

(2015) 05 GUJ CK 0013
In the Gujarat High Court
Case No : Criminal Appeal No. 1792 of 2005

State of Gujarat

APPELLANT

Vs

Harsuklal Harjibhai Pankaniya

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1)(3)
Penal Code, 1860 (IPC) — Section 302, 34
Prevention of Corruption Act, 1988 — Section 13(1)(gh), 13(2), 20, 7

Citation : (2015) 05 GUJ CK 0013

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

Bench : Single Bench

Advocate : Hansa Punani, A.P.P., for the Appellant; Amit M. Nair, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal has been filed by the appellant - State under Section 378(1)(3) of the Criminal Procedure Code, against the judgment and order dated 31.12.2004 rendered by the learned Special Judge, First Fast Track Court, Valsad in Special (Corruption) Case No. 32 of 2002, whereby the respondent-accused was acquitted of the charge for offence punishable under Section 7 and 13(1)(gh) and 13(2) of the Prevention of Corruption Act.

2. Short facts of the prosecution case are as under:

2.1 The respondent accused was working as an Assistant Engineer in the office of Executive Engineer as a public servant. The complainant is the Manager of one Company namely Hind Polypack Co. and he prepared the map for putting up the construction and same was to be approved. In this connection, the complainant came into the contact of the respondent - accused. As per the case of the prosecution, the accused pointed out certain irregularities and was not giving proper reply and therefore, in order to pass map, the respondent accused demanded Rs. 2500/- towards bribe. On 24.8.1998, the complainant met the

accused and at that time, the accused made demand of Rs. 2500/- from the complainant and therefore, the complainant promised him to pay the said amount on next day. As the complainant did not want to pay said amount to the respondent accused, he approached the ACB office, Valsad, and complaint was registered against the accused. The ACB office called two panchas and the panchas and the complainant were explained about the procedure of the trap as well as about the application of anthracene powder to the currency note as well as also about experiment of the ultra violet lamp. Then first part of the panchnama was prepared. Thereafter, after following necessary procedure, and the complainant, panchas along with ACB team reached at the place, where the accused had called them. As per the case of the prosecution, the accused took bribe of Rs. 2500/- from the complainant and at that time, ACB staff members rushed to the spot and arrested the respondent accused. Thereafter, further investigation was carried out and then charge-sheet was filed against him. The accused pleaded not guilty and claimed to be tried.

2.2 To prove the case against the present accused, the prosecution has examined, in all two witnesses namely (1) Birendrasingh Navrangsinh, Exhibit 11 and (2) Ambapratapsinh Chandravijaysinh Jadeja, Exhibit 14 and the prosecution also produced several documentary evidence on record.

2.3 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 Special Judge, Fast Track Court, Valsad, acquitted the respondent of all the charges leveled against him by judgment and order dated 31.12.2005.

3. I have heard learned advocates appearing on both sides.

4. Learned APP Mrs. Punani, for the State submitted that the learned Judge ought to have appreciated that the prosecution has proved beyond reasonable doubt the demand, acceptance and recovery of the bribe amount. The bribe amount is recovered from the possession of the accused. The preliminary panchnama also supports the prosecution case. She also submitted that the learned Judge ought to have believed the evidence of the complainant and the trapping Officer, wherein these witnesses clearly stated that the accused demanded bribe from the complainant and accepted the same. It is also submitted by learned APP, that the learned Judge ought to have appreciated the evidence of the Trapping Officer. She also submitted that the learned Judge ought to have seen that the muddamal notes were recovered from the possession of the accused. Therefore, present appeal is required to be allowed by quashing and setting aside the impugned judgment and order of acquittal.

5. Per contra, learned advocate Mr. Nair for the respondent-accused has submitted that entire edifice of the prosecution case fall to the ground as the three main ingredients as envisaged under the provisions of the Prevention of Corruption Act, and most specific aspect i.e. demand was absent in the present

case. He submitted that when the demand is not proved, then it can be said that the main ingredients of alleged offence are not proved against the respondent, therefore, the learned trial Judge has rightly acquitted the respondent-accused. He also submitted that in absence of demand, the case against the accused is not proved by the prosecution beyond reasonable doubt. He also submitted that in the statement under Section 313, the accused gave explanation for the same. He submitted that considering the evidence on record, the learned Special Judge has rightly acquitted the accused of the charges levelled against him. Therefore, he submitted that present appeal is required to be dismissed.

6. I have considered the arguments advanced on both sides and also gone through the materials on record. In this case, only two witnesses were examined by the prosecution to prove the case against the accused. It also appears that the complainant had no knowledge about what irregularities in the plan as stated by the accused. From the evidence of the complainant, it appears that the complainant had not known at what time, he gave money to the accused and also at that time, panch was present or not. Even the demand is not established from the evidence of the complainant and also acceptance is not proved as the money of bribe was recovered from the drawer of the table and inside the file, when such bribe amount was given by the complainant to the accused, the complainant had no knowledge. Therefore, the aspect of recovery is not established by the witnesses. Even there is no mark of anthracene powder on the accused or on his cloth. It also appears that the panchas were not examined by the prosecution. From the evidence of the trapping officer, the offence as alleged is not established against the accused. Therefore, from the evidence of witnesses examined by the prosecution, it is not established that the accused made demand of the bribe from the complainant and at the time of trap and the bribe amount was recovered from the accused. As per the provisions of Section 7 of the Act, the demand is required to be proved. The presumption under Section 20 of the Act is also not clearly established by the prosecution. No doubt the accused has not properly explained in his statement recorded under Section 313 about the amount found inside the file and drawer. Therefore, the demand main material aspect is not established then there is no question of alleged offence committed by the accused. From the documentary evidence even, it is not established by the prosecution about alleged offence. There are so many contradictions between the documentary evidence and oral evidence. Therefore, the findings recorded by the learned trial Judge also cannot be said to be perverse. Therefore, this appeal sans merit.

7. In a recent decision of the Apex Court 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 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."

8. Similar principle has been laid down by the Apex Court in the 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 MP, reported in 2007 AIR SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

9. 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 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 ."

10. It is settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. On the touchstone of these judgments, the principles enunciated therein go to show that the finding of fact recorded in paragraph 56 of the impugned judgment cannot be said to be perverse and this view is based on facts and the law of the land. The prosecution having failed to prove the three main ingredients for bringing home the charge. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent - accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal sans merit and is required to be dismissed.

11. In the result, the Criminal Appeal is dismissed and the judgment and order dated 31.12.2004 passed by the learned Special Judge, First Fast Track Court, Valsad, in Special (Corruption) Case No. 32 of 2002 is hereby confirmed. Record and Proceedings to be sent back to the concerned trial court forthwith.