

(2015) 01 GUJ CK 0096
In the Gujarat High Court
Case No : Criminal Appeal No. 1016 of 2003

State of Gujarat	Vs	APPELLANT
Ashokkumar Bababhai Parmar		RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2), 20, 7

Citation : (2015) 3 CCR 339

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : C.M. Shah, Public Prosecutor, for the Appellant; Siddharth H. Dave, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J—By way of this appeal, the appellant-State has challenged the judgment and order of the learned Special Judge, 3rd Fast Track Court, Mehsana, dated 17.5.2003, rendered in Special ACB Case No. 3 of 1996, whereby, the learned trial Court acquitted the original accused, the respondent herein, of the charges under Sections 7, 13(1)(c)(1-2-3) and Section 13(2) of the Prevention of Corruption Act. The brief facts of the case of the prosecution, as set out before the trial Court, are that the original accused-respondent herein, at the relevant point of time, was discharging duties as Unarmed Head Constable with Visnagar Police Station, whereas, the original complainant-Dashrathbhai Shamalbhai Chaudhary was plying Matador between Mehsana and Visnagar carrying passengers. According to the complainant with a view to see that the Traffic Police does not detain the vehicle of the complainant or does not issue any Memo for contravention of traffic rules, the accused, herein, on 14.11.1995 asked him to pay Rs. 40/- for plying vehicle without any hindrance for two weeks and also to pay Rs. 100/- towards Dipavali gift (Boni) on the next day, i.e. on 15.11.1995. Hence, the complainant made a complaint to the ACB officials and a trap was arranged. Then, on 15.11.1995, as agreed the complainant gave Rs.

40/- to the accused and the accused was caught by the ACB officials and the offence was registered against him. Pursuant thereto, on finding sufficient evidence and after obtaining necessary permission to prosecute the accused, a charge-sheet was filed against the accused person. At the time of trial, since, the accused did not plead guilty and claimed to be tried, the case was committed before the competent Court for trial.

2. At the time of trial, the prosecution, in support of its case, examined four witnesses, including the complainant, Panch, raiding officer and the I.O.

3. Apart from that the prosecution also produced as many as 31 documentary evidence, viz. Original complaint of the complainant (Exhibit-18), Panchnama of trap (Exhibit-22), seizure memo (Exhibit-23), etc., to prove its case beyond doubt.

4. After recording the evidence of the witnesses and perusing the material on record, the trial Court passed the impugned order. Hence, the present appeal.

5. Learned APP for the appellant-State, vehemently submitted that the trial Court committed a grave error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective. She, submitted that taking into consideration the evidence of the witnesses examined by the complainant as well as the documentary evidences produced by the prosecution, the trial Court ought to have held the accused guilty of the charges levelled against him. She, therefore, prayed that the appeal be allowed.

6. On the other hand, Mr. Dave, learned Advocate for the accused-respondent, opposed the appeal and submitted that the trial Court acquitted the accused after perusing the entire material on record, and hence, no interference is called for at the hands of this Court and the appeal be dismissed.

7. I have heard learned APP for the appellant-State as well as the learned Advocate for the original accused and perused the material on record with their assistance.

8. In the instant case, the prosecution case is that the accused, herein, who was serving as an Unarmed Head Constable at Visnagar, demanded illegal gratification from the original complainant so as to allow him to ply his Matador for carrying passenger without any hindrance. In that regard, here, it would be relevant to refer to the evidence of the complainant, who was examined as P.W.-1. P.W.-1, in his deposition (Exhibit-17), stated that the accused, herein, used to harass him and demand money from him for allowing him to ply his vehicle without any hindrance. However, in his complaint, the complainant has stated that the police personnel posted at Mehsana S.T. Bus Stop and Visnagar-Savala Darwaja (gate) used to harass him for illegal gratification. The complainant has, further, stated that at Visnagar the present accused and one Kaiyumbhai, who is also a police personnel, used to demand illegal gratification from him so as to allow him to ply his vehicle without hindrance. Thus, as per the

