IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 374 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMABHAI KANABHAI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

MR KG SG SHETH APP for Respondent No. 1

MR PK JANI for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/04/2001

ORAL JUDGEMENT

1. The petitioner abovenamed, being the original informant in Special Atrocity Case No. 2/98, in the Court of Special Judge at Mehsana, has preferred this

Criminal Revision Application under Section 397 of the Code of Criminal Procedure, 1973 (for short "Code") against the judgement and order dated 18.3.2000 recorded by the learned Special Judge at Mehsana in Special Atrocity Case No. 2/98, under which, the learned Judge acquitted contesting respondents Nos. 2 to 4 from the offences punishable under Sections 332, 504, 506(2), 426 read with Section 117 as well as for the offence punishable under Section 3(1)(10) of the Schedule Caste and Schedule Tribe (Preventions of Atrocity) Act.

2. The petitioner abovenamed had preferred FIR before Kadi Police Station. It was registered as CR. No. 2731/97 for the aforesaid offences. It was alleged that petitioner was a public servant discharging his function as such at the relevant point of time on 14.8.1997 around 4.30 p.m. at Gram Panchayat Office. That at that time, respondent Nos. 2 to 4 had abused him and had also beaten him. That these respondents had also threatened petitioner and the abusive language used by contesting respondent was such that it insulted the present petitioner with respect to his caste and therefore, contesting respondents had committed the above said offences as per the case of petitioner.

3. On the strength of the FIR as above, investigation was gone into and after conclusion of the investigation, chargesheet was filed and the case was registered before learned Special Judge. There, the charge was framed for the aforesaid offences. The contesting respondents pleaded not guilty to the said charge. After hearing evidence and arguments, the learned Judge found that the case of the prosecution was not established and therefore, contesting respondents came to be acquitted by the said Court.

4. Feeling aggrieved by the said judgement and acquittal order of the learned Special Judge, the petitioner has preferred this revision application before this Court. It has mainly been contended that the trial Court has not properly appreciated the evidence. That the trial Court had also not appreciated the medical evidence in proper way. That the Trial Court has committed illegality in acquitting contesting respondents nos. 2 to 4, though, there was sufficient evidence on record. That on the whole, the judgement and acquittal order of the trial Court are illegal, erroneous and deserve to be set aside.

5. The petitioner has therefore, prayed for quashing and setting aside the impugned judgement and order of

acquittal and to convict respondent no. 2 to 4 for the aforesaid offences.

6. I have heard Mr. E.E. Saiyed, learned advocate for petitioner, Mr. K.G. Sheth, learned APP for State of Gujarat - respondent no. 1 and Mr. P.K. Jani, learned advocate for respondent nos. 2 to 4. I have looked into the papers made available to me in this revision application.

7. Mr. E.E. Saiyed, learned advocate for petitioner has argued at length that though, there was oral testimony of petitioner supported by medical evidence, trial Court has committed serious illegality in not properly appreciating the said evidence and therefore, the judgement and acquittal order are illegal and erroneous. It is also contended that medical evidence has not been considered by the Trial Court.

8. On going through para 20 at page 14, it can be gathered that the evidence of Dr.Kalabhai Madhabhai Bajaniya at Ex. 12 has been considered and appreciated by the Trial Court. Even in police Yadi, the injury certificate produced at Ex. 13 and 14 have also been considered by the trial Court. Then on appreciation of the evidence of the medical officer, the trial Court has found that the petitioner did not have any external mark of injury and complain of pain may be imeginatory also.

9. Learned advocate for petitioner has argued that the Trial Court has not properly appreciated the evidence available with it and therefore, revision application requires to be allowed and contesting respondent Nos. 2 to 4 are required to be convicted.

10. On this argument of the learned advocate for the petitioner, it is worthwhile, to reproduce Subsection 3 of Section 401 of the code for ready reference as follows:-

" Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. "

11. On a bare reading of Subsection 3 of Section 401 of the Code, it becomes very clear that this Court exercising jurisdiction under Section 397 of the Code cannot convert finding of acquittal into that of a conviction. In other words, this Court exercising Criminal Revision Application, cannot convict an accused

person, who has already been acquitted by the Trial Court.

12. Therefore, in my view, as per the aforesaid embargo, it is not possible to accept the above arguments advanced on behalf of the petitioner to allow the petition and to convict the contesting respondents Nos. 2 to 4.

13 Then it has been alternatively argued that Court should remand the matter back to the Trial Court for reappreciation of evidence, since the appreciation is not proper.

14. I am afraid, it is not possible for this Court to remand the matter back to the Trial Court for the purpose of reappreciation of evidence on the ground that appreciation is not proper. If the appreciation is not legal, this Court can also go into appreciation of evidence but this Court cannot convert a finding of acquittal into a finding of conviction.

15. More over, I am of the opinion that the matter cannot be remanded to the Trial Court for reappreciation of evidence on the ground that the appreciation is not proper.

