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Gujarat High Court

Case No: R/Criminal Appeal No. 1584 Of 2010

State Of Gujarat		APPELLANT
	Vs	
Virabhai Jinabhai Chovatiya & Ors		RESPONDENT

Date of Decision: Dec. 2, 2025

Acts Referred:

- Code Of Criminal Procedure, 1973-Section 313, 378, 378(1)(3)
- Indian Penal Code, 1860-Section 147, 148, 149, 323, 325, 367
- Bombay Police Act, 1951-Section 135

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Shruti Pathak, Ketulkumar V Patel

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1. This appeal has been filed by the appellant-State under Section 378(1)(3) of the Criminal procedure Code, 1973 (Code), against the judgment and order of acquittal dated 13.05.2010, passed by the learned Additional Sessions Judge, FTC No.4, Bhavnagar at Mahua, in Sessions Case No.125 of 2005, for the offence under Sections 323, 147, 148, 149, 325, 367 of the Indian Penal Code, 1860 (IPC) and Sections 135 of the Bombay Police Act.

2. The brief facts of the prosecution case are as under:

2.1. The present respondents-accused had with a view to achieve their common intention, constituted an unlawful assembly and thereby showing false reason that complainant committed theft and thereby on 04.02.2005 at about 02:30 p.m. armed with lethal weapons of stick and iron rod kidnapped the complainant and thereby caused him serious injuries with the weapons and gave kick and fist blows.

2.2. Therefore, aforesaid offence was registered against the respondents with A Division Police Station, Bhavnagar vide I-C.R. No.267/2005, necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation ultimately, the respondents accused were arrested and charge-sheet was filed against them. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.3. The trial was initiated against the respondents and during course of trial the prosecution examined 10 witnesses and 14 documentary evidences were produced. 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 judgment and order dated 13.05.2010.

2.4. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant-State has preferred the present appeal.

3. It was contended by learned APP that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the same and looking to evidence led under 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.

4. Learned APP for the appellant - State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

5. Learned advocate for the respondent-accused has submitted that the Trial Court has appreciated all the the evidence in its true perspective and has not committed any error in acquitting the accused therefore, no interference of this Court is required in the impugned judgment and the order of the acquittal passed by the Trial Court and has urged this Court to reject this Appeal.

6. Having heard learned APP for the appellant State, having gone through the judgment and order of acquittal passed by the Trial Court as well as material placed on record, certain aspects which weighed with this Court needs to be discussed.

6.1. Before adverting to the facts of the case, it would be worthwhile to refer to the scope of interference in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice 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 reaffirmed and strengthened by the trial Court.

6.2. Further, 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. Further, 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 arrive at would not be arrived at by any reasonable person, and therefore, the decision is to be characterized as perverse.

6.3. 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. That the duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to just decision on the basis of material placed on record to find out whether the accused is connected with the commission of the crime with which he is charged.

6.4. In the case of Babu v. State of Kerala, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C., it is held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (emphasis applied)

6.5. In Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752, the Apex Court has observed that:

"The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court".

6.6. The Apex Court, in case of Chandrappa v. State of Karnataka (2007) 4 SCC 415, reiterated the legal position as under: (SCC p. 432, para 42)

"(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 emphasise 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."

6.7. The Apex Court has held that the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

6.8. These decisions clearly express 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.

7. In the aforesaid background, considering the oral as well as documentary evidence on record, and considering the impugned judgment and order of the Trial Court, the following aspects weighed with by the Court:

7.1. The Doctor in his deposition has stated that if someone is hurt falling on a bricks, then also the said injury can take place and that hemorrhage and fracture injury can take place because of accident.

7.2. The Trial Court has also taken into consideration the fact that neither any X-ray has been produced by the prosecution, nor the orthopedic Doctor who has treated the complainant has been examined.

7.3. The prosecution has also failed to prove that, which of the accused has used which weapon to assault the complainant has not been proved by the prosecution and the same is also not coming forward in the medical history. If the complainant's evidence taken vide Exhibit-17 is taken into consideration, there are contradictions in the said statement and the Trial Court has also taken into consideration that the said complaint is an afterthought.

7.4. If the oral evidence of the mother of the complainant, Ashuben Dadanbhai vide Exhibit-24, is taken into consideration, the evidence of the said witness also does not support the case of the prosecution. The said witness also does not say that she has seen that the complainant was assaulted by the accused.

7.5. The other witness Bhikha Jusav is also a hearsay witness and all the witnesses are near relatives of the complainant and are interested witnesses.

7.6. If the independent witness Velji Karsan's evidence is taken into consideration, in his deposition also, it cannot be proved that the accused had entered with an intention of kidnapping.

7.7. The P.W.-3 is examined at Exhibit-18 and P.W.-4 is examined vide Exhibit-17 and they are the witnesses of the place of offence and the Panch Witness for recovery of the weapon have been examined vide Exhibits 19 and 20. The witnesses have not supported the prosecution's case.

7.8. The trial court while considering the evidences in detail has observed that the prosecution failed to prove the case against the accused beyond reasonable doubt. The trial court has gone into the evidence in detail and has come to the conclusion that the accused are not guilty of the alleged offence.

7.9. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. 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.

8. In view of the above matter, I am of the considered opinion that the Trial Court was completely justified in acquitting the respondents of the charges leveled against them.

8.1. 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.

8.2. 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. Hence the appeal is hereby dismissed.

9. The judgment and order dated 13.05.2010, passed by the learned Additional Sessions Judge, FTC No.4, Bhavnagar at Mahua in Sessions Case No.125 of 2005 recording the acquittal of the respondent is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P to be sent back forthwith.