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**(2010) 02 GUJ CK 0080**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 334 of 2004**

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| State of Gujarat              | Vs | APPELLANT  |
| Babu @ Nagraj Chhotabhai Kodi |    | RESPONDENT |

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**Date of Decision :** 19-02-2010

**Acts Referred:**

Arms Act, 1959 — Section 25(1)(A)  
Criminal Procedure Code, 1973 (CrPC) — Section 313, 378  
Evidence Act, 1872 — Section 27

**Citation :** (2010) 02 GUJ CK 0080

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

**Bench :** Single Bench

**Advocate :** H.L. Jani, app, for the Appellant;

**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 7.1.2004 passed by the learned Addl. Sessions Judge, Rajkot in Criminal Appeal No. 19/2003, whereby the learned Addl. Sessions Judge has acquitted the accused of the charges levelled against him and set aside the judgment and order of conviction and sentence dated 23.9.2003 passed by the learned JMFC, Jasdan in Criminal Case No. 219/2003.

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

2.1 As per the case of the prosecution, the complainant has received an information that the accused is having fire-arm without any pass or permit. Therefore, complainant along with two panchas has interrogated the respondent-accused and during the interrogation, the respondent-accused was found in possession of one country made revolver worth Rs. 5000/- and five cartridges without any pass or permit.

2.2 Therefore, a complaint with respect to the aforesaid offence was filed against

the respondent with the Jasdan Police Station. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, charge-sheet was filed against him before the court of learned JMFC, Jasdan, which was numbered as Criminal Case No. 219/2003. The trial was initiated against the respondent. At the end of the trial, the learned Magistrate has convicted and sentenced the respondent-accused for the offence punishable u/s 25(1)(A) of the Indian Arms Act and sentenced to undergo S/I for three years and to pay a fine of Rs. 200/-, in default, to undergo further S/I for ten days.

2.3 During the course of trial, to prove the case against the present accused, the prosecution has examined 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 has convicted and sentenced the respondent-accused as aforesaid vide judgment and order dated 23.9.2003.

2.5 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned Magistrate, the appellant has preferred Criminal Appeal No. 19/2003 before the learned Addl. Sessions Judge, Rajkot, who was pleased to set aside the impugned judgment and order passed by the learned Magistrate and acquit the respondent-accused of the charges levelled against him.

2.6 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned Addl. Sessions Judge, Rajkot, the appellant State has preferred the present appeal.

3. It was contended by learned APPMr HL Jani that the judgment and order of the learned Addl. Sessions Judge is against the provisions of law; the Sessions 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 APP has also taken This Court through the oral as well as the entire documentary evidence. Mr Jani has further contended that the fire-arm was recovered from the possession of the respondent-accused and nowadays, this is very danger for the society that a person is having fire arms without any pass or permit. Therefore, the impugned judgment and order passed by the learned Addl. Sessions Judge, Rajkot is required to be quashed and set aside and the judgment and order passed by the learned Magistrate is required to be confirmed.

4. 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 views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

4.1 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 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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. The Sessions Court, while appreciating the oral as well as documentary evidence has clearly observed that as per the evidence of the witnesses, who were members of the raiding party, the accused was present in the back side of the Jeep and has not uttered a single word and when the said vehicle reached to the destination of the place of panchnama, the muddamal was recovered. It further appears from the contents of the panchnama which was drawn by the police u/s

27 of the Indian Evidence Act, the main ingredients of Section 27 of the Act are not proved. When the panchnama u/s 27 of the Act is not proved by the prosecution, then it is fatal to the prosecution case. The panch witness also turned hostile. The prosecution has miserably failed to prove the case against the accused beyond any reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

6. Mr. Jani 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.

6. 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.

7. 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.

8. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the learned Addl. Sessions Judge, Rajkot in Criminal Appeal No. 19/2003 and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. R & P to be sent back to the trial Court, forthwith. Bail bond, if any, stands cancelled.