

(2009) 10 GUJ CK 0062
In the Gujarat High Court
Case No : Criminal Appeal No. 47 of 2000

State of Gujarat

APPELLANT

Vs

Bhikhubhai Girdharbhai Bhatiya

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

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

Citation : (2009) 10 GUJ CK 0062

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

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; Jigar P. Raval, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of the Criminal Procedure, 1973 is directed against the judgment and order of acquittal dated 30.9.1999 passed by the learned Special Judge, Vadodara in Special Case No. 8 of 1988 whereby the accused has been acquitted of the charges leveled against him.

The brief facts of the prosecution case are as under:

2.1 In 1987 the complainant was working as a farmer. Under the government scheme, he was allotted land. He had approached the accused for getting the land. The accused had demanded bribe. However the complainant did not want to pay him. Therefore the complainant lodged a complaint with A.C.B. Office, and the accused was trapped during the raid of A.C.B.

2.2. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, chargesheet was filed against him.

3. Thereafter, as the case was exclusively triable by the Special Court, the same

was committed to the Special Court, which was numbered as Special Case No. 8/1988. The trial was initiated against the respondent.

4. To prove the case against accused, the prosecution has examined ten witnesses and produced twelve documentary evidence.

5. 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 defence, the learned Sessions Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 30.10.1999.

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

7. It was contended by learned APP that the judgment and order of the Special Court is against the provisions of law, the Special 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.

8. 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 view are possible, the appellate court should not interfere with the finding of acquittal recorded by the trial Court below.

9. 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.

10. 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.

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.

11. Similar principle has been laid down by the Apex Court in the Case 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 M.P. reported in AIR 2007 SCW

5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

12. 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 expressions of general agreements with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

13. 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.

14. We have gone through the judgment and order passed by the trial court. We have also perused the oral as well as documentary evidence adduced before the trial court and also gone through the Record and Proceedings and considered the submissions made by learned Advocate for the appellant.

15. The trial court has clearly recorded a finding that the prosecution has failed to prove the case against accused. From the deposition of complainant, the prosecution has failed to prove that any such demand was made by the accused person. Panchas were selected ones. The demand itself was not proved and even the recovery was also not proved. Thus the prosecution has failed to prove the demand, acceptance and recovery, the three pillars of the prosecution case. Without demand no person can be convicted under the provisions of the Act. In the present case the aforesaid ingredients are lacking. Even the selected panchas were examined by the prosecution. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

16. Thus there are serious lacunae in the prosecution case. The appellant in this appeal has not produced any evidence to rebut the finding of the Trial Court.

17. Mr. Kodekar learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of a 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.

18. In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

19. We find that the findings recorded by the trial court are absolutely just and

proper and in recording the said finding, no illegality or infirmity has been committed by it.

20. We are, 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. Hence the appeal is hereby dismissed. Record and Proceedings to be sent to the trial court forthwith.