

(2016) 03 GUJ CK 0211
In the Gujarat High Court
Case No : Criminal Appeal No. 1882 of 2004

The State of Gujarat

APPELLANT

Vs

Ushakant Nanalal Dave

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 378
Penal Code, 1860 (IPC) — Section 302, Section 323, Section 34, Section 504, Section 506(2)

Citation : (2016) 03 GUJ CK 0211

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Rutvij Oza, APP, for the Appellant; Premal R. Joshi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—1. The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 28.5.2004 passed by the learned Judicial Magistrate First Class, Third Court, Gandhinagar, in Criminal Case No. 3235/1998, whereby, the learned trial Judge acquitted the original accused - the respondent herein, of the charges for the offence punishable under Section 323, 504 and 506(2) of IPC.

2. The brief facts of the prosecution case are that the son of the complainant who was prosecuting his study in std. 11th Science wanted to take tuition from the opponent-accused and for that, accused being a private tutor, took the test of the complainant's son, who failed in the said test and when he went to enquire whether he should come for re-test which was on 26.2.1998 at 2.30pm, he was manhandled. The child even got threshing even on his head and he has threatened not to visit again. He had vomiting. He was moved to civil Hospital Gandhinagar, from where he was referred to Civil Hospital, Ahmedabad, where CT Scan test was done. The complainant also tried to meet the accused,

however, he was also threatened with dire consequence. Therefore, complainant Ganatra Girdharlal Premjibhai filed a complaint against the opponent accused being CR No. 49/98 for the offence punishable under sec. 323, 504 and 506(2) of IPC. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, charge-sheet was filed against him in the Court of learned Judicial Magistrate First Gandhinagar, which was numbered as Criminal Case No. 3235/1998. The trial was initiated against the respondent.

3. To prove the case against the present accused, the prosecution has examined 8 witnesses and also produced 6 documentary evidence.

4. At the end of trial, after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Magistrate, acquitted the respondent of all the charges leveled against him by judgment and order dated 28.5.2004.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial Court the appellant State has preferred the present appeal.

6. It was contended by learned APP Mr. Oza that the judgment and order of the trial Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved all the ingredients of alleged charges against the present respondent. Learned APP Mr. Oza has also taken this court through the oral as well as the entire documentary evidence and submitted that the present appeal deserves to be allowed.

7. Per contra, learned Advocate Mr. Premal R. Joshi has taken this Court through the entire evidence on record and submitted that the impugned judgment and order passed by the learned Magistrate is just and proper. Mr. Joshi learned Advocate further submitted that in view of the evidence on record, it cannot be said that the learned trial Judge has committed any error in acquitting the accused, and therefore, the present appeal deserves to be dismissed.

8. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of "M.S. NARAYANA MENON @ MANI v. STATE OF KERALA & ANR", , (2006) 6 S.C.C. 39, the Apex Court has narrated 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."

9. Further, in the case of "CHANDRAPPA v. 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."

10. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/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.

11. 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."

12. Similar principle has been laid down by the Apex Court in cases of "STATE OF UTTAR PRADESH v. RAM VEER SINGH & ORS.", , 2007 A.I.R. S.C.W. 5553 and in "GIRJA PRASAD (DEAD) BY L.R.s v. STATE OF MP", , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

13. In the case of "LUNA RAM v. 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 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."

14. Even in a recent decision of the Apex Court in the case of "MOOKKIAH AND ANR. v. STATE, REP. BY THE INSPECTOR OF POLICE, TAMIL NADU", reported in , AIR 2013 SC 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 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 reappreciate 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 v. Sohan Lal and Others, , (2004) 5 SCC 573]"

15. It is also a settled legal position that in acquittal appeals, 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 v. HEMAREDDY", , 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."

16. In a recent decision, the Hon"ble Apex Court in "SHIVASHARANAPPA & ORS. v. STATE OF KARNATAKA", , JT 2013 (7) SC 66 has held as under;

"That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

17. 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.

18. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned APP Mr. Oza for the appellant-State and learned advocate Mr. Premal R. Joshi for the respondent-accused. On going through the entire evidence, it cannot be said that the provisions of section 323, 504 and 506(2) of IPC can be attracted in the facts of this case. Ld. APP Mr. Oza has read the charge at ex. 18. He has taken this Court through the entire evidence, more particularly, the evidence of PW-2 victim Chirag Girdharbhai Ex. 26, his father PW-1 Girdharlal Premjibhai Ex. 24 and unarmed police constable PW-6 Vikramsinh Amarsinh Ex. 36. In all, the prosecution has examined about eight witnesses. The complainant and his son have been examined at ex. 24 and 26. PW-3 Vinodkumar Valji examined at ex. 28. PW-5 Dr. Jayagauri Dave has been examined at ex. 30. PW-6 Vikarmsinh Amarsinh has been examined at ex. 36. PW-7 Dhananjay Rameshchandra and PW-8 Pravinsinh Gopalsinh are examined at ex. 37 and 40 and PW-9 Ramvishal Ramlakhan has been examined at ex. 45. The deposition of PW-7 and 8 has been sought to be corroborated for getting the documentary evidence also exhibited which is at page 247. The point

in issue raised by the learned trial Judge was whether the accused got angry and used filthy language and had beaten the son of the complainant and had threatened to do away with him. The answer was negative. It is submitted by the learned APP that the evidences have been misread. However, the first aspect is regarding the medical evidence of PW-5 Dr. Jayagauri and it goes to show that the medical terminology of the injuries and the injuries narrated by the complainant and the injured, are of different. This not the only aspect on which the accused has been given benefit of doubt. The witnesses do not tell the truth about whom they had gone to examine in the hospital. The CT Scan report shows absolute normalcy and there is no injury on the head, and therefore, this court on the touchstone of the decisions of the Apex Court narrated hereinabove, cannot accept the submission of learned APP that the accused be held guilty and the judgment of the trial court be upturned. Without further going into the details which emerges that the accused has been roped into as it appears that the child wanted to study with the accused who was a known private tutor in Gandhinagar where the complainant was serving in Government. Further there were no injury marks even on the chin of the injured. All these aspects will not permit this Court to take a different view in the matter then the taken by the trial Court. I do not find any infirmity in the order passed by the learned trial Judge so as to interfere in this case. The judgment and order of acquittal passed by the learned trial Judge is just and proper. The evidence on record will not permit this court to take a different view than that taken by the learned trial Judge. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Even looking to the evidence on record, Id. APP is not able to bring home the charge levelled against the accused and persuaded this Court to take a different view than that taken by the learned trial Judge in view of the catena of decisions of the Apex Court and the latest decision of the Apex Court in the case of *State of Punjab v. Madan Mohan Lal Verma*, reported in , (2013) 14 SCC 153. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

19. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him. I 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. I am, 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.

20. In the result, the present appeal is hereby dismissed. R & P to be sent back to the trial Court. Bail and bail bond, if any, stands cancelled. Surety also, if any given, stands discharged.