
(2009) 12 GUJ CK 0034
In the Gujarat High Court
Case No : Criminal Appeal No. 653 of 1996

Dahyabhai K. Solanki

APPELLANT

Vs

Industrial Chemicals Works and Others

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26, 44

Citation : (2009) 12 GUJ CK 0034

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Sunil L. Mehta, for the Appellant; A.K. Chitnis, for Opponents 1 - 3 and H.L. Jani, Ld. APP for Opponent 4, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973 is directed against the judgment and order of acquittal dated 29.4.1995 passed by the learned Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 728/1989, whereby the accused have been acquitted of the charges u/s 44 of Water (Prevention & Control of Pollution) Act, 1974 leveled against them.

2. The brief facts of the prosecution case are as under:

2.1 It is the case of the prosecution that respondents No. 2 and 3 are the partners of respondent No. 1 firm. In the said Factory, the respondents are manufacturing Gama Acid in the said factory. During the process of manufacturing the acid, the said factory is consuming water and discharges the dirty water in the Kharikat canal without any treatment and thereby they are polluting the river. The respondents have not obtained consent from the Board u/s 25 and 26 of the Act but an application for "No objection" was filed by the respondents on 1.5.1987. The Board has given "No objection" vide order No. 7604 dated 18.5.1987 on condition that they have to maintain the parameters of trade effluents. On 5.9.1988, the officers of Board have visited the premises of

the said factory and found that the respondents have committed the breach of the conditions imposed by the Board while granting "No objection". Therefore, the officers have taken sample of dirty water and after following the procedure the sample was sent to the Board for analysis and as per the report of analysis, it is found to be more dirty. On these facts, the complaint was filed before the Court, which was numbered as Criminal Case No. 728/1989 against the respondents. At the time of trial, evidence was led before the trial Court. The documents were produced and oral evidence of the witnesses were also recorded by the trial Court and after considering the oral as well as documentary evidence, the learned Magistrate has passed the order of acquittal which is impugned in this appeal.

3. It was contended by learned Advocate Mr. Sunil Mehta for the appellant that the judgment and order of the learned Magistrate is not proper, legal and it is erroneous. He has also argued that the learned Magistrate has not considered the evidence of the witnesses. He has argued that Officers of the Board have followed the rules prescribed by law and also followed the procedure of taking the sample which is just and proper. The sample was seized and sealed properly. Yet, the learned Magistrate has not considered the evidence of prosecution. Therefore, the order impugned in this appeal passed by the learned Magistrate requires to be quashed and set aside.

4. It is a settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasoning's when the Appellate Court is in agreement with the reasons assigned by the trial court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents- accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal requires to be dismissed.

5. Even in a recent decision of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. Reported in (2007)3 SCC 75 the 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

6. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR 2007 SCW 5553 and in Girja Prasad (Dead) by LRs v. state of M.P. reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

7. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning's, 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 Alias Vemareddy and Another, wherein, it is held as under:

This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, that it is not the duty of the appellate court when it agrees with the view of the trial 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. 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. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant. The trial court while considering the oral as well as documentary evidence has clearly observed that the prosecution has not followed the mandatory provisions during the sealing and seizing the sample. There is serious contradictions in the oral evidence of witnesses. The prosecution has failed to prove its case beyond reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

10. Mr. Sunil Mehta learned Advocate for the appellant is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

11. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondents of the charges leveled against them.

12. I find that the findings recorded by the trial court are absolutely just and

proper and in recording the said findings, no illegality or infirmity has been committed by it.

13. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. R & P to be sent back to the trial Court, forthwith. Bail bond, if any, stands cancelled.