IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL (FOR ENHANCEMENT) NO. 1553 of 2013
With
CRIMINAL APPEAL NO. 1675 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI Sd/-
and
HONOURABLE MR.JUSTICE G.B.SHAH Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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ASHARIYA SUMAR RAMANI....Appellant(s)

Versus

STATE OF GUJARAT & 1....Opponent(s)/Respondent(s)

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Appearance:
MR BY MANKAD, ADVOCATE for the Appellant(s) No. 1
MR. BHADRISH S RAJU, ADVOCATE for the Opponent(s)/Respondent(s) No. 2
MR LR PUJARI, APP for the Opponent(s)/Respondent(s) No. 1
RULE SERVED for the Opponent(s)/Respondent(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**

and
HONOURABLE MR.JUSTICE G.B.SHAH

Date : 30/10/2015

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Both these Criminal Appeals are preferred against judgment and order dated 31.08.2013 passed by the learned Additional Sessions Judge, Bhuj-Kutch in Sessions Case No.28 of 2009. By the said judgment, accused nos.1, 3 and 4 were acquitted of the charges for offences under Sections 307, 394, 323, 326, 506 (2), 114 of the Indian Penal Code. Accused no.2 was also acquitted of the charges for offences under Sections 307, 394, 506 (2) and 114 of IPC, however, he was convicted for offences punishable under Sections 325 of IPC and ordered to undergo two years rigorous imprisonment and fine of Rs.5,000/- was imposed on him and in default of payment of fine, accused no.2 was ordered to undergo simple imprisonment of one month, however, accused no.2 was given the benefit under the Probation of Offenders Act and he was also ordered to pay compensation of Rs.15,000/- to the victim. Being aggrieved by this judgment, Criminal Appeal No.1553 of 2013 is preferred by the complainant for enhancement of sentence imposed on accused no.2 by the impugned judgment and also against the benefit of probation given to him. Criminal Appeal No.1675 of 2013 is preferred by the State against the

acquittal of the accused persons by the impugned judgment for offences punishable under Sections 307, 394, 323, 326, 506 (2) and 114 of IPC.

2. Both these appeals are arising out of the same judgment and since they are arising out of the same incident and the evidence is common in both these appeals, the same are taken up for hearing together.

3. The case of the prosecution is that the complainant, Ashariya Sumar Ramani, had lodged a complaint agianst the accused persons on 13.2.2009 with Mundra Police Station stating that he was beaten with stick, axe and dhariya on his head, hand and on the back side by the accused and the accused persons had also looted a gold chain worth Rs.45,000/- and cash of Rs.6,800/-. The cause of the incident is stated to be that the complainant is an active member of Gauchar Bahcav Samiti and he had also filed a petition before this Court. Therefore, in order to intimidate and harass the complainant, he was attacked by the accused persons. Therefore, aforesaid complaint was given against the accused persons.

3.1 Thereafter, investigation was carried out and charge

sheet was submitted in the Court of learned Magistrate. However, as the case was exclusively triable by the Court of Sessions, the same committed to Sessions Court. Thereafter, charge was framed against the accused persons. The accused persons pleaded not guilty and claimed to be tried.

3.2 During the trial, the prosecution had examined following witnesses;

Sr. No.	**Name**	**Exh.**
1	Ashariyabhai Sumarbhai Ramani, Complainant.	67
2	Ram Naran Gagiya	71
3	Dr.Manojbhai Gulabshankar Dave.	74
4	Ram Varjang Kanani (Gadhavi)	76
5	Kalyan Gopal Gelva.	81
6	Jaga Pala Gadhavi.	83
7	Kanjibhai Ashabhai Sedat.	85
8	Samatbhai Tharu Chheda.	86
9	Savraj Petha Sankhala.	92
10	Bipinbhai Arvindbhai Chothani.	93
11	Haribhai Virambhai Gohil.	96
12	Rohitkumar N. Bhatt	97
13	Nanjibhai Sudamaji Bhati	98
14	Dr.Roshanben Mohd.Matiulla Ara.	106
15	Punshibhai Karmanbhai Ramani.	114
16	Jaysukhbhai Devjibhai Vaghela.	118
17	Delandh Saaya Raviya.	126

