
(2009) 10 GUJ CK 0068
In the Gujarat High Court
Case No : Criminal Appeal No. 1016 of 1988

N.T. Kachoria

APPELLANT

Vs

Ibrahim Haji Ismail Sambhania and Others

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Customs Act, 1962 — Section 108, 135
Penal Code, 1860 (IPC) — Section 120B, 34

Citation : (2009) 10 GUJ CK 0068

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

Bench : Single Bench

Advocate : Shakeel A. Qureshi, for the Appellant;

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 5.10.1987 passed by the learned Chief Judicial Magistrate, Amreli, in Criminal Case No. 1357/1986, whereby the accused have

been acquitted of the charges u/s 135 of the Customs Act and 120-B and 34 of IPC, leveled against them.

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

2.1 As per the case of the prosecution, the office of the Customs Department received an information that some contraband goods were to be

brought in the vessel known as ""Ratna Sagar"" and, therefore, the Coast Guard of the Customs Department were made alert about the same. When

the patrolling was going on I n the sea near Mangrol on 22.12.1985, at 10.00am, one vessel was seen moving suspiciously and, therefore, the

Coast Guard tried to go near the said vessel and on seeing the patrolling boat, the said vessel tried to run away and, therefore the patrolling party followed the said vessel and ultimately at about 5.00pm, the said vessel was apprehended at a distance of 6 to 7 km from the shore of old Dwarka. The said vessel was thereafter inspected by the officers of the Department who were on the patrolling duty and it was found that the said vessel was ""Ratna Sagar"" bearing VRC No. VRL 289. On the vessel, there were in all 18 persons including 16 crew members and Tandel and two unauthorised persons. On inspection, it was found that there were contraband goods in the said vessel which was brought illegally and unlawfully and therefore the said vessel was brought to Diu on 23.12.1985 at about 10.00am. Thereafter, in the presence of panchas, the contraband goods which were in the said vessel were seized by making necessary panchnama. The said goods were worth Rs. 51,06, 942/- and which included fabrics, watch batteries etc. The statements of the Tandel and the Crew Members of the vessel were recorded u/s 108 of the Customs Act and the statement of other two persons were also recorded u/s 108 of the Customs Act. After completing the investigation, criminal complaint was filed against the respondents in the Court of Id. Chief Judicial Magistrate, Amreli being Criminal Case No. 1357/1986. The trial was initiated against the respondents.

2.3 To prove the case against the present accused, the prosecution has examined witnesses and also produced documentary evidence.

2.4 At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondents of all the charges leveled against him by judgment and order dated 4.3.1985.

2.5 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial Court the appellant has preferred the present appeal.

3. It was contended by learned Advocate Mr Sakil Kureshi that the judgment and order of the trial Court is against the provisions of law; the trial

Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the

prosecution has proved the whole ingredients of the evidence against the present

respondent. Learned Advocate has also taken this Court through the oral as well as the entire documentary evidence.

4. 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 and Another, 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 view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

4.1 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, reappraise 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 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.

4.2 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.

4.3 Even in a recent decision of the Apex Court in the case of *State of Goa v. Sanjay Thakran and Anr.* (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.

4.4 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 SCW 5589. Thus, the powers which this Court may

exercise against an order of acquittal are well settled.

4.5 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 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.

4.6 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.

5. 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. I have also perused the provisions of Section 108 of

the Customs Act. The trial court while considering the oral as well as documentary evidence has clearly observed that 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.

6. Mr. Sakil Kureshi learned Advocate 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.

6.1 In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the

charges leveled against him.

7. 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.

8. 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.