(2025) 12 GUJ CK 0068

Gujarat High Court

Case No: R/Criminal Appeal No. 586 Of 2008

State Of Gujarat		APPELLANT
	Vs	
Radheshyam Shriharidwarilal Goyel & Anr		RESPONDENT

Date of Decision: Dec. 3, 2025

Acts Referred:

- Code Of Criminal Procedure, 1973-Section 209, 313, 378, 378(1)(3)
- Indian Penal Code, 1860-Section 114, 509
- Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989-Section 3(1)(12)

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Pranav Dhagat, Dhaval G Nanavati

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1 This appeal has been filed filed by the appellant-State under Section 378(1)(3) of the Criminal procedure Code, 1973 (Code), assailing the judgment and order dated 18.07.2007, passed by the Special Judge and Additional Sessions Judge, Gandhinagar in Special (Atrocity) Case No.9 of 2007, acquitting the respondents - original accused for the offence punishable under Section 509 and 114 of the Indian Penal Code, 1860 (IPC) and Section 3(1)(12) of the Schedule Caste and Schedule Tribe Prevention of Atrocity Act, 1989.

2.1 The brief facts of the prosecution case are that the complainant Laxmiben Dahyabhai Parmar, aged.23 years, residing at Plot no.671/1, Sector.13/A, Gandhinagar with her parents, in connection with the tender which was applied by her family, and they were selected as a sweeper and they started to work from 01.10.2006. Their working time was 6.00 a.m. to 9.00 am. therefore, complainant and her mother working at third and forth floor and her uncle was handling the first

floor of the building. On 06.11.2006, on first floor, accused was sleeping in his room, he called the complainant at about 07.00 a.m. and he aske0d the complainant to press his forehead saying that he had a headache. Accused also said to complainant that he would give her more Rs. 2,000/-, in response she has to do what he say. As a result, she came out from the room. Next day of the said incident, on 07.11.2006, accused had called her in his room but she did not go. Thereafter, on 8.11.2006, also accused called her through security man Pavan Mishra, but due to fear she didn't go in his room and thereafter, she informed all these matter to her mother and uncle with all staff. On 09.11.2006, complainant and her uncle went to the police station to lodge complaint against the accused. Thereafter, PSI, Sector-7, Police station had lodged complaint and started the investigation. After completion of investigation and after recording statements of relevant witnesses, and after drawing necessary panchnamas the police prepared charge-sheet against the present accused-respondent and submitted the same before the Court of Judicial Magistrate First Class, Gandhinagar.

2.2. However, as the case was exclusively sessions triable, the Judicial Magistrate First Class, Gandhinagar as per Section 209 of the Code of Criminal Procedure, committed the said case to the Special Court (Atrocity), which was registered as Special Case (Atro) No.9 of 2007.

2.3 The Sessions Judge framed charges against the accused respondents to which the accused respondent denied his involvement and pleaded to be tried.

2.4 The trial was initiated against the respondents and during course of trial the prosecution examined 12 witnesses and produced 13 documentary evidences. 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 18.07.2007.

2.4 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. 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 and looking to the evidence led by the prosecution, 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. Having heard learned APP for the appellant State and advocate for the respondent, having gone through the judgment and order of acquittal passed by the trial Court as well as material placed on record, certain aspects which weigh 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:

(i) The Trial Court has taken into consideration the deposition of the P.W.1 Vandanaben Jivanbhai Parmar, who is the mother of the complainant and there are lot of contradictions in her deposition and that what has been stated by the complainant P.W.4, if the deposition of P.W.1-mother of the complainant is taken into consideration, it comes on record that, she states that the incident which the complainant narrates that took place on 06.11.2006, happened at 07.00 a.m. and in her examination-in-chief, she states that she had instructed her daughter i.e. complainant not to do work the which has been suggested by the accused.

(ii) In her deposition, it also comes on record that the contract for work was in the name of complainant.

(iii) There is also contradiction that the timing that the office starts, in her deposition it comes forward that the office work started at 09.00 a.m. and before 09.00 a.m. she had to finish the entire cleaning of the office. It also comes on record that till the time, she gives her complaint to the officer, she does not file any Police Complaint and on 08.11.2006, she has been called to the office of Mr.Singhal i.e. P.W.6 and the accused being his officer, has already filed complaint against Mr.Singhal for his work and in defense, it has been taken that Mr.Singhal has conspired with the complainant to file false complaint.

(iv) By way of P.W.2 and P.W.3, the Police Officers have deposed before the Court. If the deposition of P.W.4 is taken into consideration, there are lot of contradictions in the complaint and the deposition of the P.W.4-complainant. Moreover, no allegation as stated in the deposition has been made in the complaint, There are also contradictions for the timing wherein, the mother-P.W.1 is stating that the office starts at 09.00 a.m., the complainant states that the office time starts at 10.00 a.m.

(v) Moreover, the security guard is examined as P.W.5 and in his deposition he has stated that he is not aware of the said incident and by way of P.W.6-Mr.Singhal has also been examined, who is also not an eye witness and if the document Exhibit-19 is taken into consideration, the same is a ticket which clearly shows that the accused had arrived on 07.11.2006 at 07.30 a.m. and therefore, the entire case of the prosecution that the incident happened on 07.11.2006 has not

been proved by the prosecution.

(vi) The prosecution has examined by way of P.W.7, the father of the complainant Jivanbhai and from his evidence also the prosecution has not proved the case. Moreover, he also states that he does not have personal knowledge of the said incident. The uncle who had accompanied the complainant has been examined vide Exhibit P.W.8 and in his deposition also it is stated that when the letter was given to Mr.Singhal, which is produced vide Exhibits 26 and 27, the same was blank.

(vii) The P.W.9 has produced document Exhibits-26 and 27 i.e. the complaint that was made by the complainant before the Officer of Water Supply Commission.

(viii) If the evidence of the driver who had brought the accused from the Airport is taken into consideration i.e. P.W.11, it is coming on record that he had brought the accused at guest house only at 08.30, the entry to that effect is also produced, which clearly indicates that the accused had come at 8.30.

(ix) Moreover, the prosecution has failed to prove any eye witnesses. It has also come on record that there is no explanation given by the complainant of not filing the complaint, on the date of occurence i.e. on 06.11.2006. Moreover, there is also no explanation given by the complainant for not filing the complaint from 06.11.2006 to 08.11.2006. The prosecution has failed to prove that the accused was present at 07.00 a.m. There are also no medical evidence to prove the case of the prosecution.

(x) Therefore, the prosecution has not proved the case against the accused for the offence punishable under Section 509 and 114 of the Indian Penal Code, 1860 and Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8.1 The trial court while considering the evidences in detail has observed that the prosecution has 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.

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

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

9.1 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.

9.2 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.

10. The judgment and order dated 18.07.2007, passed by the Special Judge and Additional Sessions Judge, Gandhinagar in Special (Atrocity) Case No.9 of 2007 acquitting the respondents-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P to be sent back forthwith.