18	Chandrarajsinh Mahendrasinh Jadeja.	132

3.3 The prosecution has also produced and relied upon following documentary evidence:-

Sr. No.	Description	Exh.
1	Original complaint.	68
2	Medical Certificate mark 16/10.	75
3	Certified copy of Medical Certificate Exh.75.	77
4	Panchnama of the place of offence.	82
5	Arrest Panchnama Mark 16/2	84
6	Panchnama of seizure of clothes of the complainant.	87
7	Panchnama of search of house of the accused Mulji Mindhani.	88
8	Panchnama of search of house of the accused-Vishram Kalyan Mindhani.	89
9	Panchnama of search of house of the accused-Khengar Ram Mindhani.	90
10	Panchnama of search of house of the accused-Karsan Jakhabhai Mindhani.	91
11	Panchnama of blood sample of accused persons.	94
12	Yadi of map of place of offence as well as map.	99, 100
13	X-ray plates.	107 to 109
14	Medical Certificate, Mark 16/11.	110
15	Letter written to FSL, Junagadh.	119
16	Receipt of FSL,Junagadh.	120
17	Original letter of FSL, Junagadh.	121

18	Report of FSL, Junagadh.	122
19	Letter of FSL, Junagadh, Mark 20/1.	123
20	Serological report by FSL, Junagadh.	124
21	Janvajog entry.	133
22	Yadi written to Medical Officer.	134
23	Letter of FSL, Junagadh, Mark 16/17.	135
24	Report of FSL, Junagadh, Mark 16/18.	136

3.4 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and, thereafter, passed the impugned judgment and order awarding the sentence, as aforesaid, and also acquitting the accused persons of some of the charges levelled against them. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals are preferred before this Court.

4. Mr.B.Y.Mankad, learned advocate appearing for the complainant has submitted that the order of conviction recorded against accused no.2 is just and proper. So far as Criminal Appeal No.1553 of 2013 is concerned, which is preferred for enhancement of sentence imposed on accused no.2, he has taken us through the evidence and contended that the trial Court has committed an error in imposing the sentence upon accused no.2 inspite of voluminous evidence

against him and contended that the trial Court ought not to have imposed such a lesser punishment. He also submitted that without appreciating the documentary as well as oral evidence available on the record of the case in its proper perspective, learned Judge has erred in imposing lesser punishment upon accused no.2. He submitted that without appreciating those documentary as well as oral evidence available on the record of the case in its proper perspective the learned Judge has erred in imposing lesser punishment upon accused no.2 for offences punishable under Section 325 of IPC. He submitted that the reason put forth on behalf of the accused is not sufficient and reasonable for imposing lesser sentence on the accused. Therefore also, as the sentence imposed by the learned Judge is not sufficient and reasonable the same deserves to be enhanced by this Hon'ble Court. He also submitted that from the available material and from facts and circumstances of the case, it is clear that the accused no.2 deserve maximum sentence as provided under the aforesaid provisions of the Code. It is a fit case wherein the sentence imposed on accused no.1 deserves to be enhanced by this Hon'ble Court. He further submitted that the learned Judge has failed to appreciate that there is no any mitigating circumstance to impose lesser sentence and it is very clear

from the facts and circumstances of the case available on the record of the case that there is aggravating circumstances in which Hon'ble Judge ought to have imposed the maximum sentence as provided under the law. He also submitted that the learned trial Judge has committed an error in taking lenient view while imposing sentence on accused no.2 and, therefore, the sentence imposed is required to be enhanced. He also submitted that the trial Court has committed an error in granting benefit of probation to accused no.2 as he is a head strong person and there are other criminal cases and chapter cases registered against him. He also submitted that the trial Court has not even called for the report of the Probation Officer and, therefore, such benefit should not have been extended to accused no.2. In support of his submission, he has relied upon the decision of the Apex Court in **MCD v. State of Delhi and Another** reported in **(2005) 4 SCC 605,** wherein it is held as under in paragraph 22:-

