

**(2015) 12 GUJ CK 0056**  
**In the Gujarat High Court**

**Case No :** Criminal Appeal Nos. 41, 106, 116, 371 and 372 of 1992

Vijay Maganlal Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

---

**Date of Decision :** 21-12-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357  
Penal Code, 1860 (IPC) — Section 34, 342, 363, 364, 365

**Citation :** (2015) 12 GUJ CK 0056

**Hon'ble Judges :** K.S. Jhaveri and R.P. Dholaria, JJ.

**Bench :** Division Bench

**Advocate :** R.J. Goswami, Advocate, for the Appellant; C.M. Shah, Addl. Public Prosecutor, for the Respondent

---

## **Judgement**

K.S. Jhaveri, J.—By way of these appeals the original accused No. 1, 2, 5 & 7 as well as the State have challenged the judgement and order dated 30.12.1991 passed by the learned Additional Sessions Judge, Court No. 18, Ahmedabad in Sessions Case No. 97 of 1990 whereby the trial court has convicted and sentenced the accused as under. Criminal Appeals No. 41, 106 & 116 of 1992 have been preferred by original accused Nos. 1, 2, 5 & 7 against the conviction whereas Criminal Appeal No. 371 of 1992 has been preferred by the State for enhancement of sentence imposed and Criminal Appeal No. 372 of 1992 has been preferred by the State against the acquittal of original accused Nos. 3,4, 8 & 9 recorded under Sections 364 , 365 , 363 and 342 r/w 34 of IPC.

2. It is the case of the prosecution that the accused had made a plan and thereby abducted Kiran - son of complainant Ravjibhai and demanded ransom of Rs. 3 lakhs from the complainant. It is the case of the prosecution that the accused also tried to kill Kiran but somehow the plan was foiled. The accused were apprehended and after investigation charge sheet was submitted. The case was committed to the Court of Sessions. The trial was initiated against the accused and during the course of trial the prosecution examined various

witnesses whose evidences were read before us by learned advocates for both the sides. The prosecution also exhibited certain documents which have been perused by us during the course of hearing. At the end of the trial and 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 Additional Sessions Judge convicted the appellant as mentioned aforesaid. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the accused and the State have preferred the present appeals.

3. Mr. R.J. Goswami, learned advocate appearing for the accused has stated that considering the fact that considerable period of time has lapsed, this Court may take a considerate view in the matter. He submitted that the accused are remorseful and is ready and willing to pay appropriate amount as compensation to the victim and his family members which is acceptable to the complainant.

4. Ms. CM Shah, learned APP appearing for the respondent State has supported the order of the trial court and has submitted that the trial court has gone into the evidence in detail and has come to the conclusion that the accused are guilty of the offence so convicted of. She also submitted that the sentence imposed upon the accused is just and proper and does not deserve to be reduced or quashed.

4.1 Ms. Shah submitted that the judgement and order of the Sessions Court is against the provisions of law and that the Sessions 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 the whole ingredients of the evidence against the present respondents. Learned APP has also taken this court through the oral as well as the entire documentary evidence.

5. The appeals preferred by the original accused are not pressed on the point of conviction but only for the period of sentence. The trial court has awarded sentence which meets the end of justice. However, considering the time of almost 26 years, the sentence imposed upon the accused may be reduced to the extent of having undergone. The accused are willing to pay compensation to the victim which is agreeable to the victim and his family members as stated by learned advocate appearing for the complainant. On the peculiar facts and circumstances of this case, we are of the considered opinion that the recent decision of the Apex Court in the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra, will squarely apply to the facts of the present case. In that view of the matter, we have felt it appropriate that when the Apex Court has shown concern that section 357 of Cr.P.C be implemented in its proper perspective this is a fit case where we feel that the same requires to be adopted.

6. So far as acquittal appeals are concerned, 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."

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, reappraise 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 a recent decision of the Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, , the 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 judgement 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 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement 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."

6.6 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. from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Ms. Shah, 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.

7. Considering the facts and circumstances of the case coupled with the ocular as well as the documentary evidence, and considering the fact that a considerable

period of time has lapsed, we think it fit to pass the following order:

8. In the result, the impugned judgment and order of conviction and sentence dated 30.12.1991 passed by the Additional Sessions Judge, Court No. 18, Ahmedabad in Sessions Case No. 97 of 1990 is modified as under:

"(i) The conviction and sentence imposed upon the accused No. 1, 2, 5 & 7 is confirmed. The acquittal of original accused Nos. 3, 4, 8 & 9 is also confirmed.

(ii) However, in the event the accused No. 1, 2, 5 & 7 pay an amount of Rs. 3,00,000/- each by way of compensation to either Kiran Ravjibhai or Ravjibhai Popatbhai under sec. 357 of Cr.P.C. over and above the amount of fine imposed by the trial court, they shall not be required to undergo the remaining part of sentence and the sentence they have already undergone shall be considered sufficient to meet the ends of justice.

(iii) The amount of compensation/fine shall be paid by accused No. 1, 2, 5 & 7 on or before 31.03.2016. If the accused do not pay the amount as ordered hereinabove in time, the sentence awarded hereinabove shall stand revived and it shall be open to the concerned authorities to take accused into custody and they shall be liable to serve the remaining part of the sentence.

(iv) Bail bond shall stand continued till the accused pay the amount of fine and compensation or till 31.03.2016 whichever is earlier and the same shall stand cancelled if the accused have paid the amount of fine and compensation.

(v) Criminal Appeal Nos. 41, 106 & 116 of 1992 are allowed to the aforesaid extent.

(vi) Criminal Appeals No. 371 & 372 stand dismissed accordingly.

(vii) The sentence awarded by the court below stands altered accordingly. The judgement and order dated 30.12.1991 is modified accordingly."