deposition of the complainant, apart from present accused other police personnel were also demanding illegal gratification from him. However, the complainant in his cross-examination stated that, except, the present accused, he had no dispute with any other police personnel. Therefore, the trial Court observed that, though, the complainant lodged his complaint against two police personnel, he, in his deposition, targeted only present accused. The trial Court, hence, rightly observed that from the above, it cannot be said that the trap was arranged for the present accused only. Further, as per the evidence of the complainant (P.W.-1), Panch (P.W.-2), raiding officer (P.W.-3), the trap was carried out at Visnagar-Savala Darwaja (gate), which is a public place and looking to the time of trap, at that time, there is likely to be heavy traffic and heavy crowd. Thus, it would be natural that accused, who was in uniform, would not call the complainant to give him bribe at that point of time and at that place. Therefore, the story of the prosecution about the setting of trap at the place and at the time given, raises suspicion. Now, as per the evidence of complainant, on the appointed time, when he approached the accused and asked him about the Dipavali gift (Boni), the accused told him to give the same, and hence, the complainant gave him four currency notes of Rs. 10/- denominations each, which accused accepted with his right hand and put the same in the right-hand side pocket of his trouser. As against this, now, if, we examine the evidence of the Panch witness, who was examined as P.W.-2, then, he has stated that when the complainant asked the accused about Dipavali gift (Boni), the accused stated that he does not accept gift (Boni) and despite the fact that the accused did not demand any money in his (P.W.-2's) presence, the complainant on his own gave four currency notes of Rs. 10/- denominations each to the accused. Further, as per the evidence of P.W.-2, no procedure was carried out at the place of offence and that same was done at the Rest House. In other words, there are material contradictions in the evidence of the complainant (P.W.-1) and that of Panch (P.W.-2) on the aspect of "demand". In above view of the matter, this Court has to look into the matter from the touchstone of the decisions of the Hon"ble Apex Court on the aspect of acquittal.

9. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6 CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp : (2006) AIRSCW 4652 : (2006) 5 Supreme 547 , the Apex Court has narrated 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 views are possible, the Appellate Court should not interfere with the finding of acquittal recorded by the Court below."

10. Further, in the case of Chandrappa and Others Vs. State of Karnataka, (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630, 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, re-appreciate 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 emphasise 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."

11. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/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.

12. Even in the case of State of Goa v. Sanjay Thakran & Anr., reported in II (2007) CCR 38 (SC) : III (2007) SLT 368 : (2007) 3 SCC 75, the Apex 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."

13. Similar principle has been laid down by the Apex Court in cases of State of Uttar Pradesh v. Ram Veer Singh & Ors., IV (2007) CCR 1 (SC) : 2007 AIR S.C.W. 5553 and in Girja Prades (Dead) By L.Rs. v. State of M.P., VIII (2007) SLT 19 : III (2007) DLT (Cr.) 1004 (SC) : III (2007) CCR 328 (SC) : 2007 A.I.R. SCW. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

14. In the case of Luna Ram v. Bhupat Singh & Ors., reported in (2009) SCC 749, the Apex Court in paras 10 and 11 has held as under:

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post-mortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

15. Even in a recent decision of the Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1 Supreme 88 , the Apex Court in para 4 has held as under:

"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges levelled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since Counsel for the appellants very much emphasized that the High Court has

exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first Appellate Court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the Court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal [vide *State of Rajasthan Vs. Sohan Lal and Others*, (2004) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480 Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404]."

16. It is also a settled legal position that in acquittal appeals, the Appellate Court is not required to rewrite 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 v. Hemareddy*, 1981 (SLT Soft) 482 : AIR 1981, SC 1417, wherein it is held as under:

"...This Court has observed in *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, AIR 1967 SC 1124 : (1967) 1 SCR 93 that it is not the duty of the Appellate 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."

17. In a recent decision, the Hon'ble Apex Court in *Shivasharanappa and Others Vs. State of Karnataka*, AIR 2013 SC 2144 : (2014) 1 CCR 485 : (2013) CriLJ 2658 : (2013) 7 JT 66 : (2013) 3 RCR(Criminal) 86 : (2013) 6 SCALE 757 : (2013) 5 SCC 705 : (2013) AIRSCW 2719 : (2013) 4 Supreme 38 has held as under:

"That Appellate Court is empowered to reappreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

18. Further, in the case of *State of Punjab Vs. Madan Mohan Lal Verma*, AIR 2013 SC 3368 : (2013) CriLJ 4050 : (2013) 3 RCR(Criminal) 972 : (2013) 10 SCALE 211 : (2013) 14 SCC 153 : (2013) 217 TAXMAN 402 , the Apex Court has held as under:

"The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted

money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convincing the accused person."

19. In view of the above discussion, I am of the opinion that the trial Court committed no error in passing the impugned judgment and order acquitting the original accused-opponents, herein, and hence, the present appeal deserves to be dismissed. In the result, this appeal fails and is dismissed. The judgment and order of the trial Court, dated 17.5.2003, stands confirmed. Bail bonds of the accused, if any, on bail, stands discharged. R & P be sent back to the concerned trial Court, forthwith.