

(2010) 01 GUJ CK 0048
In the Gujarat High Court
Case No : Criminal Appeal No. 583 of 1996

State of Gujarat		APPELLANT
	Vs	
Gulam Husen Sunderji and Others		RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Citation : (2012) 1 Crimes 372

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : M.G. Nanavati, LD app, for the Appellant;

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The appellant State of Gujarat, has preferred this Appeal u/s 378 of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 10th April 1996 passed by the learned Judicial Magistrate First Class, Maliya camp at Morbi, in Criminal Case No. 114 of 1989, whereby the learned Magistrate has acquitted the respondents/accused of the charges levelled against them.

2. The short facts of the prosecution case is that the complainant, Food Inspector, visited the business place of the accused No. 1 on 28th July 1989 and has taken "Tikdi Kattha" as sample after paying consideration and sent the same for analysis to the Public Analyst, Bhuj. On examination, the Public Analyst by its report dated 18th September 1989 found that the said sample was not upto the standard as prescribed. Thereafter, after obtaining necessary sanction from the Local Health Authority, Rajkot, the Food Inspector filed case against the accused in the court of learned Magistrate.

3. Thereafter the trial was conducted before the learned Magistrate. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence. After considering the oral as well as documentary evidence, the

learned Magistrate has acquitted the respondents-accused from the charges alleged against them by the judgment and order dated 10th April 1996.

4. Being aggrieved and dissatisfied with the said judgment and order dated 10th April 1996 passed by the learned Magistrate in Criminal Case No. 114 of 1989, the appellant-state of Gujarat, has preferred the above mentioned Criminal Appeal.

5. I have heard Mr. M.G. Nanavati, learned Additional Public Prosecutor, appearing on behalf of the appellant state and learned advocate, appearing on behalf of respondents-accused. I have also gone through me papers and the judgment and order passed by the Trial Court.

6. Mr. M.G. Nanavati, learned Additional Public Prosecutor for the appellant has taken me through the evidence of prosecution witnesses and the documentary evidence and submitted that from the above evidence it is established that the prosecution has successfully proved its case beyond reasonable doubt. He has contended that the witnesses have supported the case of the prosecution and the learned Magistrate has committed grave error in disbelieving and discarding the evidence of witnesses. He also contended that the learned Magistrate has not considered the fact that the food Inspector has followed the proper procedure while collecting the sample. He, therefore, contended that the judgment and order passed by the learned Magistrate is without appreciating the facts and evidence on record.

7. Learned advocate for the respondents-accused has supported the judgment and order of the Trial Court and contended that the food Inspector has not followed the mandatory rules and the prosecution has failed to establish prima-facie case against the accused.

8. I have gone through the judgment of the Trial Court. I have also perused the reasons assigned by the learned Magistrate.

9. 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 court below.

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.

11. Even in a recent decision of the Apex Court in the case of *State of Goa v. Sanjay Thakran & Anr.* (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, there-fore, 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 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.

12. Similar principle has been laid down by the Apex Court in the cases of *State of Uttar Pradesh v. Ram Veer Singh & Ors.* AIR 2007 SCW 5553 and in *Girja Prasad (Dead) by LRs v. State of M.P.* AIR 2007 SCW 5589, Thus, the powers which this Court may exercise against an order of acquittal are well settled.

13. 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 reasoning, 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*,

14. 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.

15. 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 advocate for the appellant.

16. The Trial Court has, after appreciating the oral as well as documentary evidence, found that the Food Inspector has committed breach of mandatory provisions of the Rules while taking the sample. The prosecution has not followed the provision of Section 2(1)(a) of the Act. It is also observed by the Trial Court that prosecution has not followed the mandatory provision while ceasing of

sample. It is also observed by the Trial Court that for edible Tikdi Kattha", no standard is fixed. The Trial Court has observed that there are serious lacuna in the oral as well as documentary evidence of prosecution. Nothing is produced on record of this appeal to rebut the concrete findings of the Trial Court.

17. Thus, the appellant could not bring home the charges against the respondent-accused in the present appeal. The prosecution has miserably failed to prove the case against the respondent/accused. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

18. Learned Additional Public Prosecutor is not in a position to show any evidence to take a contrary view in 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.

19. In above view of the matter, I am of the considered opinion that the Trial Court was completely justified in acquitting the respondent/accused of the charges levelled 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.

20. 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 reasons to interfere with the same. Hence the appeal is hereby dismissed. Record and Proceedings to be sent back to the Trial Court, forthwith. Bail bonds, if any shall stands cancelled. Appeal dismissed