

**(2010) 02 GUJ CK 0053**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 82 of 1993**

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| Somabhai Mathurbhai Vasava  | Vs | APPELLANT  |
| State of Gujarat and Others |    | RESPONDENT |

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**Date of Decision :** 08-02-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378  
Penal Code, 1860 (IPC) — Section 114, 406

**Citation :** (2010) 02 GUJ CK 0053

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

**Bench :** Single Bench

**Advocate :** D.N. Pandya, for the Appellant; H.L. Jani, Assistant Public Prosecutor for Respondent No. 1 and Adil Mehta, for Respondent Nos. 2 - 3, for the Respondent

**Final Decision :** Dismissed

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## 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 05.01.1991 passed by the learned Chief Judicial Magistrate, Bharuch in Criminal Case No. 7222 of 1995, whereby the accused has been acquitted of the charges leveled against them.

2. The brief facts of the prosecution case are that when the accused No. 1 was President in the Vikas Education Trust situated at Bharuch and the accused No. 2 was on duty as In-charge Principal of the said Trust during the period of the year 1984-1985, at that time they have not deposited the amount of Provident Fund of the employee in Employees Provident Fund and spend the said amount for their personal use and thereby the accused, with the help of each other, have misappropriated the amount and committed the offence punishable u/s 406 r/w. Section 114 of the Indian Penal Code.

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

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 Magistrate acquitted the respondents of all the charges leveled against them by judgment and order dated 05.01.1991.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Court of Chief Judicial, the appellant has preferred the present appeal.

6. It was contended by Mr. D.N. Pandya, learned advocate for the appellant 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 offence against the present respondent. Learned advocate for the appellant has also taken this Court through the oral as well as the entire documentary evidence.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. I have gone through the judgment and order passed by the Court of Chief Judicial Magistrate. I have also perused the oral as well as documentary evidence led by the Court of Chief Judicial Magistrate and also considered the submissions made by learned advocate for the appellant. The trial Court has clearly observed that witness Hasmukhbhai Jayantilal (Ex.91) is not supporting the say of the complainant. The witness is serving as Clerk in the said Trust. He has clearly deposed that the accused have not spent the amount at Provident Fund of the employee for the personal use. However, the prosecution has not declared this witness (Ex.91) as hostile witness. The witness has clearly deposed that for opening the Provident Fund account of the employee sanction of D.E.O. is required. He also deposed that as the Trust could not get the Grant for additional staff the complainant was removed from service. Looking to the above evidence the trial Court has found that the accused are wrongly involved in the commission of offence and the prosecution has miserably failed to prove the case against the accused.

15. 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.

16. In the above view of the matter, I am of the considered opinion that the Court of Chief Judicial Magistrate was completely justified in acquitting the respondent of the charges leveled against him.

17. I find that the findings recorded by the Court of Chief Judicial Magistrate are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

18. 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 fails and is hereby

dismissed. Bail bond, if any, stands cancelled.