

(2015) 01 GUJ CK 0073
In the Gujarat High Court
Case No : Criminal Appeal No. 563 of 2004

State of Gujarat

APPELLANT

Vs

Dolarrai Trikambhai Vaghela

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 313, 378
Penal Code, 1860 (IPC) — Section 302, 34
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (2015) 2 Crimes 113

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : Monali Bhatt, APP, for the Appellant; Harnish V. Darji, 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 6.1.2004 passed by the learned Special Judge, Gandhidham - Kutchchh in Special Case No. 2 of 1999 whereby, the learned trial Judge acquitted the original accused - the respondent herein, of the charges for the offence punishable under Section 5(2) of Prevention of Corruption Act. The brief facts of the prosecution case are that the accused was working as Medical Officer at village Lakadia, Taluka Bhachau. That on 22.9.1984, when complainant had gone for treatment, the accused had demanded a bribe of Rs. 15/- from the complainant. Therefore, a complaint was lodged which is at Ex. 27. 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. On receiving such signal, members of the raiding party along with other panchas, were to take further action. 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 Case No. 2/1999.

2. 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.

3. 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 6.1.2004.

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 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 respondents. Learned APP has also taken this court through the oral as well as the entire documentary evidence. The presence of the respondents is already established and commission of offence is also established, and therefore, the present appeal deserves to be allowed. Id. APP further submitted that the Id. Judge has committed a grave error of holding that the provisions of section 154 and 157 of the Criminal Procedure Code are not followed. She has submitted that the learned trial Judge has erred in holding that the prosecution witness Mr. Rathod who is panch witness was not the independent witness. She further submitted that the learned trial Judge has committed error in not accepting the case of the prosecution on the aspects of acceptance of bribe amount, ignoring the material facts that the presence of anthracene powder was found on the tip of the accused. The Investigating Officer also has been disbelieved by the learned trial Judge. She further submitted that the case of the prosecution was full proof and the acquittal requires to be up turned even on the touch tone of the judgments of the Apex Court that the decision of the learned trial Judge is perverse and contrary to law, and therefore, the present appeal deserves to be allowed.

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

7. 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 emphasize 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."

8. 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.

9. 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 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 strangled. 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."

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 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, (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 of 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 reappreciate 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. The Apex Court in the case of Satvir Singh Vs. State of Delhi, (2014) AIRSCW 4924 : (2014) 9 SCALE 528 , 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, AIR 2014 SC 1256 : (2014) AIRSCW 1499 : (2014) 3 JT 542 : (2014) 2 RCR(Criminal) 51 : (2014) 3 SCALE 310 : (2014) 4 SCC 9 : (2014) 1 SCC(L&S) 769 and 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 , 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 and no interference is called for..

17. 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. The prosecution has miserably failed to prove the case against the accused beyond any reasonable doubt. 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. Bhatt 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, AIR 2013 SC 3368 : (2013) CriLJ 4050 : (2013) 3 RCR(Criminal) 972 : (2013) 10 SCALE 211 : (2013) 14 SCC 153 : (2013) 217 TAXMAN 402 , 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.

18. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him. 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. In the result, the present appeal is dismissed. The impugned judgment and order dated 6.1.2004 passed in Special Case No. 2 of 1999 by learned Special Judge, Gandhidham-

Kutchchh, 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.