

(2009) 07 GUJ CK 0065
In the Gujarat High Court
Case No : Criminal Appeal No. 391 of 1996

State of Gujarat

APPELLANT

Vs

Damji Bhagwanji Baghela

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 378
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (2009) 07 GUJ CK 0065

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

Bench : Division Bench

Advocate : Manisha Lavkumar, app, for the Appellant; B.D. Karia, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of

acquittal dated 15/2/1996 passed by the learned Special Judge, Jamnagar in Special Case No. 6 of 1988 whereby present respondent-original

accused was acquitted of the charges leveled against him.

2. The brief facts of the prosecution case are as under:

2.1 Complainant is serving as a Clerk with trawler owned by Abdul Husen Sachada for the purpose of fishing. Prior to three months of the

incident, port supervisor Shri Vaghela-original accused threatened the complainant for using the trawler for illegal use of transportation on rent and

also said that if complainant give him Rs. 1,000/- he will allow to continue the said act. Complainant has stated all these facts to the owner and

owner has sent message through the complainant to give maximum Rs. 500/-. Accused ultimately agreed to give Rs. 600/- and complainant has

given Rs. 600/- for three months because of fear. Thereafter the complainant could not give Rs. 600/- for the last month and therefore the accused

asked for hapta. Ultimately the complainant lodged the complaint before ACB Police, Jamnagar also.

2.2 According to compliant, Police Inspector arranged trap and necessary formalities for trap were completed. Thereafter, panch No. 1 and

complainant have gone to office of accused and complainant gave amount of Rs. 600/- and came out from the office and gave signal as decided

earlier according to trap and thereupon Police Inspector went to office of accused and raided and recovered Rs. 600/- from the drawer of table

where the said amount was kept. Accordingly the accused was caught during the trap.

2.3 As the trap was proved successful, necessary investigation was carried out and statements of witnesses were recorded and ultimately, charge

sheet was filed against the respondent-accused before the court of learned JMFC, Jamnagar.

2.4 Thereafter, as the case was exclusively triable by the Special Court, the same was committed to the Court of learned Special Judge, Jamnagar

u/s 209 of Cr.P.C. The case was numbered as Special Case No. 6 of 1988. The trial was initiated against the respondent-accused.

2.5 To prove the guilt against the accused the prosecution has examined following witnesses:

[1] Aamad Shubhar - Exh.7

[2] Sishor V.P. - Exh.8

[3] Abdul Husen S. - Exh.9

[4] Suleman M. S. - Exh.10

[5] Girjasinkar K. R. - Exh.11

[6] Damji Bhagavanji - Exh.4

2.6) In order to support the case, the prosecution has produced following documents:

[1] Muddamal list - Exh.5

[2] FIR - Exh.12

[3] Panchnama - Exh.13

[4] Letter dated 11/10/1986 - Exh.15

[5] Letter dated 13/10/1986 - Exh.16

[6] Letter dated 7/10/1996 - Exh.17

[7] Letter dated 9/10/1986 - Exh.18

[8] Letter dated 22/10/1986 - Exh.20

[9] Documentary evidence list - Exh.6

2.7) 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 the

defense, the learned Special Judge acquitted the respondent of all the charges leveled against him by judgement and order dated 15/2/1996.

2.8. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Special Judge, Jamnagar, the appellant-State has preferred the present appeal.

3. Though served, the respondent-accused has not remained present.

4. Ms. Manisha Lavkumar Shah learned APP contended that the judgement 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. She submitted that the prosecution witness had clearly deposed in his deposition that the

respondent-accused was found committing offence punishable under Sections 161 of the Indian Penal Code and Section 5(2) of the Prevention of

Corruption Act. She further submitted that there was no reason for the Special Judge to disbelieve the prosecution case and to acquit the

respondent-accused.

5. 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 judgement 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.

5.1 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, reappraise 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.

5.2 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.

5.3 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 judgement 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.

5.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh & Ors reported in AIR

2007 SCW 5553 and in Girja Prasad (Dead) by LRs v. state of MP reported in AIR 2007 SCW 5589. Thus, the powers which this Court may

exercise against an order of acquittal are well settled.

5.5 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement 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

expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

5.6 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.

6. We have gone through the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence led

by the trial court and also considered the submissions made by learned Advocate for the appellant.

6.1 While considering the oral as well as documentary evidence, it is found that there are serious contradictions in the version of the panch witness

No. 1. It was also established that demand of bribe and acceptance of the same is not proved. Only on the basis that from the drawer of the table

of the accused the currency notes were recovered, the accused cannot be held to be guilty for the offence alleged against him. As per the evidence

there was no talk between the complainant and the accused. The panch also went inside along with complainant and he went out with the

complainant. In such situation the panch should have known about the talk and transaction. However the evidence of panch does not inspire any

confidence. Therefore in the case of bribery the prosecution has failed to prove acceptance of bribe. Therefore view taken by the trial Court is just

and proper and therefore we do not find any reason to interfere with the said finding.

6.2 Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Ms. Manisha Lavkumar

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

7. 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. We 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. 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. Further this Court has limited scope to decide the appeal. Hence the appeal is hereby dismissed.

8. Record and Proceedings be sent back forthwith.