

(2010) 02 GUJ CK 0039
In the Gujarat High Court
Case No : Criminal Appeal No. 418 of 2004

State of Gujarat

APPELLANT

Vs

Arjanbhai Palabhai Rathod

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)(3)
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 39(1)

Citation : (2010) 02 GUJ CK 0039

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

Bench : Single Bench

Advocate : A.J. Desai, app, for the Appellant; D.M. Ahuja, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378(1)(3) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 14.7.2003 passed by the learned Judicial Magistrate, First Class, Kalyanpur in Criminal Case No. 501 of 1991, whereby the accused has been acquitted from the charges leveled against him.

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

2.1 As per the case of prosecution, on 27.3.1991, Shri N.K. Zala, Junior Inspector, made a surprise check at the place of accused under the Standard of Weight & Measure (Enforcement) Act, 1985. The respondent - accused is the owner of Laxmi Narayan Traders and he was present at the time of surprise check. During the checking, it was found that the measure tape was not as per the provisions of the said Act. Therefore, the measure tape was seized in the presence of panchas. Therefore, the offence was registered against the accused - present respondent u/s 39(1) of the Standard of Weight & Measure (Enforcement) Act, 1985.

2.2 Therefore, Criminal Case No. 501 of 1995 with respect to the aforesaid

offence was filed against the respondent before the learned Judicial Magistrate, First Class, Kalyanpur.

2.3 To prove the case against the present accused, the prosecution has also produced documentary evidence and has examined two witnesses. After hearing the parties, the learned trial Judge was pleased to acquit the accused.

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

4. It was contended by learned APP Mr. Desai 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 APP has also taken this Court through the oral as well as the entire documentary evidence. He has contended that the respondent has committed the offence punishable u/s 39(1) of the Act, but the learned trial Judge has totally failed to appreciate to consider the evidence produced by the prosecution on record. Therefore, order of the learned trial court is required to be quashed and set aside.

4.1 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.

4.2 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 judgement 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.

4.3 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 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

4.4 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.

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. From record and judgment of the learned trial Court, it is established that the prosecution has totally failed to prove the case against the respondent - accused. I have also perused panchnama at Exhibit 33, however, it appears that the panch witness has not supported the case of prosecution. The prosecution has not examined any independent witness to support its case. Even the complainant in his deposition at Exhibit 31 has clearly admitted that at the time of incident, he was not serving at Khambhaliya and he has not having any personal knowledge. The witness Mr. M.K. Zala has also admitted that in his cross-examination that he had not kept any note about the place where he had gone. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Therefore, in my opinion, the learned trial Judge has not committed any error in passing the judgment and order and I see no reason to interfere with the same.

6. 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 or that the decision is perverse or that the trial court has ignored the material evidence on record.

7. 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.

8. 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.

9. 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.