
(2010) 02 GUJ CK 0106
In the Gujarat High Court
Case No : Criminal Appeal No. 2165 of 2009

Gujarat Pollution Control Board	Vs	APPELLANT
B.R. Prajapati Prop. B.R. Prajapati and Another		RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 21(1)(2), 31, 31A
Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Evidence Act, 1872 — Section 78(2)

Citation : (2010) 02 GUJ CK 0106

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

Bench : Single Bench

Advocate : Sunil L. Mehta, for the Appellant; Yatin Soni, for Opponent 1 and H.L. Jani, Additional Public Prosecutor for Opponent 2, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal u/s 378(4) of the Code of Criminal Procedure, 1973 is directed against the judgment and order of acquittal dated 31.3.2009 passed by the learned Judicial Magistrate, First Class, Hansot in Criminal Case No. 529 of 2008 whereby the respondents-accused has been acquitted of the charges under Sections 21(1)(2) and Section 31 of the Air (Prevention and Control of Pollution) Act, 1981.

2. Brief facts of the prosecution case are that the accused No. 1 M/s. B.R. Prajapati, his proprietor Mr. B.R. Prajapati was manufacturing bricks at village Kharach of Hansot Taluka. As per the case of the complainant, for manufacturing process of brick, clay and husk is required be used and as per provisions of Section 21 of Air (Prevention and Control of Pollution) Act, 1981, there is need to obtain permission of the complainant Board for manufacturing or establishing such kind of business. But the accused had not obtained any permission from the Board and continued his business of manufacturing brick and the accused had violated the provisions of Act. On these facts, the complaint was filed before the

Court against the respondent. At the time of the trial, evidence was led before the trial Court. The documents were produced and oral evidence of five witnesses was 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 the 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 witnesses. He has contended that learned Judge ought to have appreciated that as per notification all the manufacturer of the bricks has required to take consent of the Gujarat Pollution Control Board under the Air Pollution Act and to take effective measures to prevent air pollution nearby area of the manufacturing unit. Even the appellant has issued notice u/s 31A of the Act, give notice, but the respondent No. 1 has continued his activities and violated the notification issued by the Government of India as well as notice issued by the G.P.C.B.. Therefore, the order impugned in this appeal passed by the learned Magistrate requires to be quashed and set aside.

4. At the outset, it is required to be noted that the principles which would govern and regular 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 v. State of Kerala and Anr.* reported in (2006) SCC 39, the Apex Court has narrated about the powers of the 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 views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

5. Further, in the case of *Chandrappa and Others Vs. State of Karnataka*, 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 act 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 is available to him under the fundamental principles 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.

6. 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.

7. 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 characterised 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. 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 MP* reported in AIR 2007 SC 5589. Thus, the powers which this Court may exercise against an order of acquittal are well

settled.

9. 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 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 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 a 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....

10. 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.

11. 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 before the trial court and also considered the submissions made by the learned Advocate for the appellant Board.

The evidence of Vinodkumar Keshavlal Prajapati Exhibit 69 and notice at Exhibit 50 have been examined before the learned trial Court, but there is no any single evidence to support the version of aforesaid witness and therefore, the complainant was bound to prove the case against the accused, but he has failed to prove the case against the accused. He has to prove that the act which was committed by the respondent is covered within the meaning of Notification and whether the area of the said offence of place, is covered withing meaning of Notification, but he has totally failed these material aspects in his favour. He has produced newspaper cutting in support of the case, but that cutting does not have any identification of newspaper, which newspaper. Besides, for publication of such notice/advertisement, there is no any evidence for publishing the same in newspaper. I have also perused Section 78(2) of the Evidence Act. I have also perused the judgments delivered by the Hon"ble Supreme Court in the cases (1) Indian Oxygen Ltd. v. The Workman Employed by Indian Oxygen Ltd. Vs. Workmen as represented by Indian Oxygen Karamchari Union, (2) Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, and (3) Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, The Hon"ble Supreme Court has observed that paper cutting evidence cannot be treated as proof of fact. A newspaper is not one of the document referred to in Section 78(2) of the Evidence Act. The trial court while considering the oral as well as documentary evidence has clearly observed that the prosecution has miserably failed to prove its case beyond reasonable doubt against the respondents. 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.

12. In the above view of the matter, I am of the considered view that the trial court was completely justified in acquitting the respondent of the charges levelled against it.

13. 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.

14. 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 reason to interfere with the same. Hence, the appeal preferred by the appellant Board is hereby dismissed. Record and Proceedings be sent back to the trial court forthwith. Bail bonds, if any, stand cancelled.