WWW.LIVELAW.IN

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 2197 of 2022

In R/CRIMINAL APPEAL NO. 226 of 2022

With
R/CRIMINAL APPEAL NO. 226 of 2022

==========

STATE OF GUJARAT
Versus
THAKOR GOPALJI CHHANAJI

==========

Appearance:
MS CM SHAH, APP for the Applicant(s) No. 1
for the Respondent(s) No. 1,2,3,4,5,6

==========

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

Date : 31/01/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE S.H.VORA)

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 23.08.2021 passed by the learned 4th Additional Sessions Judge, Mehesana at Visnagar in Sessions Case No.15 of 2019, whereby, the respondents accused came to be acquitted for the offence under sections 395, 397, 323, 504, 506(2) of Indian Penal Code (hereinafter referred as **"IPC"** for short) and under section 135 of G.P.Act, 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).

2. Briefly stated, the complainant – Shri Thakor Mathurji Anarji registered a complaint with Vadnagar Police Station as I-

Downloaded on : Tue Feb 01 15:08:01 IST 2022

WWW.LIVELAW.IN

C.R.No.65 of 2018 for the aforesaid offence inter-alia alleging that on 27.07.2018, the complainant's son and son of accused no.2 had quarrel for the matter of going way to Ambaji Temple. Thereafter, on 30.07.2018, the complainant's son – Shri Sanjaybhai called the complainant saying that respondents would come for settlement talk at his shop and therefore, the complainant returned back and came at shop where, respondent no.1 and 2 inflicted bat blows on the body of the complainant and other accused had also beaten complainant and other witnesses. It is further alleged that jewelry was grabbed / roped and with the help of each other, they committed offence. Complainant and injured – witnesses were admitted in Vadnagar Civil Hospital. Pursuant to complaint, the police authorities investigated the offence and during the course of investigation, statement of various witnesses were recorded, panchnama of place of offence and other recovery / discovery panchnama of weapons were drawn and necessary medical evidence and other relevant documents were collected. After having found sufficient material against the respondent accused, the investigating agency submitted charge-sheet before learned JMFC, Vadnagar. Since the case was exclusively triable by learned Sessions Court, the learned JMFC, Vadnagar committed the case to the Sessions Court as provided under section 209 of the Code.

3. Upon committal of the case to the Sessions Court, learned Sessions Judge framed charge against the respondents accused at Exh.7 for the aforesaid offences. All the respondents accused pleaded not guilty and claimed trial.

Downloaded on : Tue Feb 01 15:08:01 IST 2022

WWW.LIVELAW.IN

4. In order to bring home charge, the prosecution has examined 13 witnesses and also produced 15 documentary evidence which is as under : -

Sr.No.	Documents	Exh.
1	Medical certificate of complainant – Shri Mathurji	15 / 16.
2	Original case papers, total 56 and 12 X-ray plates.	17
3	Medical certificate of witness – Sanjayji.	18
4	Original case papers, total 4 and 2 X-ray plates.	19
5.	Medical certificate of witness – Sureshji.	20
6	Original case papers, total 1 and X-ray plate.	21
7	Panchnama of scene of offence.	23
8	Panchanam of recovery of weapon.	26
9	Panch slip of Muddamal article no.1.	27
10	Panchanam of recovery of weapon.	30
11	Panch slip of Muddamal article no.2.	31
12	Complaint.	34
13	Xerox copy of page no.29 of original station diary of Vadnagar Police Station.	39
14	Depute order.	40
15	Vardhi of dispensary.	41

5. Upon conclusion of trial, the learned Trial Judge recorded further statement of the respondents – accused as provided under section 313 of Code, wherein, the respondents accused

Downloaded on : Tue Feb 01 15:08:01 IST 2022

WWW.LIVELAW.IN

denied their involvement in the offence and further stated that on account of enimty with regard to land and election of Sarpanch, false case is lodged against them.

6. After hearing both the sides and after analysis of the evidence adduced by the prosecution before the learned Trial Court, the learned Trial Court acquitted the respondents accused from the aforesaid offence of charge framed vide Exh.7.

