IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION NO. 4612 of 2022
In
R/CRIMINAL APPEAL NO. 495 of 2022
With
R/CRIMINAL APPEAL NO. 495 of 2022

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STATE OF GUJARAT
Versus
RATNIYABHAI NEVSINGBHAI RATHVA

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Appearance:
Ms. Chetna M. Shah, APP for the Applicant - Appellant

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CORAM:**HONOURABLE MR. JUSTICE S.H.VORA**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 02/03/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE SANDEEP N. BHATT)

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 22.09.2021 passed by the learned Sessions Judge, Chhota Udepur in Sessions Case No.26 of 2016 for the offences under Sections 143, 147, 148, 149, 307, 323, 325, 504 and 506(2) of the Indian Penal Code, the applicant – State of Gujarat has preferred this application to grant leave to appeal as provided under section 378(1)(3) of the Code of Criminal Procedure, 1973 (**"the Code"** for short) inter alia challenging the judgment and order of acquittal in favour of the respondent accused.

2. The case of the prosecution is that, on 12.12.2015 at about 16:00 hours, when the complainant, along with other five persons who are the neighbourers, were standing at the bus stop of Village : Rodadha and were waiting for the luxury

bus coming from Vadodara to go for pilgrimage, at that time, original accused Nos. 3, 9 and 10, resident of Barel Faliya, Village : Rodadha, came and attacked on the complainant, by keeping grudge about the voting in the election. Accused No.10 – Kangaliyabhai was armed with an iron pipe. Accused No.9 – Nevsingbhai caught the complainant and accused No.10 has given pipe blow on the back and Thigh of the complainant, where as accused No.3 has given fist blows to the complainant. Due to such scuffle and shouting, all the three accused ran away from the place of offence. While leaving the place of offence, they have threatened the complainant that they will kill him. The persons who were standing with the complainant were already left the place due to the said scuffle. Thereafter, when the accused had run away from the place of offence, the other persons who were standing with the complainant, came back and called the ambulance and the complainant was shifted to Keshar Hospital, Chhota Udepur, where he was treated. The complainant has given complaint before ASI from the hospital on 13.12.2015 at about 11:15 hours with regard to the incident. The same was registered before Panvad Police Station as II–C.R. No.18 of 2015 for the offences under Sections 143, 147, 148, 149, 307, 323, 325, 504 and 506(2) of the Indian Penal Code.

3. In pursuance of the complaint lodged by the complainant, investigating agency recorded statements of the witnesses, collected relevant evidence in form of medical evidence and drawn various Panchnamas and other relevant evidence for the purpose of proving the offence. After having found material against the respondent accused, charge-sheet came to be filed in the Court of learned JMFC, Kawant. As said Court lacks jurisdiction to try the offence, it committed the case to

the Sessions Court, Chhota Udepur as provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, Chhota Udepur, learned Sessions Judge framed charge at Exh.13 against the respondents accused for the aforesaid offence. The respondents accused pleaded not guilty and claimed to be tried

5. In order to bring home charge, the prosecution has examined 19 witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in paragraphs : 6 and 7 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondent accused so as to obtain his explanation/answer as provided u/s 313 of the Code. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him. After hearing both the sides and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the respondent accused of the offences, for which he was tried, as the prosecution failed to prove the case beyond reasonable doubt.

7. We have heard learned APP Ms. Shah appearing for the applicant State and have minutely examined the documentary evidence provided to us by learned APP during the course of hearing.

8.1 From the deposition of the complainant himself, it transpires that, one uncle of the complainant viz., Raghanbhai has gone to the Chhota Udepur Police Station for lodging the complaint immediately after the incident, however, for the reasons best known to him, the complaint was lodged on the next day i.e. on 13.12.2015 at about 11:15 hours i.e. after about 19 hours of the incident. The complainant has not explained as to why the complaint is given late i.e. after about 19 hours from the incident, which creates suspicion on the part of the complainant regarding the incident. Further, he has deposed in his examination-in-chief that he has taken treatment as indoor patient at Keshar Hospital, Chhota Udepur for nine days, whereas in his cross-examination, he has stated that he was admitted in the hospital as indoor patient for 11 days. He has stated in his cross-examination that 42 persons were there along with him.

8.2 Further, PW-8 – Rumliben, wife of Bhuniyabhai has clearly deposed in her cross-examination at Exh.49 that, when her husband was shifting to the hospital, few persons were going to the police station for lodging the complaint. Factually, the incident was happened on 12.12.2015 and the complaint is lodged after about 19 hours i.e. on 13.12.2015 at about 11:15 hours. Therefore, the story mentioned in the cross-examination does not support the case of the prosecution.

8.3 Further, PW-9 – Harsingbhai Chandubhai Rathwa at Exh.50 has deposed in his deposition that, the complainant himself has stated to the said witness that one Zanzadiya Nevsing has given stick blow to the complainant. From

compliant, we could not find any stick blow by any of the accused. The complainant did not speak about stick blow in his first version – complaint. It is important to note here that, the said witness has, in his cross-examination, stated that, said Zanzadiya Nevsing was handicap and bend from middle part of the body and cannot be able to walk without the help of the stick. This is hearsay evidence. However, there is factual contradiction in the version regarding the blows. Therefore, it does not support the case of the prosecution.

