HIGH COURT OF GUJARAT (*D.B.*)

State of Gujarat
Versus
Kumbhar Nitinbhai Batukbhai

Date of Decision: 08 October 2009

Citation: 2009 LawSuit(Guj) 784

Hon'ble Judges: K S Jhaveri, Z K Saiyed

Case Type: Criminal Appeal

Case No: 371 of 1991

Subject: Criminal

Acts Referred:
Code of Criminal Procedure, 1973 Sec 378

Final Decision: Appeal dismissed

Advocates: R C Kodekar, R C Jani

Cases Referred in (+): **7**

K S Jhaveri, J

[1] 0 This appeal, under Section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 21.02.1991 passed by the learned Sessions Judge, Amreli, in Sessions Case No. 12 of 1990, whereby, the accused have been acquitted from the charges leveled against them.

[2] 0 The brief facts of the prosecution case are as under:

2.1 On 13.10.19889, while the complainant along with other persons were sitting in a nearby chowk, at that time the respondents-accused attacked the complainant and other persons with weapons like dharia, knives and thereby caused them grievous injuries.

2.2 Therefore a complaint with respect to the aforesaid offence was filed against the respondents with Dhari Police Station, which was registered as C.R. I-No. 71 of 1989. 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 him before the Court of learned JMFC, Dhari. As the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, Amreli and it was numbered as Sessions Case No. 12 of 1990.

2.3 On production of the respondents, charge was framed but as the accused pleaded not guilty to the charge levelled against them, trial was initiated against the respondents. During the course of trial, the prosecution has examined thirteen witnesses viz. PW-1 Dr. Ushaben Shirishkumar at Exhibit-22, PW-2 Pravinkumar Amrutlal at Exhibit-28, PW-3 Bipinchandra Chhaganlal at Exhibit-30, PW-4 Rehman Adambhai at Exhibit-31, PW-5 Amrutlal Bhanubhai at Exhibit-32, PW-6 Bhikumbhai Manjibhai at Exhibit-34, PW-7 Bharatbhai Gokalbhai at Exhibit-35, PW-8 Manilal Nathabhai at Exhibit-36, PW-9 Nanalal Jivraj at Exhibit-38, PW-10 Iqbal Ajibbhai at Exhibit-39, PW-11 Kishorepari Valpari at Exhibit-41, PW-12 Dahyabhai Virabhai at Exhibit-43 and PW-13 Indrasinh Natwarsinh Jadeja at Exhibit-49.

2.4 The prosecution had placed reliance upon several documentary evidence, more particularly, the complaint at Exhibit-29, the inquest panchnama at Exhibit-33, the panchnama of the scene of offence at Exhibit-40, the arrest and discovery panchnama at Exhibit-42, PM notes at Exhibit-26, FSL report at Exhibit-18, Serological report at Exhibit-19. At the end of trial and after recording the statement of the accused under Section 313 of Cr.P.C., the learned Sessions Judge acquitted the respondents of all the charges leveled against them, by impugned judgment and order dated 21.02.1991.

2.5 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 It was contended by learned APP that the 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 itself, it is established that the prosecution has proved the ingredients of the offence against the present respondent. Learned APP has also taken this Court through the oral as well as the documentary evidence available on record.

[4] 0 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 v. State of Kerala and Anr.,

2006 6 SCC 39, 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.

4.1 Further, in the case of Chandrappa v. State of Karnataka, 2007 4 SCC 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:
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> [1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
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> [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.
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> [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 curtain 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.
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> [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.

4.2 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.

4.3 Even in a recent decision in the case of State of Goa v. Sanjay Thakran and Anr.,2007 3 SCC 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.

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

4.5 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 v. Hemareddy, 1981 AIR(SC) 1417, wherein, it is held as under;

This Court has observed in Girija Nandini Devi v. Bigendra Nandini Chaudhary, 1967 1 SCR 93 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.

4.6 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.

[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 Advocate for the appellant. The trial Court has recorded a finding that The Court below, after carefully scrutinizing the evidence on record, has come to the conclusion that the evidence of the complainant was wholly unreliable as there were serious contradictions in it and that to on material aspects of the case. Apart from that the prosecution has failed to establish the presence of the accused at the place of incident. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

5.1 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.

[6] 0 In the above view of the matter, we are of the considered opinion that the trial Court was completely justified in acquitting the respondents of the charges leveled against them. 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.

[7] 0 The appeal is, accordingly, dismissed. Bail bonds, if any, shall stand cancelled. R & P be sent back to the trial Court concerned forthwith.