

(2015) 02 GUJ CK 0072
In the Gujarat High Court
Case No : Criminal Appeal No. 543 of 1995

State of Gujarat

APPELLANT

Vs

Balvantbhai Becharbhai Patel and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Penal Code, 1860 (IPC) — Section 302, 34

Prevention of Corruption Act, 1988 — Section 12, 13(1)(d), 13(2), 7

Citation : (2015) 2 GLR 1708

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : Monali Bhatt, A.P.P., for the Appellant; V.M. Dhotre, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J—The present appeal, under Sec. 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 31-1-1995 passed by the learned Special Judge, Nadiad in Special Case No. 5 of 1991, whereby, the learned trial Judge acquitted the original accused - the respondents herein, of the charges for the offence punishable under Sees. 7, 12, 13(1)(d), (1), (2), (3) read with Sec. 13(2) of the Prevention of Corruption Act. The brief facts of the prosecution case are that the complainant is having a Saw Mill at Kapadvanj. In Kapadvanj, there are about 32 Saw Mills and they have formed an Association of these Saw Mills and the present complainant was the President of the said Association. The accused persons are serving in Forest Department. It is alleged in the complaint that they accused persons are collecting Rs. 15,000/- from the Association for not registering the offence. It is further alleged that in the year 1988, the accused have increased the amount and demanded Rs. 30,000/- from the Association. Since, the said amount was higher, and ultimately, it was settled at Rs. 27,000/-. Therefore, on 21-12-1988, Rs. 15,000/- was handed over to accused No. 3 in the office of Asha Traders. On

3-1-1989, accused No. 1, 2 and 3 had gone to the complainant for remaining amount of Rs. 12,000/-. Since, the complainant does not want to pay any amount, he told the accused to come on 4-1-1989 between 6-00 p.m. to 7-00 p.m. at the office of Asha Traders. The complainant did not want to pay the amount, and hence, approached A.C.B. Office at Nadiad on 4-1-1989 and lodged the complaint. Panchas were called. The complainant produced five currency notes of Rs. 100/- each and one currency note of rupee one. Panchas were introduced to complainant. P.S.I. Mr. Puvar explained the anthracene powder treatment properly and working of Ultra violet lamp. Thereafter, after following necessary procedure, the raiding party started at 4-45 p.m. from Nadiad. Complainant, panch No. 1 accompanied the complainant to go to the office of Asha Traders. Panch No. 2 remained with the raiding staff. The complainant had received a Phone call from the accused No. 3 who asked the complainant whether Keshubhai had come? The complainant replied that yes, he himself is Keshubhai. The accused told him that you wait we are coming. Thereafter, the accused reached there and demanded for the remaining amount of Rs. 12,000/-. Therefore, the complainant had given him Rs. 12,000/- to accused No. 3, who in turn, gave it to accused No. 2, who has started counting it. Thereafter, the complainant then went out of the office and gave signal which was earlier decided and was instructed to show. On seeing the signal, the raiding party rushed there. On seeing the raiding party, accused No. 2 had threw away the money. Thereafter, in presence of panchas, the said currency notes were seized. All these notes were shown in the lamp light which showed shining bluish powder. The clothes of the accused did not show any powder marks. The hands of the accused Nos. 2 and 3, complainant and hands of panch No. 2 when seen in lamp, showed anthracene powder marks. Detailed panchnama was drawn. The currency notes numbers were tallied with first part of the panchnama. These notes were signed by the panchas. Detailed panchnama was signed by the panchas who were there and also by the Investigating Officer. The currency notes were attached. The statements of the witnesses were recorded. Thereafter, the offence was registered and further investigation was carried out by the Nadiad A.C.B. During the course of investigation, respondent was arrested, and ultimately, charge-sheet was filed against him, which was numbered as Special Case No. 5 of 1991. The trial was initiated against the respondents.

2. To prove the case against the present accused, the prosecution has examined witnesses and also produced documentary evidence.

3. At the end of trial, after recording the statement of the accused under Sec. 313 of Cr.P.C. and hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 31-1-1995.

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

5. It was contended by learned A.P.P. Ms. Bhatt 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 all the ingredients of alleged charges against the present respondents. Learned A.P.P. has also taken this Court through the oral as well as the entire documentary evidence and submitted that the present appeal deserves to be allowed. While discussing threadbare the evidence, Ms. Bhatt learned A.P.P. has taken this Court through the evidence of the complainant and has strenuously urged that it was respondent No. 3 who had accepted the amount after reaching the place of the offence from where, he was nabbed. It is further submitted that even accused No. 2 who was accompanied and even his hands were tinted. She has further submitted that the judgment is so perverse that it requires to be upturned. The demand was proved. Just because the complainant was not owner of the Saw Mill, he could not lodge the complaint. Ms. Bhatt further submitted that this is a case where the learned trial Judge has misread the evidence as they were negotiating and on negotiations being taken place, the accused has reached the place of offence. Therefore, the impugned judgment and order requires to be quashed and set aside and the appeal be allowed.

