

Deceased and Another Vs. State of Gujarat and Others

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Court : Gujarat

Decided On : Mar-26-2015

Judge : S.G. Shah

Appeal No. : Criminal Revision Application (Against Acquittal) No. 512 of 2009

Appellant : Deceased and Another

Respondent : State of Gujarat and Others

Judgement :

Cav Judgment:

1. Rule. Mr. Goswami waive service of notice of rule for respondent no.2 while Ms. Jhaveri waives service of notice of rule for respondent no.1.
2. Heard learned counsel for the respective parties and perused the record.
3. Petitioner is father of the victim, whereas, respondent no.1 is prosecuting agency, whereas, respondent nos.2 to 5 are original accused in Sessions Case no.154 of 2008. By impugned judgment and order in such Sessions case, the Additional Sessions Judge of Ahmedabad (Rural) has acquitted all of them from offences under Sections 302, 507, 324, 201 and 114 of I.P.C. read with Section 135(1) of the B.P. Act. Therefore, this is a revision application against the order of acquittal. Thereby, practically, the jurisdiction of this Court is very limited. However, to ascertain the irregularity and illegality, if any, committed by the trial

Court in acquitting the accused are concerned, I have verified and scrutinized the available record and impugned judgment. However, I do not find any such illegality, irregularity, perverseness or arbitrariness either in the trial or in determination of the case by impugned judgment. The trial Court has, in the detailed judgment recorded all factual details and discussed material evidence before him for concluding acquittal of the accused when the impugned judgment is assigning the reasons for acquittal, it would be difficult even for the High Court to modify or change the conclusion in such revisional jurisdiction. The reference of the judgment makes it clear that trial Court has discussed all evidence and all relevant information and facts for acquitting the accused.

4. Even if we verify the complaint and evidence on record, it becomes clear that this is a case of circumstantial evidence as there is no eye witness and when there is no specific evidence regarding involvement of the accused in committing such crime, only because there was a grievance between the parties because of one Rekhaben Himmatsinh Rajput being aunty of the victim, it cannot be said that the accused have certainly committed an offence as alleged and, thereby, they are entitled to be acquitted and hence trial Court has acquitted them.

5. If we peruse the deposition of said Rekhaben Himmatsinh Rajput, it becomes clear that there is no reason for the accused to enter into such quarrel. The trial Court has rightly observed that there is no evidence to convict the accused for serious offence like Section 302 etc. though there is death of a person. Even medical evidence is also not confirming the presence of accused and it is undisputed fact that dead body of the deceased victim was found unattended on next day without any call and, therefore, practically they were charge-sheeted only because of alleged relationship with Rekhaben.

6. The trial Court has, therefore, after considering the evidence before it and after relying several decisions of the different Courts, acquitted all the accused.

7. Even otherwise this revision application is against the order of acquittal. Therefore, as per settled legal position, there is very limited scope to re-appreciated the evidence.

8. The jurisdiction of the Court in such revision petitions is limited by the statute itself, thereby prima facie, the Court has to look into the issue regarding irregularity or illegality, if any, committed by the trial Court while passing the impugned judgment and whether the impugned judgment has ultimately resulted into miscarriage of justice or absolute injustice to either of the litigants. Therefore, this being the first revision against the order of acquittal, though this Court is empowered to re-appreciate the evidence, to examine that whether appreciation of evidence by the trial Judge has resulted into miscarriage of justice or not, it is settled legal position that such re-appreciation of evidence has to be done with limited jurisdiction and authority so as to verify the irregularity and illegality only and evidence cannot be re-appreciated or dealt with, only because of different opinion of the Appellate Court. Thereby, the Appellate Court has to be careful while re-appreciating the evidence in case of acquittal and decision of acquittal can be interfered only and only if the appreciation of evidence by the trial Judge is absolutely unjust and illegal and without consideration of settled legal position and applicable law. Thereby, only because someone is able to take a different view from the same set of evidence, on such ground alone, the evidence cannot be re-appreciated so as to convert the decision of acquittal into that of conviction of accused. To that extent, the Apex Court has categorically stated that in case of acquittal appeal or revision, the accused have got double benefit in their favour viz. (1) a standard rule of criminal jurisprudence that no one should be believed as an accused unless there is proper proof and evidence against him and (2) in such cases of acquittal, the judgment of acquittal, which is otherwise confirming either innocence or lack of evidence against such accused. Therefore, respondent before us though they were accused before the trial Court, they are having a clear verdict in their favour by the trial Court that either they are innocent or there is lack of evidence so as to convict them and, therefore, in such cases, the re-appreciation of evidence is to be done with great care and order of acquittal can be interfered only and only if there is absolute and clear evidence without any doubt regarding commission of offence by such respondent. Therefore, the smallest benefit of doubt would certainly tilt in favour of the respondents in criminal appeal or revision.

9. If we peruse the entire evidence in its totality and if we consider the appreciation of such evidence, though there may be difference of opinion, if we re-appreciate the evidence, it is crystal clear that one cannot come to the conclusion that there is any irregularity or illegality and that the learned trial Judge has failed to consider such evidence as cogent and reliable evidence against the present respondents for confirming their guilt. To that extent, there is no reason to disapprove the appreciation of such evidence so as to interfere the decision of acquittal either into the decision of conviction or for retrial of the entire case as argued by the petitioner before this Court.

10. It cannot be ignored that decision of acquittal cannot be converted into decision of conviction only because there is possibility of coming to different opinion or conclusion while appreciating the evidence on record by the Appellate Court.

11. Looking to the facts and circumstances and evidence on record as discussed herein above and more particularly as discussed by the learned trial Judge in the impugned judgment, having limited jurisdiction in revision application against order of acquittal, this Court is not convinced to interfere with the decision of acquittal merely because the victim prefers such revision, more particularly in absence of cogent and reliable evidence on record against the respondents. For coming to such conclusion, the reliance is placed upon the judgments of the Apex Court in *Johar and Others Vs. Mangal Prasad and Anr.* reported at (2008)3 SCC 423 and *Sheetala Prasad and Ors. Vs. Sri Kant and Anr.* reported at (2010)2 SCC 190, which makes it clear that interference with judgment of acquittal is not permissible unless impugned judgment is perverse. The revisional jurisdiction u/ss. 397 and 401 of the Cr.P.C. is limited, more particularly when it is arising from a judgment of acquittal and it is not permissible for the High Court to analyse the depositions of all the witnesses and to re-appreciate the whole evidence. There must be any error of law on the part of the trial Judge and unless any evidence has been left out of consideration by the trial Judge or any irrelevant material has been taken into consideration, then and then the High Court has to re-appreciate the evidence.

12. In view of discussion herein above on facts, evidence and law point, I do not find any error of law or irregularity or illegality or perverseness in the appreciation of evidence and decision by the trial Judge, which does not permit this Court to come to any different conclusion even if entire evidence is examined herein above to convert the decision of acquittal into that of conviction or to order the retrial, as prayed for, by the petitioner. The result is that there is no substance in the revision, which deserves to be dismissed and, hence, dismissed. Rule is discharged.

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