

(2015) 01 GUJ CK 0017
In the Gujarat High Court
Case No : Criminal Appeal No. 975 of 2005

State of Gujarat

APPELLANT

Vs

Bhanubhai Chandubhai Miyatra

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

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

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

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

Citation : (2015) 01 GUJ CK 0017

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Monali Bhatt, A.P.P., for the Appellant; Arpit A. Kapadia, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 1.11.2004 passed by the learned Special Judge (Corruption) and Addl. Sessions Judge, Fast Track Court No. 9, Bharuch in Special (ACB) Case No. 11 of 2003, whereby, the learned trial Judge acquitted the original accused—the respondent herein, of the charges for the offence punishable under Section 7 and 13(1)(d) read with section 13(2) of Prevention of Corruption Act.

2. The brief facts of the prosecution case are that the accused Bhanubhai Chandubhai Miyatra was serving as unarmed police constable in Ankleshwar Police Station as a public servant. That the complainant was doing the business of foreign liquor. The accused police constable demanded "hafta" from him. On the complainant not agreeing to the same, on 1.7.2003, at about 8.00 O'clock by taking him from his residence, an offence under the Prohibition Act was registered against the complainant and he was arrested and released on bail on 4.7.2003. Thereafter, the accused demanded monthly "hafta" of Rs. 7000/-, i.e.

Rs. 5000/- for the Police Inspector and Rs. 2000/- for the members of the "D" staff from the complainant for not registering any prohibition case against him. Therefore, the complainant went to A.C.B. Office and lodged the complaint. The complaint is at Ex. 9.

3. In accordance with the standard procedure for trap cases, arrangement for panchas was made and usual test of anthracene powder was carried out, explaining the panchas and the complainant, how anthracene powder works. Two panchas were also called. That on 5.7.2003 a trap was arranged and the accused was caught red-handed while accepting the amount of Rs. 7000/- with anthracene powder, and ultimately, the present case came to be lodged against the present respondent or Accused. Statements of several witnesses were recorded. During the course of investigation, respondents were arrested and, ultimately, charge-sheet was filed against them. The case was committed to the Court of Sessions. The case was numbered as Special (ACB) Case No. 11/2003.

4. To prove the case against the present accused, the prosecution examined witnesses and also produced documentary evidence which has been thoroughly gone through by this Court.

5. At the end of trial, after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 1.11.2004.

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

7. It was contended by learned APP 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 that all the ingredients of the alleged charge are proved against the present respondent. Learned APP has also taken this court through the oral as well as the entire documentary evidence. The presence of the respondent is already established and commission of offence is also established, and therefore, the present appeal deserves to be allowed. Ld. APP further submitted that PW-1 Bharatbhai Laxmanbhai Bhatiya Ex. 8 has supported the case of the prosecution. Para-14 of the impugned judgment itself is bad and though panch witnesses have turned hostile, they partially supported the case of the prosecution. The amount is accepted and is recovered as per panchnama Ex. 11, and therefore, the present appeal deserves to be allowed.

8. Ld. Counsel Ms. Kapadia for Mr. Arpit Kapadia appearing for the respondent has taken this Court through finding of fact and interpretation of term "demand and acceptance" and the fact that was absence of demand and acceptance on the part of the accused. She has relied on the fact that whether the amount was demanded, whether it was accepted is nowhere proved. She has relied on para-12 of the impugned judgment and the finding of fact cannot be therefore

interfered as they are not perverse. She has further submitted that even on the touch-stone of the judgment of the Apex Court, this Court may not interfere with the cogent and elaborate finding of facts recorded by the learned trial Judge and has requested to dismiss the appeal.

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, , 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." 10. 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."

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 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." 13. Similar principle has been laid down by the Apex Court in 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.

14. In the case of *Lunaram Vs. Bhupat Singh and Others*, , the Apex Court in para 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 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."

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*, , 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 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, " 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 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." 17. In a recent decision, the Hon''ble Apex Court in Shivasharanappa and Others Vs. State of Karnataka, 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." 18. 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.

19. The Apex Court in the case of Satvir Singh Vs. State of Delhi, , has observed that there was a failure on the part of the prosecution to prove demand and acceptance of illegal gratification by appellant from complainant, appellate jurisdiction exercised by High Court to reverse judgment and order of acquittal is not only erroneous but also suffers from error in law. The principles enunciated by the Apex Court in the case of Phula Singh Vs. State of Himachal Pradesh,

and in the case of Muralidhar @ Gidda and Another Vs. State of Karnataka, , to be kept in mind will not permit this Court to take a contrary view then that taken by the trial Court. The reasons given by the learned trial Judge are just and proper. Section 7 and 13 of the Prevention of Corruption Act, read as under:

"7. Public servant taking ratification other than legal remuneration in respect of an official act.--Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine."

13. Criminal misconduct by a public servant.--(1) A public servant is said to commit the offence of criminal misconduct.-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,--

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing of pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known source of income."

20. The prosecution case even for this Court is unable to support that the ingredients of section 7 or 13 are made out inasmuch as the accused never demanded money, and therefore, it cannot be said that there was demand or acceptance by the accused so as to bring him within the purview of sections 7 and 13 of the Act. In that view of the matter and in view of the latest decision of the Apex Court even where demand or acceptance is absent, conviction cannot be based and the acquittal cannot be converted into conviction. In this case, the fact reveals that neither there was demand nor there was acceptance, and therefore, this finding of fact cannot be interfered with by this Court in its appellate jurisdiction.

21. 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 before the trial court and also considered the submissions made by learned APP for the appellant-State. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. There are material contradiction in the evidence which are noted by the learned trial Judge while recording the acquittal. It is very clear that the learned trial Judge while recording the acquittal has given cogent reasons that no case under the Prevention of Corruption Act is proved by the prosecution. Ms. Shah Id. APP is not able to bring home the charge levelled against the accused and persuade this Court to take a different view than that taken by the learned trial Judge in view of the catena of decisions of the Apex Court and the latest decision of the Apex Court in the case of State of Punjab Vs. Madan Mohan Lal Verma, , wherein, it is held that acquittal should not be lightly interfered. Thus, from the evidence itself it is established that there are contradiction and the prosecution has not proved its case beyond reasonable doubt.

22. 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 reason to interfere with the judgment.

23. In the result, the present appeal is dismissed. The impugned judgment and order dated 1.11.2004 passed in Special (ACB) Case No. 11 of 2003 by learned Special Judge (Corruption) and Addl. Sessions Judge, Fast Track Court No. 9, Bharuch, is confirmed. R and P to be sent back to the trial Court. The bail bond and bail, if any, stands cancelled. Surety also, if any given, stands discharged.