
(2009) 02 GUJ CK 0062
In the Gujarat High Court
Case No : Criminal Appeal No. 324 of 2008

State of Gujarat	Vs	APPELLANT
Ishwarbhai Shankarbhai Gohil		RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233(2), 313, 378
Electricity Act, 2003 — Section 152(2)

Citation : (2009) 02 GUJ CK 0062

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

Bench : Division Bench

Advocate : R.C. Kodekar, APP 1, for the Appellant; Kashyap R. Joshi, for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 This appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 18.04.2007 passed by the learned Special Judge (Electricity), Bharuch in Special Electricity Case No. 15 of 2006, whereby, the respondent, accused person, has been acquitted from the charges leveled against him.

2.0 The brief facts of the prosecution case are as under:

2.1 On 15.03.2005 the officials of the Gujarat Electricity Board carried out a surprise inspection at the shop of the respondent-accused. During the said inspection, the authorities found that the respondent-accused had allegedly tampered with the electric meter, thereby, consuming electricity on illegal basis. Therefore, a bill amounting to Rs. 2,68,404.17 was handed over to the respondent.

2.2 However, as the respondent-accused had not paid the said amount, on 07.04.2005, a complaint was filed against him with G.E.B. Police Station, South

Zone, Surat, which was registered as C.R. I-No. 70/2005. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, as sufficient material was found against the respondent, he was arrested and, ultimately, charge-sheet was filed against him before the Court of learned JMFC, Vagra. As the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, Bharuch and it was numbered as Special Electricity Case No. 15/2006. Trial was initiated against the respondent. At the end of trial and after recording the statement of the respondent-accused u/s 313 of Cr.P.C., the learned trial Judge acquitted him of all the charges, by passing the impugned judgment and order.

2.3 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant-State has preferred the present appeal.

3.0 It was contended by learned APP that the judgment and order of the Court below is against the provisions of law; the Court below has not properly considered the evidence led by the prosecution and that looking to the provisions of law itself, it is established that the prosecution has proved the ingredients of the offence against the present respondent. Learned APP has also taken this Court through the oral as well as the documentary evidence available on record.

4.0 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.

4.1 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, 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 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.

4.2 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.

4.3 Even in a recent decision in the case of State of Goa v. Sanjay Thakran and Anr. reported in (2007) 3 S.C.C. 75, 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.

4.4 Similar principle has been laid down by the Apex Court in the cases of State

of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR 2007 S.C.W. 5553 and in Girja Prasad (Dead) by LRs v. State of MP reported in AIR 2007 S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

4.5 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 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.

4.6 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.

5.0 We have gone through the judgment 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. After appreciating the oral evidence on record, the trial Court has come to the conclusion that the evidence led by the witnesses who had accompanied the raiding party and the officials, who formed the raiding party, are contradictory and do not support each other. A glaring aspect which has come on record is that in the document at Exhibit-18, purported to be the electricity consumption bill for the months of April-May 2002, issued in the name of the respondent-accused, the Meter number is shown as "698740", whereas, in the panchnama at Exhibit-25, the Meter number is shown as "10019929", though the Consumer number in the said two documents, i.e. in the documents at Exhibit-18 & Exhibit-25, are the same, i.e. "08809/00152/4".

6.0 Apart from the above, two important witness, viz. H. D. Rana, Junior Engineer of the Board and who was a member of the raiding party and Mr. H. M. Patel, Deputy Engineer of the Board and to whom the muddamal wire is said to be handed over by the raiding party, have not been examined by the prosecution for reasons best known to them. In our opinion, the non-examination of the aforesaid two witnesses will have a fatal effect on the entire prosecution case.

7.0 It is pertinent to note that in the further statement of the respondent-accused recorded u/s 313 of the Cr.P.C., the respondent has stated that he has already paid up the entire amount, as demanded by the Board in its Demand Notice issued to the respondent. The learned APP is not in a position to show any evidence on record to the effect that any amount towards the said Demand Notice is still outstanding. Therefore, in view of the provisions of Section 152(2)

of The Electricity Act, 2003, criminal prosecution could not have been initiated against the respondent-accused.

8.0 Moreover, the respondent-accused has also proved the submissions made u/s 233(2) of the Cr.P.C. at Exhibit-46 and the list of documents produced by him vide Exhibit-15, exhibited vide Exhibits-16 to 23. It also appears from the record that the learned APP, who had appeared before the trial Court, has also put an endorsement to the effect that he has no objection if the documents produced by the respondent-accused are exhibited. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Mr. Kodekar, 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.

9.0 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.

10.0 The appeal is, accordingly, dismissed. The judgment and order dated 18.04.2007 passed by the learned Special Judge (Electricity), Bharuch in Special Electricity Case No. 15 of 2006, acquitting the respondent-accused, is hereby confirmed. Bail bonds, if any, shall stand cancelled.