

(1995) 01 GUJ CK 0031
In the Gujarat High Court

Case No : Criminal Appeal No's. 59, 60 and 61 of 1987

State of Gujarat

APPELLANT

Vs

Chandubhai Ramjibhai Patel

RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 409, 477A

Citation : (1995) CriLJ 4082

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : S.P. Dave, app, for the Appellant; Adil P. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—Common questions are involved in all these three acquittal appeals against the same respondent-accused and also arise out of the common judgment. Therefore, all the three appeals are disposed of by this common judgment.

2. By filing the aforesaid three appeals, the appellant-State has challenged the acquittal judgment and order passed by the learned J.M.F.C. Chikhli, Valsad District in three criminal cases Nos. 412,413 and 414 of 1985. The respondent was the original accused in the aforesaid cases tried by the trial court for the offences punishable under Sections 409 and 477A of the I.P.C. The trial court by the common judgment against the common accused on appreciation of the facts and circumstances, has held on 8-8-1986 that the prosecution has not been able to prove the charges against the accused person. Therefore, the accused was acquitted from the said charges under Sections 409 and 477A of the I.P.C.

3. Being aggrieved by the said common judgment and order of acquittal passed in favour of the respondent-accused, the State has challenged its legality and validity by filing these three appeals by invoking the aids of provisions of Section

378 of the Code of Criminal Procedure. Appeals Nos. 59,60 and 61 of 1987 are filed against the original accused in criminal cases Nos. 412, 413 and 414 of 1985 respectively.

4. According to the prosecution case, the accuse was working as branch post master in post office at village Nandai of Chikhli taluka of Valsad district, during the period from 1979 to 1984, the case of the prosecution was that, during the course of his duties as a public servant and being in charge of the branch post office at village Nandai, the accused was maintaining accounts and keeping records of the post office. It was alleged that in the year 1981, the accused had misappropriated money from certain post office savings accounts for his personal use and had also indulged in temporary misappropriation of certain amounts. He had also tampered with records of the post office. Therefore, three complaints came to be filed for the offences punishable under Sections 409 and 477A of the I.P.C. in the court of the learned JMFC at Chikhli, after the investigation was conducted.

5. In criminal complaint No. 412 of 1985, the allegation of the prosecution was that the accused had misappropriated for personal use an amount of Rs. 914/- and had temporarily misappropriated an amount of Rs. 150/-. In criminal case No. 413 of 1985, it was alleged by the prosecution that the accused had misappropriated an amount of Rs. 2424/- and had also temporarily misappropriated an amount of Rs. 425/-. In criminal case No. 414 of 1985, the accused was alleged to have misappropriated for personal use, an amount of Rs. 1700/- and had temporarily misappropriated an amount of Rs. 50/-. The accused was charged, in all the three criminal cases, for the offences punishable under Sections 409 and 477A of the I.P.C. Upon a joint request, common evidence was recorded and common judgment was invited.

6. The prosecution examined seven witnesses and also relied upon documentary evidence. There is no dispute about the fact that the accused was working as a branch post master in the post office at village Nandai at the relevant time.

7. On appreciation of the facts and circumstances and evidence on record, the trial court reached the conclusion that the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt for the offences punishable under Sections 409 and 477A of the I.P.C. Consequently, the accused came to be acquitted from the said charges in all the three cases against him. Hence, three acquittal appeals by them u/s 378 of the Code of Criminal Procedure.

8. During the course of submissions, the learned A.P.P. has taken me through the judgment and the relevant evidence. Having heard the learned A.P.P. and having considered the evidence on record, this court finds that there is no substance in the appeals. The material ingredients attracting rigours of the provisions of Sections 409 and 477A are not established beyond reasonable doubt. The prosecution has not been able to successfully prove that the respondent-accused

had misappropriated the amounts of different account holders in the post office. The material documentary evidence was also not produced before the trial court as observed by the learned Magistrate in the impugned judgment. The oral evidence relied on by the prosecution was not sufficient to transfix the culpability of the accused for the offences under Sections 409 and 477A of the I.P.C. The prosecution has not been able to prove that the accused had committed criminal breach of trust in the capacity of a public servant by misappropriating the aforesaid amounts or that he was responsible or was the author of falsification of accounts, as alleged.

9. In the course of submissions before this court, nothing has been successfully pointed out which would remotely indicate that the view taken by the trial court in the aforesaid three cases is unreasonable, unjust or illegal. There is no doubt about the fact that the prosecution has not been able to prove that the accused had written or changed the entries in the relevant pass books or records of the post office. There is no evidence on record to indicate that the alleged entries in records relied upon by the prosecution are in the handwriting of the accused. Not only that, it is clearly found from the record that the branch post office records and account books were not in exclusive possession of the accused. The prosecution has failed to establish the material ingredients of the provisions of Sections 409 and 477A of the I.P.C..

10. It is settled proposition of law that the view taken by the trial court must be shown to be erroneous, perverse, illegal or manifestly showing non-application of mind. It is also a settled proposition of law that where two reasonable conclusions can be drawn from the evidence on record, the High Court as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the court below. In other words, if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal. This view is well explained and propounded by the apex court in *Ganesh Bhavan Patel and Another Vs. State of Maharashtra*, and also in *Sirajuddin alias Siraj Vs. State of Karnataka*, .

11. Having considered the facts and circumstances and the evidence on record, this court is in agreement with the ultimate conclusion recorded by the trial court. When the appellate court is agreeing generally with the view of the trial court, there is no necessity to reiterate the reasons given by the trial court. This proposition is also very well settled and explained by the apex court in *State of Karnataka Vs. Hemareddy Alias Vemareddy and Another*, . The Supreme Court has also 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 reasons given by the court the decision of which is under appeal, will ordinarily suffice. Therefore, it would not be expedient and necessary to record

and discuss the same evidence and the grounds on which the conclusion is founded upon with which this court is in full agreement.

12. The net result is that all these three appeals are meritless. They are, therefore, dismissed.