
(2010) 02 GUJ CK 0120
In the Gujarat High Court
Case No : Criminal Appeal No. 515 of 1990

S.N. Trivedi

APPELLANT

Vs

Bharat Tubes and Meters and Others

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(4)
Income Tax Act, 1961 — Section 276, 277
Penal Code, 1860 (IPC) — Section 193

Citation : (2010) 02 GUJ CK 0120

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

Bench : Single Bench

Advocate : M.R. Bhatt, for Mauna M. Bhatt and R.P. Bhatt, for the Appellant;
S.N. Soparkar, for Opponent 2 and Maulik Nanavati, Additional Public Prosecutor
for Opponent 3, 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 30.11.1989 passed by the learned Additional Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 78 of 1986, whereby the accused has been acquitted from the charges leveled against them.

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

2.1 The accused No. 1 was registered partnership firm and accused No. 2 was the partner of the said firm as well as responsible person of the accused No. 1 firm. For the Assessment Year 1977-78, the accused No. 1 firm filed two returns of income on 30.7.1977 and accused No. 2 signed the verifications of both the returns in a capacity as a partner. There were some discrepancies were found in the account book and confessional statement of the accused No. 2 was recorded. As per his admission, it was found that the accused had willfully attempted to evade tax, penalty and interest chargeable and imposable under the provisions of

the Income Tax Act. Therefore, on the basis of these allegations, the Income Tax Officer, Circle III, Ward "D", Ahmedabad filed two complaints against the accused for the offence punishable u/s 276 and 277 of the Income Tax Act and u/s 193 of the Indian Penal Code.

2.2 Therefore, there were two Criminal Cases i.e. Criminal Case No. 78 of 1986 and Criminal Case No. 134 of 1986 were filed before the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad. Subsequently, both these cases have been consolidated and common evidence has been recorded in Criminal Case No. 78 of 1986. Necessary investigation was carried out and statements of several witnesses were recorded. Ultimately, chargesheet was filed against them before the court of learned Magistrate. The trial was initiated against the respondents.

2.3 To prove the case against the present accused, the prosecution has examined, in all four witnesses and 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 respondent of all the charges leveled against accused by judgment and order dated 30.11.1989.

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 Counsel Mr. M.R. Bhatt 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 Counsel has also taken this Court through the oral as well as the entire documentary evidence. He has contended that learned Judge has erred in holding that the complainant has not proved that there were discrepancies in the account books produced by the accused and the learned Judge has erred in appreciating the documentary evidence on record.

4. 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 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 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.

4.1 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.

4.2 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.

4.3 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 reasons, 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.

4.4 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 APP for the appellant-State.

6. It appears from the judgment and order, the learned trial Court has clearly observed that the statement of the accused, which is against the documentary evidence is of no use and on the basis of confessional statement, no conviction can be based. The trial Court has observed that the entries in the account have not been made afterwards and there is no rewriting. Looking to the reasons assigned by the learned trial Court in the judgment and order, it is very clear that the learned trial Court has rightly examined the documentary as well as oral evidence. Therefore, there is no error committed by the learned trial Judge in passing the order of acquittal of the accused. Thus, from the evidence itself it is established that the appellant has not proved its case beyond reasonable doubt.

7. Mr. M.R. Bhatt, learned Counsel 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.

8. 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.

9. 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.

10. 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. Bail bond, if any, stands cancelled. Record and proceedings to be sent back to trial Court, forthwith.