> *"22. We have already reproduced Section 4 of the POB Act. It applied to all kinds of offenders whether under or above 21 years of age. This section is intended to attempt possible reformation of an offender instead of inflicting on him the normal punishment of his crime. The only limitation imposed by Section 6 is that in the first instance an offender under twenty one years of age, will*

not be sentenced to imprisonment. While extending benefit of this case, the discretion of the Court has to be exercised having regard to the circumstances in which the crime was committed, the age, character and antecedents of the offender. Such exercise of discretion needs a sense of responsibility. The offender can only be released on probation of good conduct under this section when the Court forms an opinion, having considered the circumstances of the case, the nature of the offence and the character of the offender, that in a particular case, the offender should be released on probation of good conduct. The section itself is clear that before applying the section, the Magistrate should carefully take into consideration the attendant circumstances. The second respondent is a previous convict as per the records placed before us. Such a previous convict cannot be released in view of Section 4 of the POB Act. The Court is bound to call for a report as per Section 4 of POB Act but the High Court has failed to do so although the Court is not bound by the report of the Probationer Officer but it must call for such a report before the case comes to its conclusion. The word "shall" in sub-section (2) of Section 4 is mandatory and the consideration of the report of the Probationer Officer is a condition precedent to the release of the accused as reported in the case of State v. Naguesh G. Shet Govenkar and Anr., AIR (1970) Goa 49 and a release without such a report would, therefore, be illegal."

4.1 In view of above, he submitted that Criminal Appeal

No.1553 of 2006 may be allowed and the sentence imposed on accused no.2 by the trial Court may be enhanced.

5. On the other hand, learned advocate for accused no.2 submitted that the sentence imposed upon the accused no.2 is just and proper and this Court may not interfere with the sentence. It is submitted that the learned trial Court has after appreciating the evidence on record in its proper perspective imposed the sentence, therefore, it may not be enhanced. An affidavit is also filed on behalf of the accused stating that the accused has never been involved in any criminal offence either before or after grant of probation and there is no prosecution pending against him. Therefore, it is submitted that the sentence imposed may not be enhanced and benefit of probation may not be withdrawn and this appeal may be dismissed.

6. We have heard Mr.B.Y.Mankad, learned advocate for the complainant and learned advocate for the respondent. We have also gone through the evidence on record. Considering the evidence on record, it is clear that the witnesses examined by the prosecution are either injured persons or the relative of the complainant and it seems that this is politically motiivated

dispute. The trial Court while appreciating the evidence on record has rightly convicted accused no.2 only for offence under Section 325 of IPC, as there was no fracture and nobody was required to undergo the operation. So far as grant of probation to accused no.2 is concerned, it can be seen that in two years no untoward incident has taken place nor the accused no.2 is found to be involved in any criminal case. Previously also accused no.2 is not convicted in any offence, therefore, in our view, the decision relied upon by learned counsel for the complainant will not apply in the facts of the present case. Therefore, considering the overall evidence on record, the discretion exercised by the trial Court is just and proper while imposing punishment, as aforesaid, and the enhancement appeal preferred by the complainant against conviction of accused no.2 deserves to be dismissed.

7. So far as Criminal Appeal No.1675 of 2013 is concerned, which is preferred against acquittal of accused persons from the charges of offence punishable under Sections 307, 394, 323, 326, 506 (2) and 114 of the Indian Penal Code, it is submitted by learned APP that the impugned judgment and order of acquittal is against law and evidence on record. He submitted that the learned Judge has erred in appreciating the