8.4 Further, looking to the deposition of PW-14 – Dr.Jagdish Chelappan at Exh.74, the said witness has deposed that the uncle of the complainant viz., Raghanbhai Malubhai has stated that there were iron rod, stick blows and stones to the complainant. It is relevant to note that this witness in his deposition has deposed that the complainant was admitted in the hospital for six days as an indoor patient.

8.5 From various depositions of the witnesses, there are contradiction regarding hospitalisation of the complainant. The complainant has stated in his deposition that he was admitted in the hospital as an indoor patient for 9 days and at the same time, in his cross-examination, he has stated that he was admitted in the hospital for 11 days, whereas PW-14 – Dr. Jagdish has stated that the injured was admitted in the hospital for 6 days as an indoor patient. These are the factual but material contradiction qua the hospitalisation on record. From these contradiction, it reveals that the injuries sustained by the complainant was not serious and therefore, he was discharged from the hospital within few days. Therefore, the trial Court has rightly evaluated the depositions of the witnesses.

8.5 It is relevant to observe that said uncle – Raghanbhai Malubhai was not examined by the prosecution. Though the said uncle has gone to the police station for lodging the complaint, but the complaint was not given and though the said uncle was with the complainant in the hospital during the first treatment, even though he was not examined by the prosecution.

8.6 With regard to the presence of accused, PW-17 – Dr. Raju Adinarayan at Exh.92 has stated in his deposition that at the time of admitting the injured, the injured has stated that Kangaliyabhai Nevsingbhai Rathwa and Nevsingbhai Chhaganbhai Rathwa have given blows. The complainant – injured has not given the name of any other accused. From this it reveals that, the complainant – injured has changed his version time and again. The said witness during the cross-examination has stated that some of the injuries are fracture injuries and not grievous injuries and it can be easily curable.

8.7 Thus, from medical evidence also, it reveals that there are contradiction in the weapons used in the scuffle as well as attempt of over-implication of the persons by the complainant, so also timing of FIR and the period of hospitalisation. Therefore, the trial Court has rightly considered all these aspects and acquitted the accused.

8.8 It is relevant to note here that the trial Court has observed that the investigation is not properly carried out by the authorities. The Trial Court has also observed about the conduct of the investigation officer(s) as well as the sequence

of the investigation.

8.9 The trial Court has rightly observed in its judgment that there are material and factual contradiction between timings of the injury. The medical evidence speaks that the injuries are of six hours old, whereas the complainant has stated that the incident has happened at around 4 p.m. Therefore, the trial Court has observed that the complainant was not speaking truth before the police as well as before the Court. Further, the trail Court has observed that the prosecution has failed to produce the other relevant material on record like x-ray plates, etc. Therefore, in absence of material evidence also, the trial Court has rightly acquitted the accused. Further, the complainant and the accused persons were known to each other since long, even though the version of the complainant regarding the accused changed at different stages of the investigation and the trial.

8.10 Under the circumstances, the learned trial Judge has rightly acquitted the respondent accused for the elaborate reasons stated in the impugned judgment and we also endorse the view/finding of the learned trial Judge leading to the acquittal.

9. It is pertinent to note that the prosecution is required to prove the intention or knowledge of the accused persons, however, it is necessary that the prosecution is required to prove the intention or knowledge of the accused persons and it is not necessary that injury capable of causing death should have been inflicted by the accused persons. What is material to attract offense under section 307 of the IPC is the intention or knowledge with which all the acts are done irrespective of

its results. In order to attract the offence under section 307 of IPC, we have minutely examined oral evidence and all the prosecution witnesses, we found that nothing is disclosed with regard to intention or knowledge so as to constitute that there is anything on the part of the respondents – accused persons to commit act or attempt to commit murder. In the present case the prosecution has failed to discharge its duty to prove its case beyond reasonable doubt and the Trial Court has rightly acquitted the accused persons by giving benefit of doubt as the case is not proved beyond reasonable doubt.

10. In view of above and on our own analysis and re-appreciation of the evidence, we do not find any infirmity or compelling reasons to interfere with the order of acquittal recorded by the trial Court. We have also perused the judgment and findings given by the trial Court and find that the same are in accordance with law.

11. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

12. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:

"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

13. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

14. In the very recent judgment reported in 2021 (15) SCALE 184 in the case of Mohan @ Srinivas @ Seena @ Tailor Seena V/s. State of Karnataka, the hon'ble Apex Court has observed the scope of section 378 of the Code in Para : 20 to 22 as under :-

"20. Section 378 CrPC enables the State to prefer an appeal against

an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial Court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial Court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial Court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial Court decides a case on its own merits despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral

platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark."

15. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

16. In view of the above and for the reasons stated above, present Criminal Misc. Application No.4612 of 2022 for leave to appeal fails and same deserves to be dismissed and is accordingly dismissed. In view of dismissal of the application for leave to appeal, captioned Criminal Appeal No.495 of 2022 also deserves to be dismissed and is accordingly dismissed.

(S.H.VORA, J)

(SANDEEP N. BHATT,J)

M.H. DAVE