Gujarat High Court
State vs The on 22 June, 2009
Author: Ks Jhaveri,&NbspHonourable Z.K.Saiyed, 
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CR.A/913/1987 10/ 10 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL

APPEAL No. 913 of 1987

For
Approval and Signature:

HONOURABLE
MR.JUSTICE KS JHAVERI

HONOURABLE
MR.JUSTICE Z.K.SAIYED

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1

Whether
Reporters of Local Papers may be allowed to see the judgment ?

2

To be
referred to the Reporter or not ?

3

Whether their Lordships wish to see the fair copy of the judgment ?

4

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether it is to be circulated to the civil judge ?

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STATE
OF GUJARAT - Appellant(s)

Versus

GHANCHI
AHMED MUSA & 2 - Opponent(s)

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Appearance
:
PMS
MANISHA LAVKUMAR SHAH Ld. APP for Appellant(s) : 1,
MR HRIDAY BUCH
for Opponent(s) : 1 -
3.
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CORAM
:

HONOURABLE
MR.JUSTICE KS JHAVERI

and

HONOURABLE
MR.JUSTICE Z.K.SAIYED

Date
: 22/06/2009

ORAL
JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI) 1.0 The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 7.10.1987 passed by the learned Addl. Sessions Judge, Junagadh in Sessions Case No. 29/1986, whereby, the accused have been acquitted from the charges under sec. 302 and 201 read with sec. 34 of IPC leveled against them.

2.0 The brief facts of the prosecution case are as under:

2.1 That as per the case of prosecution, the complainant, who is residing at Mangrol, has got married his daughter Fatma with accused no. 2 - Ghanchi Mahmad Hussein Adam, about 6 to 7 months prior to the incident. Initially, both, accused no. 2 and Fatma were living peacefully. Thereafter, some quarrels took place between Fatma and accused persons on the ground of home work and Fatma went to her parental home. Since Fatma was not liking accused persons, and therefore, they planned to kill her. On 27.10.1985 between 12.00noon to 8.00pm to 28.10.1985, Bai Fatma was killed by the accused persons by strangulating by a stick and dead-body of deceased Fatma was thrown into the well and accused persons have not informed about the same to the parents of deceased Fatma. But on inquiry, the dead body of deceased Fatma was found from the well situated in the field in the evening of 28.10.1985. The accused persons have tried to establish that it is a case

of suicide.

2.2 Therefore, a complaint with respect to the aforesaid offence was filed against the respondent with the Mangrol Police Station. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondents were arrested and, ultimately, charge-sheet was filed against them before the court of learned JMFC, Mangrol. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, which was numbered as Sessions Case No. 29/1986. The trial was initiated against the respondents.

2.3 To prove the case against the present accused, the prosecution has examined the following witnesses:

PW-1 Dr.Krishnakant Chunilal Ex. 13 PW-2 Kasam Hussain Ex. 15 PW-3 Noorbai Mahmad Hussain Ex. 16 PW-4 Jagu Hajara Ex. 17 PW-5 Satarkhanbhai Ex. 19 PW-6 Ajabsinh Ramsinh Ex. 21 PW-7 Manaji Jivaji Damor Ex. 23 To prove the case, the prosecution has produced the following documentary evidence.

Statement of the accused Ex. 4 Statement of Mahmad Hussain Adam Ex. 5 Statement of Rabiya Hasan Ex. 6 PM Note Ex. 14 Police report Ex. 18 Panchnama Ex. 20 Original complaint Ex. 22 2.4 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 Sessions Judge acquitted the respondents of all the charges leveled against them by judgement and order dated 7.10.1987.

2.5 Being aggrieved by and dissatisfied with the aforesaid judgement 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 judgement and order of the Sessions Court is against the provisions of law; 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 respondent. Learned APP has also taken this court through the oral as well as the entire documentary evidence.

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 Vs. State of Kerala & Anr, reported in (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 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.

4.1 Further, in the case of Chandrappa Vs. State of Karnataka, reported in (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:

[1] An appellate court has full power to review, reappreciate 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 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.

[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 of the Apex Court in the case of State of Goa V. Sanjay Thakran & Anr. Reported in (2007)3 SCC 75, 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.

4.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh & Ors, reported in 2007 AIR SCW 5553 and in Girja Prasad (Dead) by LRs Vs. state of MP, reported in 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 judgement or to give fresh reasonigns, 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, reported in AIR 1981 SC 1417 wherein it is held as under:

& This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) 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 judgement 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 APP for the appellant-State. The prosecution has examined complainant PW-2 Kasam Husain Ex. 15 and cousin sister-in-law of deceased PW-3 Noorbai Mahmad Husain Ex. 16 and tried to establish that between 27.10.1985 12.00noon to 28.10.1985 at about 8.00pm, deceased was killed by the present accused persons and her dead-body was thrown into the well. However, on close scrutiny of the evidence, it is revealed that the prosecution has failed to prove that;

Any witness has seen the accused persons along with the deceased between 27.10.1985 to 28.10.1985.

In the panchnama of scene of offence, nothing is shown to establish that the deceased was attacked or killed by the accused persons.

The case of prosecution is a case based on circumstantial evidence and complete chain of circumstantial evidence is not established. There are infirmities which are fatal to the prosecution

case. No doubt, the doctor has stated that it is not a case of suicide, the prosecution has miserably failed to prove the role of each accused. In that view of the matter, it would not be appropriate to reverse the findings recorded by the trial Court which has appreciated the evidence. It is also required to be noted that the trial Court has also considered the theory of the deceased falling down to the well where a water motor is installed. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

6.0 Ms.

Manisha Lavkumar 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.

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 him.

7.0 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.

8.0 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. Hence the appeal is hereby dismissed.

(K.S.

JHAVERI, J.) (Z.K.

SAIYED, J.) mandora/ Top