

(2013) 07 GUJ CK 0003
In the Gujarat High Court
Case No : Criminal Appeal No. 514 of 1993

State of Gujarat

APPELLANT

Vs

Balkarsinh Harisinh Jhat Shikh

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2014) 1 Crimes 494

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The appellant State has preferred this appeal u/s 378 of the Code of Criminal Procedure challenging the order of acquittal dated 4.3.1993 passed by learned Additional Sessions Judge, Kutch Bhuj, in Criminal Case No. 9 of 1991 whereby the respondent-original accused was acquitted of the charges u/s 20(b)(1)(2) of Narcotics Drugs and Psychotropic Substances Act, ("NDPS Act" for short) by giving benefit of doubt. The facts of the case, in a nutshell, is that on 20.9.1990 the respondent original accused was found in possession of 750 grams of Ganja without permit with an intention to sell the same and thereby he committed an offence under the said NDPS Act. Therefore, charge-sheet was filed in the Court of Sessions Judge, Kutch Bhuj. Charge was read over and explained to the accused. He pleaded not guilty to the charge and claimed to be tried. The prosecution examined ten witnesses and produced panchnama of seizure of muddamal and other documents. Further statement of accused u/s 313 of the Code of Criminal Procedure was recorded. The trial Court, after considering the evidence on record, by the aforesaid judgment and order, acquitted the accused of the charge levelled against him. Hence the present appeal.

2. To prove the case against the respondent original accused, the prosecution has examined following witnesses:

1. Pruthvirajsinh Dansangji at Ex. 19
2. Atul Manishankar joshi at Ex. 21
3. Laltasing Jivrajsing, Police Head Constable at Ex. 22
4. Mohan Keshar, Police Head Constable at Ex. 23
5. Pravinsinh Kanji Vaghela, Police Constable at Ex. 25.
6. Bhupendra Hiralal Joshi, Police Head Constable at Ex. 27
7. Mulji Shamji Garva, Police Constable at Ex. 29
8. Dalsinh Popatbhai, Police Constable at Ex. 30
9. Gauriben Vallabhji Chavda, PSI, at Ex. 31
10. Bharatsinh Girvatsinh Solanki, PSI at Ex. 34

2.1 The prosecution has relied on the following documents:

1. Panchnama in relation to the seizure of muddamal dated 29.9.1990 at Ex. 20
2. Copy of entry from LCB Register at Ex. 26
3. Copy of entry made in relation to muddamal in the register of Bhuj Police Station at Ex. 28
4. Letter of FSL Dated 24.1.1991 at Ex. 32
5. Report of F.S.L. muddamal analysis dated 24.1.1991 at Ex. 33
6. Complaint at Ex. 35
7. Yadi of muddamal sent to FSL for analysis at Ex. 36
8. Acknowledgement receipt of FSL at Ex. 37
9. Extract of Station Diary of Bhuj City Police Station at Ex. 38

3. Learned APP Ms. Shah for the appellant State has contended that learned trial Judge has committed error in acquitting the accused of the charge levelled against him. She further contended that the trial Court has committed error in discarding the testimony of the police officers on the ground that there were discrepancies in the evidence of the police officers. In that view of the matter, she submitted that the order of acquittal is required to be set aside and the accused is required to be convicted.

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:

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, 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 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.

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 the case of State of Goa Vs. Sanjay Thakran and Another, 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.

4.4. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, . Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

4.5. In the case of Lunaram Vs. Bhupat Singh and Others, 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 strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem 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.

4.6. 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, , 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 leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused u/s 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 re-appreciate 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,]

4.7. 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 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 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.

4.8 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. We have heard learned counsel for the parties and perused the judgment and order of the trial Court. The trial Court, while considering the evidence on record, came to the conclusion that the prosecution has not proved the case beyond reasonable doubt. The trial Court in paragraph No. 28 of the judgment has observed that the complainant has admitted in cross-examination that he does not know at what time the secret information was received. The complainant had gone to conduct raid at the house but map of the said house has not been prepared. According to filed complainant, the bag containing objectionable article was found hanging on the right side of the house whereas as per the evidence of prosecution witness P.D. Laltasingh, the said bag was found hanging on the left side of the house. The trial Court has also observed that provisions of Section 42 of NDPS Act are not complied with. The trial Court has observed that there is no sufficient evidence on record produced by the prosecution to prove the case against the accused beyond reasonable doubt and the accused gets such benefit of doubt.

6. In view of above, in our view, the trial Court has rightly come to the conclusion that the prosecution has miserably failed to prove the case against the accused beyond reasonable doubt and the accused is required to be acquitted of

the charges levelled against them.

7. Further learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order. We are, therefore, of the considered opinion that the findings recorded by the trial Court in acquitting the accused of the charge levelled against him are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are in complete agreement with the reasonings given and the findings arrived at by the trial Court. No interference is warranted with the judgment and order of the trial Court. Hence, the appeal is devoid of any merit and is dismissed. Bail bond stands cancelled.