16. So far remand of matter is concerned, I am of the opinion that this Court can pass an order of remand to the Trial Court.

17. In fact, it is not possible to have exhaustive guidelines on the point of remand of matter to the Trial Court. However, some illustrations may be given showing the grounds for retrial or for remand of a criminal trial with a permission to the parties to lead further evidence or for any other purpose. The illustrations can be recorded as herebelow :-

(A)

The judgement and order impugned in the Criminal Revision Application are illegal and perverse meaning thereby, they are immanently opposed to the evidence on record.

AND

(B)

(i) The Court concerned has not allowed a reasonable opportunity to lead evidence.

(ii) The case has been half way and half heartedly heard and illegally disposed of.

(iii) Some material witnesses to the case in question were not permitted to be examined.

(iv) Some material evidence has not been taken into consideration at all.

(v) Inadmissible evidence has been admitted and considered.

(vi) Procedural defect.

(vii) Admissible evidence not admitted in evidence, and as such, not considered.

(viii) Jurisdictional error.

AND

(C)

There is a resultant injustice prejudicial to the interest of the parties or any of them as a consequences of occurrence of aforesaid events or any one or more of them.

18. I am of the view that in the present case, aforesaid circumstances do not appear and therefore, it is not possible to accept the request of the learned advocate for petitioner to remand the matter back to the Trial Court.

19. At the same time, it has been laid down that this court while exercising revisional jurisdiction has very limited power and jurisdiction. It has been laiddown in case of State of Gujarat Vs. Mansukhlal Lovchand Choksi reported in 1993(2) GLH 849 that the Appellate Court should be slow and reluctant to interfere with the acquittal judgement and it cannot interfere unless the judgement of the trial Court is perverse.

20. When the appellate court hearing acquittal appeal, has to be slow then the revisional court, hearing acquittal revision has to be slower while interfering with the acquittal judgement before it.

21. It would also be relevant to consider the said judgment from a different angle. It has also been laiddown that when the appellate court concurs with the logic and reasoning of the trial Court and confirms the same, it does not require to give detailed and lengthy reasonings in support of the same.

22. Reliance has also been placed on case of PATEL BACHUBHAI RAJSHIBHAI VS. RAVAL HARIVALLABH ISHWARLAL & ORS., reported in 1996(1) GLR 431, wherein, it has been held as under :-

" when two views are possible, then as a matter of judicial caution, the High Court should refrain from interfering with the order of the acquittal of the Trial Court."

23. Learned APP has also relied upon a decision of Hon'ble Supreme Court in case of BANSI LAL & OTR. VS. LAXMAN SINGH, reported in AIR 1986 SC 1721, wherein, it has been held as under :-

" It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial Court, that the High Court is empowered to set aside the order of the acquittal and direct a retrial of the acquitted accused."

24. In the present case, we find that there is no allegation that there was some procedural defect committed by the trial Court. No witness has been dropped out, no witness has been omitted from consideration. In other words, there is no apparent error of law on the face of record committed by the Trial Court.

25. The learned advocate for petitioner has relied upon decision of Hon'ble High Court in case of DALEL SINGH VS. JAG MOHAN SINGH & OTHERS, reported in 1981 CRI. L.J. 667, wherein, it has been observed as under:-

" In a case which proceeds on a police report though a private party has no locus standi, yet, it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties though the State may not have thought fit to appeal but this jurisdiction has to be exercised only where there is some glaring defect in the procedure or manifest error on a

point of law want of jurisdiction or improper admission or rejection of material evidence and consequently a flagrant miscarriage of justice."

26. The present case does not fall within four corners of the principles laid down by the Hon'ble High Court and referred to hereinabove.

27. In the aforesaid matter, it has been further observed that the court, however, cannot reappraise the evidence as if in an appeal, as an expression of opinion by the High Court on the evidence may, in case of re-trial, load the dice against the accused. So, again from the aforesaid fact, it is very clear that court of revision cannot reappreciate the evidence on record.

28. Keeping in mind the principles laiddown in the aforesaid decisions, it is established that the aforesaid decision does not fully support the argument of learned advocate for petitioner in favour of remand of a case to the Trial Court for reappreciation of evidence.

29. I am of the opinion that a matter cannot be remanded for reappreciation of evidence, when, no witness has been omitted from consideration, when there is no procedural defect and when there is no jurisdictional error resulting in failure of justice.

30. Therefore, on one hand in view of Subsection 3 of Section 401 of the Code, the finding of an acquittal cannot be converted into finding of conviction and on the other hand, looking to the facts and circumstances of the case, the matter cannot be remanded back to the Trial Court for fresh appreciation of evidence. No case is made out for remand of the case for retrail purpose.

31. No other point is made out. Therefore, there is no merit in the present Criminal Revision Application.

32. Accordingly, for the reasons stated hereinabove, the present Criminal Revision Application is ordered to be dismissed at admission stage.

(D.P. Buch, J.)
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