

(2015) 01 GUJ CK 0098

Gujarat High Court

Case No: Criminal Appeal No. 332 of 1996

State of Gujarat

APPELLANT

Vs

Kailas Ukardas

Vaishnav and Others

RESPONDENT

Date of Decision: Jan. 22, 2015**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378
- Penal Code, 1860 (IPC) - Section 114, 302, 306, 34, 498A

Citation: (2015) 3 DMC 177**Hon'ble Judges:** Kaushal Jayendra Thaker, J**Bench:** Single Bench**Advocate:** C.M. Shah, APP, for the Appellant**Final Decision:** Dismissed

Judgement

Kaushal Jayendra Thaker, J

The present appeal, under Section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 11.1.1996 passed by the learned Addl. Sessions Judge, Court No. 14, Ahmedabad in Sessions Case No. 245/1990, whereby, the learned Trial Judge acquitted the original accused the respondents herein, of the charges for the offence punishable under Sections 306, 498A read with Section 114 of the Indian Penal Code. The brief facts of the prosecution case are that the deceased Nirmalaben has married with accused No. 1-Kailash. Accused Nos. 2 and 3 are father and mother of accused No. 1 and accused No. 4 is the brother of accused No. 1. As per the case of the prosecution, the accused were demanding dowry from the deceased Nirmalaben and deceased Nirmalaben was mentally and physically harassed by the accused. Therefore, on 1.9.1989 she had committed suicide Therefore, the complaint was lodged. 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, which was numbered as

Sessions Case No. 245 of 1990. The trial was initiated against the respondents.

2. To prove the case against the present accused, the prosecution has examined witnesses and also produced documentary evidence.

3. 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 Trial Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 11.1.1996.

4. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Trial Court the appellant State has preferred the present appeal.

5. It was contended by learned APP that the judgment and order of the Trial Court is against the provisions of law; the Trial 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 all the ingredients of alleged charges against the present respondents. Learned APP has also taken this Court through the oral as well as the entire documentary evidence. The presence of the respondents is already established and commission of offence under IPC is also established, and therefore, the present appeal deserves to be allowed.

6. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the Trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of [M.S. Narayana Menon @ Mani Vs. State of Kerala and Another](#), AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6 CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp : (2006) AIRSCW 4652 : (2006) 5 Supreme 547 , the Apex Court has narrated 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."

7. Further, in the case of [Chandrappa and Others Vs. State of Karnataka](#), (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630 , 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, 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 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."

8. Thus, it is a settled principle 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.

9. Even in the case of [State of Goa Vs. Sanjay Thakran and Another](#), (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , 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."

10. Similar principle has been laid down by the Apex Court in cases of [State of Uttar Pradesh Vs. Ram Veer Singh and Others](#), AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in [Girja Prasad \(Dead\) by LRs. Vs. State of Madhya Pradesh](#), AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

11. In the case of [Lunaram Vs. Bhupat Singh and Others](#), (2009) CriLJ 1899 : (2009) 3 JT 155 : (2009) 3 SCALE 363 : (2009) 3 SCC 749 : (2009) 3 SCR 706 : (2010) AIRSCW 298 : (2009) 7 Supreme 103 , the Apex Court in Paras 10 and 11 has held as under:

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye-witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post mortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

12. Even in a recent decision of the Apex Court in the case of [Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu](#), AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1 Supreme 88 , the Apex Court in Para 4 has held as under:

"4. It is not in dispute that the Trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges levelled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since Counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first Appellate Court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be re-appreciate the entire evidence, though while choosing to interfere only the Court should find an absolute assurance of the guilt on the basis of the evidence on

record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide [State of Rajasthan Vs. Sohan Lal and Others](#), (2004) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480 Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404]"

13. It is also a settled legal position that in acquittal appeals, the Appellate Court is not required to rewrite 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 Vs. Hemareddy Alias Vemareddy and Another](#), AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981) 2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 , wherein it is held as under:

".....This Court has observed in [Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury](#), AIR 1967 SC 1124 : (1967) 1 SCR 93 , that it is not the duty of the Appellate 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."

14. In a recent decision, the Hon"ble Apex Courts in [Shivasharanappa and Others Vs. State of Karnataka](#), AIR 2013 SC 2144 : (2014) 1 CCR 485 : (2013) CriLJ 2658 : (2013) 7 JT 66 : (2013) 3 RCR(Criminal) 86 : (2013) 6 SCALE 757 : (2013) 5 SCC 705 : (2013) AIRSCW 2719 : (2013) 4 Supreme 38 has held as under:

"That Appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

15. 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.

16. I have gone through the judgment and order passed by the Trial Court. I 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. Looking to the evidence on record, more particularly, the P.M. report, the learned Trial Judge has given cogent reasons. This Court, while entertaining this appeal, had passed the following order on 9.8.96:

"After going through the R & P of the case and the reasons for acquittal given by the Trial Court, Mr. S.T. Mehta learned APP while pressing hard for admission of appeal against the respondent No. 1 -Kailas Ukardas Vaishnav submitted that so far as rest of three respondents viz. Respondents 2, 3 and 4 are concerned, he does not press. The fairness

of the learned APP is quite appreciable as we also on going through the R & P feel that at least respondent Nos. 2, 3 and 4 deserve to be given benefit of doubt. In this view of the matter, leave granted. Appeal admitted qua respondent No. 1-Ukardas Vaishnav and bailable warrant be issued against him in the sum of Rs. 5,000 and a surety of the like amount. Expedited."

17. It is matter of record that even for a period of 19 years, the accused cannot be brought to this Court for the reasons best known to the police officers. However, on going through the record, Ms. Shah learned APP submitted that the finding is perverse needs to be upturned. On going through the record, in absence of accused No. 1, the cross-examination itself goes to show that there was no harassment and there was no dowry demand. The parents have turned hostile. The evidence of doctor is also not supporting the case under Section 306 of IPC. The prosecution has miserably failed to prove the case against the accused beyond any reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the Trial Court. There are material contradiction in the evidence which are noted by the learned Trial Judge while recording the acquittal. Even looking to the medical evidence, Ms. Shah learned APP is not able to bring home the charge levelled against the accused and persuaded this Court to take a different view than that taken by the learned Trial Judge in view of the catena of decisions of the Apex Court and the latest decision of the Apex Court in the case of [State of Punjab Vs. Madan Mohan Lal Verma](#), AIR 2013 SC 3368 : (2013) CriLJ 4050 : (2013) 3 RCR(Criminal) 972 : (2013) 10 SCALE 211 : (2013) 14 SCC 153 : (2013) 217 TAXMAN 402 . Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

18. 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 levelled against them. 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. 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. In the result, the present appeal is hereby dismissed. R & P to be sent back to the Trial Court. Bail bond and bail, if any, stands cancelled. Surety also, if any given, stands discharged.