

ITEM NO.105

COURT NO.12

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1191/2008

AMARSINGH RUPSING MAHIDA

Appellant(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

WITH

Cr1.A. No. 1657/2008 (II-B)

Date : 09-08-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s) Mr. Ashutosh Ghade, Adv.  
Mrs. Sheela Goel, AOR

For Respondent(s) Ms. Vishakha, Adv.  
Ms. Hemantika Wahi, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The impugned judgment of the High Court is set aside.  
The appellants are acquitted under Section 302 IPC and 504  
IPC. The appeals stand allowed in terms of signed non-  
reportable judgment.

(RAJNI MUKHI)  
SENIOR PERSONAL ASSISTANT

(PARVEEN KUMARI PASRICHA)  
BRANCH OFFICER

(Signed non-reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1191 OF 2008

AMARSING RUPSING MAHIDA . . . . .APPELLANT

VERSUS

STATE OF GUJARAT . . . . .RESPONDENT

CRIMINAL APPEAL NO. 1657 OF 2008

DHANABEN AMARSING MAHIDA AND ANR. . . . .APPELLANTS

VERSUS

STATE OF GUJARAT . . . . .RESPONDENT

J U D G M E N T

1 Aggrieved by the conviction under Section 302 IPC read with 504 IPC and the sentence of imprisonment for life the appellants have preferred these appeals.

2 The case of the prosecution is that on 11.08.2002 in the evening at about 7.00 p.m. Amarsing Rupsing, Danaben Amarsing, Lilaben Amarsing and Akbarbhai Amarsing came and started quarrelling with complainant's father-Bhikabhai.

Accused No.1-Amarsing Rupsing gave 'Pavda blow' on the head and other accused gave fist blows to the father of the complainant-Bhikabhai and at that time his elder brother intervened and they were also abused. Subsequently complainant's father succumbed to injuries. Law was set in motion by complainant (PW1).

3 To substantiate the charges against the accused prosecution has examined PW1 complainant-Takhatsingh Bhikhabhai Mahida and PW2 Chhatrasingh Bhikhabhai. When they were examined on 09.08.2004, both PWs 1 and 2 who are the eyewitnesses had fully supported the prosecution case. But when they were recalled and cross-examined and on 19.11.2004, PWs 1 and 2 gave entirely contradictory version and they have changed the version than the one which they had already deposed before the Court on 9.8.2004. The trial court acquitted the appellants by observing that the statement of witnesses (PW1 and PW2) is inconsistent and their evidence is not reliable.

4 On appeal by the State, the High court reversed the order of the acquittal and convicted the appellants under section 302 IPC and sentenced them to undergo rigorous imprisonment for life.

5 By doing so, the High Court suo motu proceeded against PW-1-Takhatsinh Bhikabhai Mahida and PW-2- Chhatrasinh Bhikabhai Mahida for the offences of forgery for giving false evidence on oath and directed them to undergo rigorous imprisonment for two months with a fine of Rs.500/-. The High Court reversed the judgment of acquittal and convicted the appellants as aforesaid.

6 We have heard the learned counsel for the appellants and the learned counsel appearing for the State.

7 The learned counsel for the appellants has submitted that when PWs 1 & 2 had changed their earlier version during the cross-examination and when the Trial Court acquitted the accused, the High Court ought not to have interfered with the acquittal.

8 Per contra, the learned counsel appearing for the State submitted that the High Court upon proper appreciation of evidence of PWs 1 and 2 and the other witnesses rightly convicted the appellants and the conviction warrants no interference.

9 Pws 1 and 2 are the only eyewitnesses to the occurrence. As pointed out by the High Court when Pws 1 and 2 were examined-in-chief on 9.8.2004, they have fully supported the prosecution case; when they were recalled on 4.11.2004 and cross examined by the defence both the witnesses turned *volte face* and changed their version. It is brought on record that in the interregnum period between August, 2004 and November, 2004, the parties have settled the matter and in view of the settlement, Pws 1 and 2 have resiled from their earlier version.

10 In the present appeals, we are not concerned about the correctness of the suo motu proceedings initiated against Pws 1 & 2 and the sentence of imprisonment imposed upon them. We are only concerned with the correctness of the judgment of the High court reversing the judgment of acquittal.

11 The principles regarding the power of the Appellate Court in an appeal against the acquittal is fairly well settled. When there are two possible reasonable conclusions and the trial court has adopted one such conclusion which is a plausible one, the High Court normally will not disturb the order of acquittal unless there are 'strong circumstances' or 'compelling reasons.'

12 Considering the powers of the appellate court in *Chandrappa & Ors. vs. State of Karnataka* (2007) 4 SCC 415, this Court held as under:

" 42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate 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 curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize 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 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."

13 Considering the present case in the light of the above principles, the trial court has taken note of the inconsistent stand of the witnesses PWs 1 and 2 and held that the accused are entitled to the benefit of doubt. In an appeal against acquittal, the powers of the Appellate Court is wide to re-appreciate the evidence and to reach its own conclusion. But when the view taken by the trial Court is a plausible one, the High Court normally will not interfere with the acquittal unless the same suffers from 'patent illegality' or 'glaring mistake' or there are 'compelling circumstances'. In our view, the present case is not the one where the judgment of the Trial Court acquitting the appellant can be said to be suffering from such a glaring mistake warranting interference by the High Court. Since evidence of PWs 1 and 2 is inconsistent, the conviction of the accused cannot be based upon such evidence;, more so when there is no other evidence to implicate the accused.

14 The impugned judgment of the High Court is set aside. The appellants are acquitted under Section 302 IPC and 504 IPC. The appeals stand allowed accordingly.

.....J.  
(R. BANUMATHI)

.....J.  
(VINEET SARAN)

NEW DELHI,  
AUGUST 9, 2018