

(2010) 02 GUJ CK 0122
In the Gujarat High Court
Case No : Criminal Appeal No. 2239 of 2009

Gujarat Pollution Control Board	Vs	APPELLANT
Swastic Industry and Another		RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Gujarat Water (Prevention and Control of Pollution) Rules, 1976 — Rule 27
Water (Prevention and Control of Pollution) Act, 1974 — Section 24, 25, 43, 44, 47

Citation : (2010) 02 GUJ CK 0122

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

Bench : Single Bench

Advocate : Sunil L. Mehta, for the Appellant; Anuja S. Nanavati, for Opponent No. 1 and HL Jani, Additional Public Prosecutor for Opponent No. 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 4.12.2007 passed by the learned Additional Sessions Judge, Court No. 11, Ahmedabad in Criminal Appeal No. 60 of 2005 whereby the respondents-accused have been acquitted of the charges under Sections 24, 25, 43, 44 and 47 of the Water (Prevention and Control) of Pollution Act, 1974.

2. Brief facts of the prosecution case are that the respondents were doing business in partnership firm M/s. Swastik Industries at Vatva, Ahmedabad and said firm was manufacturing the chemical since 1987. The said firm had appointed one Paresh Shah, Chemist to look after the production division and to follow the rules of Pollution Board. The said factory was used for manufacturing Dxyfet Butazon by using different chemicals and huge water was required. So far the disposal of the used water trade effluent necessary arrangements were made. The office Shri P.K. Gohil had visited the factory and taken the sample of

trade effluent and therefore, it was found that the respondents had violated the terms of the consent order. The samples were sent for analyzing in the laboratory of the complainant. There were no respondents present at the time of taking sample then also on 16.2.1990.

3. The complainant - Dahyabhai Kalubhai Solanki, Assistant Law Officer, had filed Criminal Case No. 357 of 1990 before the learned Chief Metropolitan Magistrate, Ahmedabad, against present respondents and M/s. Swastik Industries. After hearing the parties and taking into consideration the evidence of witnesses on record and also documentary evidence, the learned Magistrate, convicted accused No. 1 u/s 24 and 43 and ordered to pay Rs. 5,000/- and that shall be recovered from the accused No. 2 to 4 and further ordered that accused No. 2 to 4 were convicted under Sections 24 and 43 for simple imprisonment of two years and fine of Rs. 5,000/- to each accused. Against said order of conviction passed by the learned Magistrate, the respondents had preferred Revision before the Additional City Sessions Judge, Ahmedabad being Criminal Revision Application No. 57 of 2005 and M/s. Swastik Industries had also preferred by way of Criminal Revision Application No. 60 of 2005. Both the Revision Applications were consolidated and by common judgment and order, learned Additional Sessions Judge, Court No. 11, Ahmedabad, was pleased to acquit the accused by quashing and setting aside the judgment and order dated 24.11.2005 passed by the learned Magistrate, by his order dated 4.12.2007. Therefore, present appellant - Gujarat Pollution Control Board through its Law Officer, has preferred this present appeal against the order dated 4.12.2007 passed by the learned Additional Sessions Judge, Court No. 11, Ahmedabad.

4. 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. The sample was seized and sealed properly. Yet, the learned Magistrate has not considered the evidence of prosecution. He has contended that learned Judge has failed to appreciate that as per requirement, appellant asked to divide the sample in different parts for sending the sample to other Government Analysis, but the respondents refused to send it and signed the undertaking, even though learned Judge acquitted the accused. Therefore, the order impugned in this appeal passed by the learned Magistrate requires to be quashed and set aside.

5. 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. Arayana 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.

6. 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 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 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.

7. 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. 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:

6. 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.

9. 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 2007 AIR SCW 5553 and in *Girja Prasad (Dead) by LRS v. State of MP* reported in 2007 AIR SC 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

10. 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.

11. 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.

12. 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. I have also perused oral evidence of complainant Exhibit 7. No doubt he was serving as a Law Officer of the Gujarat Pollution Board since 1984 and it is admitted by him that he had never visited the place of offence, which is cited in the case. Even he had no knowledge about the factory was in running condition or closed. As per consent letter, the respondents were to discharge 6000 Ltr. water and instead of that, the respondents had discharged 8000 polluted effluent. But the complainant had not followed the Rule 27 of the

Gujarat Water (Prevention and Control of Pollution) Act, 1976. The Sessions Court while considering the oral as well as documentary evidence has clearly observed that the complainant 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 Sessions court. Thus, from the evidence itself, it is established that the prosecution has not proved its case beyond reasonable doubt.

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

14. 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.

15. 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.