
(2009) 07 GUJ CK 0047
In the Gujarat High Court
Case No : Criminal Appeal No. 454 of 1996

State of Gujarat	Vs	APPELLANT
Jashvantbhai Bhulabhai Parmar		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, 1947 — Section 5(1), 5(2)

Citation : (2009) 07 GUJ CK 0047

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

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; K.J. Shethna, 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 23/1/1996 passed by the learned Special Judge, Surendranagar in Special Case No. 4 of 1989 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 Accused was serving as Round-Forester at Zinzuvada, Taluka-Patdi, District-Surendranagar on 15/10/1987 and accordingly he was a public servant. In September-1987, present accused along with his superiors laid down a raid at the place of the complainant where 110 bags of wooden coal were seized and thereafter the accused told the complainant that he shall be liable to pay fine of more than Rs. 10,000/- but as he has got very good relations with his superiors and due to his influence, he will get the fine reduced and told him that if the order of fine is passed for Rs. 1,000/-, he has to pay Rs. 3,000/- to the accused. Thereafter, complainant was fined for Rs. 1,100/- and the same was paid on

8/10/1987. Thereafter accused went to the house of complainant on 13/10/1987 and demanded Rs. 3,000/- and asked him to come to his house for giving the said amount. Accordingly on 15/10/1987 at about 8:15 p.m. when accused was at his house, he accepted Rs. 3,000/- as illegal gratification from complainant and misused his status and accordingly committed an offence u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and u/s 161 of the Indian Penal Code. Accordingly, the complainant filed complaint and the Police Inspector has laid down trap.

2.2 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, Surendranagar.

2.3 Thereafter, as the case was exclusively triable by the Special Court, the same was committed to the Court of learned Special Judge, Surendranagar u/s 209 of Cr.P.C. The case was numbered as Special Case No. 4 of 1989. The trial was initiated against the respondent-accused.

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

- [1] Jaswant Bhulabhai - Exh.3
- [2] Kaniyalal Vashrambhai - Exh.13
- [3] Manojkumar Vasantji - Exh.21
- [4] Bharatsinh Prabhatsinh - Exh.24

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

- [1] Muddamal receipt - Exh.2
- [2] Charge sheet - Exh.1
- [3] Approval letter - Exh.11
- [4] FIR and original complaint - Exh.14
- [5] Panch rojkam done by Range Forest Officer and case papers for the same - Exh.17
- [6] Receipt of fine paid - Exh.18
- [7] Panchnama - Exh.22

2.6 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 21/31/1996.

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

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

4. Mr. R. C. Kodekar 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. He submitted that the prosecution witness had clearly deposed in his deposition that the respondent-accused was found committing offence punishable u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, and u/s 161 of the Indian Penal Code. He 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 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.

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 and 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 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.

6.1 While considering the oral as well as documentary evidence, it is found that the Trial Court has discussed the matter at length and observed in para-26 of the judgment as under:

26. Having regard to the appreciation of evidence as referred to above, it can be safely said that in the instant case reliance cannot be placed on the evidence of the complainant solely, and corroboration from independent witnesses like the panch witness, is absolutely necessary. In the instant case, the investigating Officer has selected the panch from Rajkot, who cannot be said to be an independent one, and it can be said to be a selective one, which reflects credibility of the evidence of investigating agency also. In view of the evidence of the investigating Officer, which is on the line of other witnesses, and it cannot be believed, and hence, there is a substance in the arguments of Mr. Daftary that in such a situation, when particularly the investigating Officer has taken panch witnesses of his choice, the said witness may depose as per the wish of the investigating Officer. Under these circumstances, MR. Daftary, the learned advocate, on behalf of the defence, has rightly contended that independent and credibility of the evidence of panch witness lose its importance, and there is also substance in the arguments of Mr. Daftary that keeping in mind the circumstances, which he had brought in his cross-examination, that the investigating Officer knew the father of Shri Kanaksinh, and incidentally, the present complaint is connected with Shri Kanaksinh; and instead of lodging the complaint at Surendranagar, the complainant rushes to Rajkot, and the investigating officer is taking his complaint, and making investigation with the help of selected panchas, the evidence of the investigating Officer has become a weak piece of evidence to support the evidence of the complainant.

Considering all the aspects of the case, it appears that the prosecution has not

proved the case against the accused beyond reasonable doubt, and therefore, point No. 1 is answered accordingly....

6.2 Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Mr. R. C. 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. View taken by the trial Court is just and proper and therefore we do not find any reason to interfere with the said finding.

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.