6. As against this, Mr. Dhotre learned Advocate for respondent No. 2 has submitted that the respondent No. 2 has never demanded the amount. The finding of fact cannot be found fault with. According to Mr. Dhotre, that very foundation of the fact that all the accused were demanding money so that case may not be lodged against the Saw Mill owners is not correct and the complaints were lodged by the respondents. The original complainant was accused in one of such complaint, and therefore, the present appeal deserves to be dismissed. Mr. Dhotre learned Advocate has replied on the decision of the Apex Court 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 and in the case of Hari Dev Sharma Vs. State (Delhi Administration), AIR 1976 SC 1489 : (1976) CriLJ 1176 : (1977) 3 SCC 352 : (1976) 8 UJ 603 . Mr. Advharyu learned Advocate has taken this Court through the judgment of the learned trial Judge and the complaint and submitted that there is nothing against accused No. 4 regarding demand, acceptance and recovery. He has submitted that just because he was a person working in the department was roped in the case with an ulterior motive, and therefore, the present appeal deserves to be dismissed.

7. 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 view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

8. 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 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."

9. 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.

9A. Even in the case of State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , 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."

10. Similar principle has been laid down by the Apex Court in cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

11. In the case of Lunaram Vs. Bhupat Singh and Others, (2009) CriLJ 1899 : (2009) 3 JT 155 : (2009) 3 SCALE 363 : (2009) 3 SCC 749 : (2009) 3 SCR 706 : (2010) AIRSCW 298 : (2009) 7 Supreme 103 , 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."

12. 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 Sec. 302 read with Sec. 34 of I.P.C. and awarded R.I. 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, (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)"

13. 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 State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, AIR 1981 SC 1417 : (1981) CriLJ 1019 : (1981) 1 SCALE 206 : (1981) 2 SCC 185 : (1981) SCC(Cri) 395 : (1981) 2 SCR 695 , 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."

14. 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 re-appreciate 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."

15. 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.

16. I have gone through the judgment and order passed by me 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 A.P.P. for the appellant-State. On going through the entire evidence, the finding of facts cannot be interfered with and cannot be said to be perverse. It is to be noted that while admitting this appeal, the appeal against the main person i.e. accused No. 1 was not admitted. It would be necessary to mention that accused Nos. 3 and 5 have passed away during the pendency of this appeal which has taken 25 years to reach to this High Court finally. Taking the case of respondent No. 4, this Court, on the touch-stone of the decision of the Apex Court in the case of Muralidhar @ Gidda and Another Vs. State of Karnataka, AIR 2014 SC 2200 : (2014) AIRSCW 2278 : (2014) CriLJ 2365 : (2014) 4 SCALE 693 : (2014) 5 SCC 730 , wherein, parameters to interfere in acquittal appeals are reiterated, are kept in mind by this Court, and therefore, when there was no demand, no acceptance and evidence against the respondent No. 4 original accused No. 4, the appeal qua respondent No. 4 deserves to be dismissed. I am fortified in my view by the decisions of the Hon'ble Apex Court in the case of Muralidhar @ Gidda and Another Vs. State of Karnataka, AIR 2014 SC 2200 : (2014) AIRSCW 2278 : (2014) CriLJ 2365 : (2014) 4 SCALE 693 : (2014) 5 SCC 730 , and in the case of Satvir Singh Vs. State of Delhi, (2014) AIRSCW 4924 : (2014) 9 SCALE 528 .

17. This takes this Court to the appeal against only other survival accused i.e. accused No. 2. The fact that the complainant himself has admitted in the cross-examination that he has filed the complaint to bring pressure on the Forest Officials and the fact that there was no demand by respondent Nos. 2 and 4, and if at all, demand is made by accused No. 1, the present appeal qua accused No. 1 is not even admitted by this Court. In light of the decision of this Court in the case of Bhanushankar Popatlal v. State of Gujarat, rendered in Criminal Appeal No. 463 of 1978, I do not find any merits in the submissions made by the learned A.P.P. Ms. Bhatt to upturn the judgment of the learned trial Judge. The impugned judgment being in consonance with the principles of Evidence Act also cannot be found fault with. The documentary evidence on record will not permit this Court to take a different view than taken by the learned trial Judge. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Even looking to the evidence on record, learned A.P.P. is not able to bring home the charge levelled against the accused and persuaded this Court to take a different view than that taken by the learned trial Judge. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

18. In the above view of the matter, I am of the considered opinion that the trial Court was completely justified in acquitting the respondents of the charges leveled against them. 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.

19. Though, respondent Nos. 1, 3 and 5 have passed away, the acquittal judgment will have to be confirmed against them, as once this Court did not even permit leave to appeal against respondent No. 1, and qua him, the acquittal stood confirmed. As far as respondent Nos. 3 and 5 are concerned, there is nothing brought on record to see that they have either demanded or accepted the money. Even their presence was not found, and qua them also, the appeal stands dismissed. This order is required because they have passed away and they are Government servant and their retirement dues will have to be decided and just because abatement would not held, I have decided the matter even on merits qua them also. In the result, the present appeal is hereby dismissed. The impugned judgment and order of acquittal is confirmed. The respondents-accused are acquitted of all the charges levelled against them. R. & P. to be sent back to the trial Court. Bail and bail-bond, if any, stands cancelled. Surety also, if any given, stands discharged.