7. We have heard learned APP for the State and minutely examined oral and documentary evidence adduced by the prosecution before the learned Trial Court. Normally, we may find that offence of the nature with which we are concerned, in the instant case is committed more often not known by the persons who are known to the victim and such an offence does not fall within the category of those offences where accused out of revenge and enmity committed offence. In the instant case, of-course, identity of the accused persons is not a problem. In most of the cases of offence under sections 395 and 397 of IPC, accused person is unknown person and not known person, who ventures to commit offence of present nature. In the case on hand, it appears and is admitted fact that the complainant and accused persons are known to each other. In the present case, except evidence of complainant at Exh.8, injured – complainant's son – Shri Sanjayji at Exh.10 and Shri Sureshji at Exh.9, no other prosecution witnesses have supported the prosecution case as to occurrence to the incident, as alleged against the respondents. No recovery of any gold ornaments has been effected from any of the accused persons. It further transpires from the record that there is

Downloaded on : Tue Feb 01 15:08:01 IST 2022

WWW.LIVELAW.IN

rivalry with regard to election matter. On perusal of the evidence of complainant's son – Shri Sanjayji, he has not made any allegation with regard to dacoity or robbery. Similarly, no any injury is noticed by the Doctor on the complainant's right ear, as it is alleged that earring was snatched. Learned Trial Judge upon appreciation of evidence found that major part of evidence with regard to occurrence of incident does not stand proved and no reliance can be placed so as to believe occurrence of incident. On our re-assessment and re-appreciation of evidence adduced on record, we also find that major part of the prosecution case does not inspire confidence in our mind and so we do not find any infirmity in the finding recorded by the learned Trial Judge leading to acquittal of the respondents accused.

8. We have noticed number of infirmities in the prosecution witnesses, more particularly, complainant's son who does not utter a word with regard to dacoity / robbery and allegation of snatching gold ornaments as alleged by the complainant. To secure conviction of charge on dacoity, the prosecution is required to establish two elements viz (i) that the dacoity as defined in section 391 of IPC has been committed (b) that it was committed by the accused persons. In assessing liability to accused person for offence of dacoity, the word "co-jointly" has an important significance. According to section 391 of IPC, dacoity is robbery committed by five or more persons. Essential element of offence of dacoity under section 395 is that five or more persons must have participated in the offence of dacoity. No such evidence is coming on record so as to infer that respondent nos.3 to 6 actually participated in committing offence of dacoity. On our re-assessment of evidence, there is

Downloaded on : Tue Feb 01 15:08:01 IST 2022

WWW.LIVELAW.IN

no iota of evidence noticed by us so as to hold that prosecution succeeded in providing essential ingredients of section 395 of IPC. Under the circumstances, we have not found any compelling reason so as to interfere with the finding recorded by the learned Trial Judge and learned APP could not point out any reliable evidence so as to infer that respondents have committed offence as provided under sections 395, 397 and 323 of IPC. Under the circumstances, the learned Trial Judge has rightly acquitted the respondents 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. 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. Keeping in mind the evidence adduced by the trial Court and also settled principle as to scope of appeal against the acquittal order there are no good reasons to interfere with the findings of the trial court as there is no iota of evidence to infer that the respondent-accused has committed offence as alleged. Since independent witnesses have not been examined, the prosecution case cannot be believed as to occurrence of the incident in the complainant’s shop.

10. 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.

Downloaded on : Tue Feb 01 15:08:01 IST 2022

WWW.LIVELAW.IN

(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.

11. 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."*

12. 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,

Downloaded on : Tue Feb 01 15:08:01 IST 2022

WWW.LIVELAW.IN

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.

13. 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.

14. In view of the above and for the reasons stated above, present application for leave to appeal being Criminal Misc. Application No.2197 of 2022 fails and same deserves to be dismissed and is accordingly dismissed. In view of dismissal of the application for leave to appeal, Criminal Appeal No.226 of 2022 also deserves to be dismissed and is accordingly dismissed.

THE HIGH COURT OF GUJARAT
WEB COPY

(S.H.VORA, J)

(SANDEEP N. BHATT,J)

SATISH

Downloaded on : Tue Feb 01 15:08:01 IST 2022