
(2012) 07 GUJ CK 0070
In the Gujarat High Court
Case No : Criminal Appeal No. 667 of 1998

State of Gujarat	Vs	APPELLANT
Aniruddhsinh Bhurabhai Jhala		RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 378
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(1)(d), 13(2)

Citation : (2013) 3 Crimes 37

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

Bench : Single Bench

Advocate : Jirga Jhaveri, app, No. 1, for the Appellant;

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—Though served, nobody is appearing on behalf of the respondent. Hence, the Appeal is taken up for hearing for final hearing. The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 4.4.1998 passed by the learned Special Judge, Bhavnagar in Special Case No. 1 of 1993, whereby the accused has been acquitted from the charges leveled against him.

1.1 As per the case of the prosecution, the accused was working as Head Constable at Kolichak Police Station and the complainant met the accused with regard to the case lodged by his brother against him. The accused told the complainant to give Rs. 500/- for settling the case. The complainant did not give such amount to the accused, therefore, he approached the ACB Office, Bhavnagar. Thereafter, after completing necessary formalities, the trap was arranged and as per the case of the prosecution, the accused demanded and accepted the amount of bribe from the complainant. Therefore, the complaint for the offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 against the accused.

2. To prove the case against the present accused, the prosecution has produced several documentary evidence and examined witnesses like PW 1 Jerambhai Meghabhai at Exhibit 7, PW 2 Navinchandra Labhshankar, Exhibit 9, PW 3 Dinmohammad Dadubhai, Exhibit 11, PW 4 Akhubha Togubha, Exhibit 15 and from the defence side, DW 1 Bapalal Maletibhai at Exhibit 25.

3. 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 Special Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 4.4.1998.

4. Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 4.4.1998 passed by the Special Court, the appellant State has preferred the present appeal.

5. It is submitted by learned APP that the judgment and order of the Special Court is against the provisions of law; the Special 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 respondents. Learned APP has also taken this court through the oral as well as the entire documentary evidence. She submitted that there is direct evidence against the accused for the offence alleged. The prosecution also proved the case that on 30.3.1992, the respondent accused while he was discharging his duties as Police Head Constable, demanded Rs. 500 from the complainant for settling the chapter case and said amount was accepted by the accused from the complainant in presence of panch witness. She further submitted that there were presence of anthracene powder on the finger, tips of right hand and the same was recovered from him. Therefore, as per her say, the three material aspects of demand, acceptance and recovery of bribe amount is proved by the prosecution. She further submitted that the accused had accepted the amount of bribe in the presence of panch witness and thereafter, on arrival of raiding party, the accused threw away the bribe amount. She further submitted that there is not contradiction between the oral evidence of complainant and panch No. 1. It clearly shows that the accused demanded the amount of bribe from the complainant and same was accepted by him, She further submitted that the accused being public servant misused his power for doing the official work.

6. I have perused the record and considered the submissions made by the parties. I have perused the oral evidence of the witnesses examined by the trial Court. I have also read the charge framed by the trial Court. In this case, total four witnesses from the prosecution side and from the defence side, one witness were examined during the trial. It appears that the complainant turned hostile and looking to the contents as stated by the complainant in his evidence, it appears that the say of the complainant in his evidence is not supporting the compliant, which is lodged by himself During the experiment of ultra violet lamp, the marks of anthracene powder were not found on the hands or any part of the

body of the accused. Other witnesses, who were examined during the trial, have not supported the case of the prosecution. Therefore, learned Special Judge has rightly observed that the demand on the part of the accused is not established and therefore, the offence as alleged against the accused is not proved by the prosecution. Looking to the statement recorded u/s 313 of the Cr.P.C., the accused had very well explained the incident occurred and therefore, it is clearly established that the accused has not involved in the offence.

7. It is also a settled legal position that in acquittal appeal, the appellate court is not required to rewrite the judgment or to give fresh reasoning's, when the reasons assigned by the Court below are found to be just and proper.

8. 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 learned APP for the appellant State, Thus, from the evidence itself, it is established that the prosecution has not proved its case beyond reasonable doubt.

9. Learned APP 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 of that the decision is perverse or that the trial court has ignored till material evidence on record.

10. 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 her.

11. 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. 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.