2024 INSC 295

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 334 OF 2019

Bhupatbhai Bachubhai Chavda & Anr. ... Appellants

versus

State of Gujarat ... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellants, who are father and son, were prosecuted for the offence punishable under Section 302, read with Section 34 of the Indian Penal Code (IPC). The incident occurred on 17th September 1996. The allegation is that the appellants assaulted one Punjabhai (the deceased) with pipes and sticks. The deceased suffered a large number of injuries and ultimately succumbed to the injuries. By judgment dated 5th July 1997, the Sessions

Court acquitted the appellants. Being aggrieved by the judgment of the Sessions Court, the respondent - State of Gujarat preferred an appeal against acquittal before the High Court. By the impugned judgment dated 14th December 2018, the High Court interfered and converted the acquittal of the appellants into a conviction for the offence punishable under Section 302, read with Section 34 and Section 323 of the IPC. By order dated 6th January 2020, this Court directed that the present appeal be listed for hearing. By order dated 18th May 2021, the application for suspension of sentence and grant of bail by the first appellant was rejected by this Court. However, this Court continued the order dated 21st January 2019 by which exemption was granted to the second appellant from surrendering.

2. The prosecution case in brief is that PW-1 Danabhai is the brother of the deceased. He had two brothers. The deceased was engaged in the business of diamond polishing. At about 9.45 pm on 17th September 1996, when PW-1 was sitting in his pan-bidi shop, one Vajsurbhai came to him by motorcycle and told him that the appellants had assaulted the deceased. On hearing this news, PW-1 went towards village Jhanjhmer. He met his uncle Ramabhai on the outskirts of the village, who was taking the deceased to the hospital by a tempo.

According to the prosecution case, Karshanbhai (PW-4), Dayabhai, Jivabhai and other villagers were sitting in the tempo. The deceased was taken to the clinic of Dr. Goti at Dhola village. As per his advice, the deceased was immediately shifted to Bhavnagar in a private hospital. The deceased succumbed to the injuries in the early morning of 18th September 1996.

3. The Trial Court disbelieved the testimony of PW-4 Karshanbhai for various reasons. In the impugned judgment, the High Court noted that though, according to the case of PW-4, he received injuries on 17th September 1996 at the hands of the accused, Dr Jagdishbhai (PW-5) deposed that PW-4 informed him that he suffered injuries on 18th September 1996. The High Court, in the impugned judgment, held that in his police statement, PW-4, had correctly stated that he was injured on 18th September 1996. Therefore, the statement he gave before the Court and the statement given by the doctor were meaningless. The High Court held that although the number of persons who witnessed the incident have not been examined, the appellants failed to adduce any evidence to falsify the prosecution's version. By the impugned judgment, after overturning the acquittal of the appellants, the High Court sentenced them to undergo life imprisonment.

SUBMISSIONS

4. The learned senior counsel appearing for the appellants pointed out that the High Court, while overturning the order of acquittal, had relied upon the police statement of PW-4 and had erroneously put the burden on the appellants to adduce evidence to show their innocence. He submitted that the entire approach of the High Court while dealing with an appeal against acquittal, is completely erroneous. He submitted that there is no finding recorded by the High Court that the only possible view which could be taken based on the evidence was that the guilt of the appellants had been proved. The learned senior counsel submitted that the High Court had erred in overturning the order of acquittal.

5. The learned counsel appearing for the State vehemently submitted that in an appeal against acquittal, the High Court was duty-bound to reappreciate the evidence, and after finding that evidence of PW-4, an eye-witness, completely inspires confidence, the High Court rightly interfered with the order of acquittal.

OUR VIEW

6. It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court

is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.

7. The second error the High Court committed is found in paragraph 23 of the impugned judgment. The High Court has gone to the extent of recording a finding that the appellants have failed to adduce evidence in their support, failed to examine the defence witness and failed to establish falsity of the prosecution's version. This concept of the burden of proof is entirely wrong. Unless, under the

relevant penal statute, there is a negative burden put on the accused or there is a reverse onus clause, the accused is not required to discharge any burden. In a case where there is a statutory presumption, after the prosecution discharges initial burden, the burden of rebuttal may shift on the accused. In the absence of the statutory provisions as above, in this case, the burden was on the prosecution to prove the guilt of the accused beyond a reasonable doubt. Therefore, the High Court's finding on the burden of proof is completely erroneous. It is contrary to the law of the land.

8. We have carefully examined the evidence of the material prosecution witnesses. PW-1 Danabhai stated that after he was informed in the night around 9 O'clock about the assault on the deceased by one Vajsurbhai, he proceeded by his bicycle. He stated that when he reached Jhanjhmer, he found that his deceased brother was laid in a tempo of Ramabhai. He stated about the presence of Arjanbhai and Jivabhai. He stated that no one informed him about the incident at that time. He thereafter described how the deceased was taken to the hospital of Dr Goti and thereafter to a private hospital in Bhavnagar. PW-1 deposed that PW-4 Karshanbhai went with him to Bhavnagar, and in the hospital of Dr Rana, PW-4 informed PW-1 that the appellants had assaulted the deceased by

using a stick. He stated that though PW-4 informed him that he was present at the time of the incident, he did not tell him about the assault on him by the accused. Thus, PW-1 did not state that PW-4 was present when he reached the place where he found that the deceased was laid in a tempo, and according to his version, PW-4 came to Bhavnagar. Though PW-4 stated that PW-1 came on a bicycle and came to Dhola with them, the version of PW-1 is that PW-4 joined him at Bhavnagar. This creates a doubt about the presence of PW-4 at the time of the incident. Importantly, one Vajsurbhai, who informed PW-1 about the assault on the deceased, has not been examined as a witness.

9. PW-4 admitted that there is an ongoing litigation about his family's land between the appellants and his family. PW-4 claimed that just before the fatal blow was inflicted on the deceased, a blow was given to the witness by pipe around 8 pm on the date of the incident. However, PW-5 Dr Jagadishbhai stated that when he examined PW-4 on 19th September 1996, the history given by PW-4 was to the effect that he was assaulted by a pipe on 18th September 1996 at 8.00 pm. The incident is of 17th September 1996. The High Court has completely brushed aside this statement of PW-5 by observing that once the police recorded statements of the Doctor and PW-4, the

statements of PW-4 and the Doctor before the Court became meaningless. As is apparent from Section 162 of the Code of Criminal Procedure, 1973 (CrPC), statements recorded by police under Section 161 of the CrPC cannot be used for any purpose except to contradict the witness. The Trial Court gives several reasons for discarding the testimony of PW-4. His prior enmity with the appellants and his failure to report the incident to the police, notwithstanding available opportunities, are also the factors considered by the Trial Court.

10. Therefore, after having perused the evidence of the material prosecution witnesses, in our view, the finding of the Trial Court that the evidence of PW-4 did not inspire confidence is a possible finding which could have been recorded on the basis of the evidence on record. There was no reason for the High Court to overturn the order of acquittal when the findings of the Trial Court were possible findings that could be arrived at after reappreciating evidence.

11. Therefore, the appeal must succeed. We set aside the judgment and order dated 14th December 2018 of the High Court and set aside the conviction of the appellants. The judgment and order dated 5th July 1997 of the Trial Court is restored. The appeal is, accordingly, allowed. The bail bonds of the appellant no.2 are cancelled. The appellant

no.1 shall be forthwith set at liberty unless he is required to be detained in connection with any other case.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
April 10, 2024.