evidence of the prosecution witnesses wherein the prosecution has established that the respondent-accused were guilty of the offences alleged against them. He submitted that the learned Judge has committed grave error apparent on the record of the case by not properly appreciating the material available on the record of the case. He also submitted that the learned Judge has not properly appreciated the over all facts and circumstances of the case and also the evidence available on the record of the case which is sufficient to prove that the accused have committed the offence, as alleged. Therefore, the learned Judge ought to have convicted the accused persons for the aforesaid offences. He submitted that the learned Judge has committed grave error in discarding and disbelieving the prosecution version while coming to the conclusion that prosecution has failed to prove beyond reasonable doubt that the accused have committed the offence. Therefore, the impugned judgment and order passed by the learned Judge deserves to be quashed and set aside by this Hon'ble Court. He, therefore, submitted that by allowing Criminal Appeal No.1675 of 2013, impugned judgment acquitting the respondents-accused of charge of offence punishable under Sections 307, 394, 323, 326, 506 (2) and 114 of IPC may be set aside.

8. At the outset, it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in a catena of decisions. In the case of **M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr., (2006) 6 S.C.C. 39**, the Apex Court has narrated the powers of High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:-

> "54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

8.1 Further, in the case of **Chandrappa Vs. State of Karnataka, (2007) 4 S.C.C. 415**, the Apex Court laid down the following principles:

> 42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:
>
> [1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which

> the order of acquittal is founded.
> [2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> [3] Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtain extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasis the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.
>
> [4] An appellate Court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.
>
> [5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

8.2 Thus, it is a settled principle that while exercising appellate power, even if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

8.3 Even in the case of **State of Goa V. Sanjay Thakran &**

Another, (2007) 3 S.C.C. 75, the Apex Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

8.4 Similar principle has been laid down by the Apex Court in the cases of **State of Uttar Pradesh Vs. Ram Veer Singh & Ors, 2007 A.I.R. S.C.W. 5553** and in **Girja Prasad (Dead) by LRs Vs. State of MP reported in 2007 A.I.R. S.C.W. 5589**. Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

8.5 In the case of **Luna Ram Vs. Bhupat Singh and Ors, (2009) SCC 749**, the Apex Court in paras-10 and 11 has held

as under:

> "10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.
>
> 11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

8.6 Even in a recent decision of the Apex Court in the case of **Mookkiah and Anr. Vs. State, rep. by the Inspector of Police, Tamil Nadu, AIR 2013 SC 321**, the Apex Court in para 4 has held as under:

> "4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan

> through and if need be re-appreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]"

8.7 It is also a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of **State of Karnataka Vs. Hemareddy**, **AIR 1981, SC 1417**, wherein it is held as under:

> ...This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary (1967) 1 SCR 93:(AIR 1967 SC 1124) that it is not the duty of the Appellate Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

8.8 Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower Court, then the discussion of evidence is not necessary.

9. We have gone through the oral as well as documentary evidence on record. It is observed by the trial Court that the prosecution has failed to prove that the injuries in question were caused by accused persons and therefore, they were rightly not convicted for the offences as alleged. It is also found by the trial Court that the accused do not have anything to do with Gauchar, therefore, the allegation of the complainant that he is attacked as he is actively involved in Gauchar Bachao Samiti is not proved by leading any evidence. Therefore, we find that the accused persons are rightly acquitted by the learned trial Judge for the charges of offence under Sections 307, 394, 323, 326, 506 (2) and 114 of IPC. Moreover, learned APP is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored material evidence while acquitting the accused persons. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the accused of the charge of offence punishable under Sections 307, 394, 323, 326, 506 (2) and 114 of IPC. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the

impugned judgment and, therefore, find no reasons to entertain this appeal and this appeal is also required to be dismissed.

10. In view of the aforesaid discussion, both these Criminal Appeals are dismissed. The impugned judgment and order dated 31.08.2013 passed by the learned Additional Sessions Judge, Bhuj-Kutch in Sessions Case No.28 of 2009 is hereby confirmed. Bail bond of the accused, if any, stands cancelled. Registry to return the R&P, if lying here, to the trial Court forthwith.

Sd/-
(K.S.JHAVERI, J.)

Sd/-
(G.B.SHAH, J.)

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