecution and that looking to the provisions of law, it is established that the prosecution has proved the ingredients of the offence against the present respondents beyond doubt. Therefore, the impugned judgment and order deserves to be quashed and set aside.

4.0 Mr. E. E. Saiyed, learned Advocate for the respondents, accused persons, has contented that the respondents have been wrongly roped into the alleged offence in question on account of a past enmity between the parties. He has submitted that in connection with an offence u/s 302 IPC, the complainant had been convicted by the competent Court and that in that criminal case, one of the respondents herein had deposed as a prosecution witness against the complainant. Keeping that enmity in mind, the complainant has wrongly implicated the respondents in the alleged offence.

4.1 Learned Advocate has submitted that the Court below has appreciated the entire evidence on record in its true perspective and has, thereafter, acquitted the respondents. Hence, no interference is required from this Court in this appeal.

5.0 We have gone through the judgment and order passed by the trial Court. We have also perused the oral as well as documentary evidence led by the trial Court and also considered the submissions made by learned Counsel for the respective parties. At the outset, it is 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 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 judgement 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.

5.1 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 emphasize 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.

5.2 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.

5.3 Even in a recent decision in the case of State of Goa v. Sanjay Thakran and 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.

5.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR 2007 S.C.W. 5553 and in Girja Prasad (Dead) by LRs v. State of MP reported in AIR 2007 S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

5.5 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 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 when it agrees with the view of the trial 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.

5.6 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.

6.0 Before the Court below, the case of the prosecution mainly rested upon the evidence of the complainant, Ravinarayan Madrasi, who was examined as PW - 1 at Exhibit - 13. After carefully considering the evidence led by him, the Court below found that there were several contradictions/omissions and that he had even improved upon his version on several occasions. One such occasion is that before the Court below, the complainant had tried to implicate respondent No. 2, by stating that he was one of the assailants in the alleged offence. However, in the complaint at Exhibit - 15, he has averred that respondent No. 2 was one of the accused persons, who had caught hold of him and had pushed him on the ground, at the relevant point of time. But, in the statement recorded by the Executive Magistrate at Exhibit - 23, the complainant has not even referred to the name of respondent No. 2.

6.1 Here, it is pertinent to note that to fill-in the aforesaid lacuna, the complainant had created another story by stating that at the time when his statement was being recorded by the Executive Magistrate, he was feeling drowsy. But, what he had narrated herein above was a lie was proved in his chief-examination, wherein, he has categorically stated that he was conscious at the relevant point of time.

6.2 The said aspect also gets support from the evidence led by the Executive Magistrate as PW - 3 at Exhibit - 22. Several facts, which the complainant has deposed before the Court below, have not been averred by him in the complaint at Exhibit - 15. Similarly, several facts which he has deposed before the Court below have not been stated by him in his statement at Exhibit - 23 recorded by the Executive Magistrate. Apart from that there are several contradictions in

what the complainant has stated in the complaint at Exhibit - 15 and in the statement at Exhibit - 23.

6.3 Considering the aforesaid factual aspects in the background of the past enmity that had existed between the parties and the criminal antecedent of the complainant, we do not find his evidence to be credible and satisfactory and one upon which reliance could be placed for arriving at any concrete conclusion against the respondents.

7.0 The prosecution had also placed reliance upon the evidence of the child witness - Dashrath @ Jaswant, who has been examined as PW - 5 at Exhibit - 29. It is to be noted that at the time when his deposition was recorded, he was aged 10 years. The alleged incident in question took place on 15.08.1986 and his statement before the Court below was recorded on 11.01.1988, i.e. after a lapse of about 17 months, meaning thereby, that at the time when the alleged incident in question had taken place, the child witness was aged about 8½ years. Therefore, we have to consider the evidence of this witness keeping in mind the fact that he was aged about 8½ only at the time when the alleged incident in question had taken place.

7.1 The Court below, after carefully witnessing the conduct of this witness, has come to the conclusion that his evidence was a "tutored" one. A Judge, before whom a trial takes place has the opportunity to witness the conduct of any accused person / prosecution witness, which helps him to a certain extent in ascertaining the credibility of the evidence led by such person. In the present case, the Court below, after carefully noticing the conduct of the child witness, has come to the conclusion that he was heavily tutored by the prosecution. The Court below found the evidence led by this child witness to be full of omissions in comparison with his statement recorded by the police. Thus, we do find any reasons to interfere with the said conclusion recorded by the Court below.

8.0 Apart from the above two witnesses, the case of the prosecution also does not get any support from the evidence led by the brother of the complainant, Kishan Narayan, as PW - 6 at Exhibit - 30. It is to be noted that this witness is not an eye-witness to the alleged incident in question. The evidence led by this witness is also full of omissions with reference to the statements made in his police statements. Therefore, the evidence led by this witness will also not be of any use to the prosecution case.

9.0 A glaring fact that has come on record is that in the discovery panchnama, purported to have been prepared u/s 27 of the Indian Evidence Act, the two panch witnesses, who are said to have been present at the relevant point of time, are Nemichand Gotumal [PW - 7 at Exhibit - 31] and one Ramvir Vajjnath. The said Ramvir Vajjnath has not been examined as a witness for reasons best known to be prosecution. But, PW - 7, in his deposition, has totally ruled out the presence of said Ramvir Vajjnath as a panch witness to the discovery panchnama. But, we find the signature of said Ramvir Vajjnath in the discovery

panchnama. The said discrepancy in the discovery panchnama clearly reduces its credibility to a great extent.

10.0 From the above discussion, we are of the considered opinion that the prosecution has not been able to prove its case beyond reasonable doubt. Mr. Kodekar, learned APP, is not in a position to show any evidence to take a contrary view of 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.

11.0 In the above view of the matter, we are of the considered opinion that the trial Court was completely justified in acquitting the respondent of the charges leveled against him. We find that the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the Court below and hence, find no reasons to interfere with the same.

12.0 The appeal is, accordingly, dismissed. Bail bonds, if any, shall stand cancelled.