

(2010) 02 GUJ CK 0113
In the Gujarat High Court
Case No : Criminal Appeal No. 238 of 1993

State of Gujarat

APPELLANT

Vs

Kalubhai Arjunbhai Damor

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 225

Citation : (2010) 02 GUJ CK 0113

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

Bench : Single Bench

Advocate : Maulik Nanavati, app, for the Appellant;

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 29/8/1992 passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural) in Criminal Case No. 1234 of 1990 whereby the accused was acquitted of the charges leveled against him.

2. The brief facts of the prosecution case are as under:

2.1. On 18/5/1990 the Police Inspector of Satellite Police Station Shri B.A. Tiwari reached the police station at 10.00 a.m. On receiving telephonic message from Deputy Commissioner of Police (W) Ahmedabad that Police Sub-Inspector Shri J.J. Patel, Crime Branch had arrested one Mahamad Safi Lad Mahamad Shaikh with razor near Shreyas Crossing, Ayojan Nagar at about 3:00 p.m. in the night and arrested him for the offence punishable under Bombay Police Act and the offence was registered being C.R. No. 94 of 1990 and second offence was registered in C.R. No. 79 of 1990 u/s 135(1) of Bombay Police Act. The said person was required to be interrogated by Police Inspector Shri Tiwari. The Police Inspector inquired from Shri Somabhai Inswarbai, Head Constable who was

officer in charge that at about 8:00 a.m. The said accused was taken to Gaikwad Haveli Lock-up room with Lock-up Chit by Constable Kalubhai Arjanbhai. On learning the same Shri Tiwari sent one constable Shival Revandas with lock-up chit to bring back the said Mahamadsafi Ladmahamad Shaikh. Constable Shival Revandas went there and from there he informed vide telephonic message that the accused was not there and therefore complainant investigated and gathered information from Constable Kalubhai Arjanbhai that the accused was released and had gone back to his residence. Therefore a complaint was filed by the complainant against the respondent-accused person before the Satellite Police Station, Ahmedabad. Necessary investigation was carried out and statements of witnesses were recorded. Ultimately, charge sheet was filed against the respondent-original accused before the learned Chief Judicial Magistrate, Ahmedabad (Rural), Mirzapur for the offence punishable u/s 225 of the Indian Penal Code which was numbered as Criminal Case No. 1234 of 1990. The trial was initiated against the respondent-accused accordingly.

2.2. To prove the guilt against the accused the prosecution has examined six witnesses and in order to support the case, the prosecution has produced several documentary evidences.

2.3. At the end of trial, after recording the statement of the accused person and after hearing arguments on behalf of prosecution and the defence, the learned Chief Judicial Magistrate, Ahmedabad (Rural), Mirzapur has acquitted the respondent-accused of all the charges leveled against him by judgement and order dated 29/8/1992 which is impugned in the present appeal.

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

4. It was contended by learned APP Mr. Maulik Nanavati that the judgment and order of the learned Chief Judicial Magistrate is not proper, legal and it is erroneous. He has also argued that the learned Chief Judicial Magistrate has not considered properly the evidence of witnesses. He has submitted that the Court below 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-accused. 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 225 of the Indian Penal Code. He further submitted that there was no reason for the learned Magistrate to disbelieve the prosecution case and to acquit the respondent.

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 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.

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 2007 AIR SCW 5553 and in Girja Prasad (Dead) by LRs v. 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.

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. I have gone through the judgement and order passed by the Chief Judicial Magistrate, Ahmedabad (Rural), Mirzapur. I 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. The entire prosecution case rests on prosecution witnesses and oral as well as documentary evidences. It appears from the oral evidences of witnesses and

documentary evidence that the prosecution has failed to prove the negligence of the present respondent-police man. Even from the oral evidence of the defence witness concerned, it was proved beyond reasonable doubt before the learned Chief Judicial Magistrate that the respondent has not committed any wrong with his duty and therefore it appears that there is serious lacuna in the prosecution case and the prosecution has failed to establish the case against the respondent-accused. Therefore the trial court has given the benefit of doubt to the accused and acquitted him. I therefore, do not find any reason to interfere with the said finding of the Trial Court.

6.2. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Mr. Maulik Nanavati, 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.

7. 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 reasons to interfere with the same. Hence the appeal is hereby dismissed.