
(2010) 08 GUJ CK 0225
In the Gujarat High Court
Case No : Criminal Appeal No. 473 of 1992

State of Gujarat	Vs	APPELLANT
Keshabhai Laxmanbhai Vaghri		RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2010) 08 GUJ CK 0225

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

Bench : Single Bench

Advocate : Mini Nair, Addl. Public Prosecutor, for the Appellant; Hardik S. Soni, for the Respondent

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 14th February 1992 passed by the learned Special Judge and Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, in Special Criminal Case No. 13 of 1991, whereby the learned Judge has acquitted the respondent-accused of the charges levelled against him.

2. The short facts of the prosecution case is that on 31st May 1991 Police Sub Inspector has received information that at Nr. Bus Stand, Village Zundal, activities of selling diesel and petrol illegally are going on. It is the case of the prosecution that on receiving such information, P.S.I. Along with other police persons went to the said place. At that point of time, respondent-accused was present at that place. It is the case of the prosecution that when complainant went near the Bus Stand, the respondent-accused started running. It is further the case of the prosecution that he was caught by the police persons and complaint was filed against the respondent-accused in the Court of learned Sessions Court, Ahmedabad (Rural), Mirzapur under Sections 3 and 7 of the

Essential Commodities Act.

3. Thereafter the trial was conducted before the learned Judge. 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 Judge has acquitted the respondent-accused from the charges alleged against him by the Judgment and Order of acquittal dated 14th February 1992.

4. Being aggrieved and dissatisfied with the said Judgment and Order of acquittal dated 14th February 1992 passed by the learned Special Judge and Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, in Special Criminal Case No. 13 of 1991, the appellant-State of Gujarat, has preferred the above mentioned Criminal Appeal.

5. I have heard Ms. Mini Nair, learned Additional Public Prosecutor and Mr. Hardik Soni, learned Counsel appearing on behalf of the respondent-accused. I have also gone through the papers produced before me and the Judgment and Order passed by the learned Magistrate.

6. Ms. Mini Nair, learned Additional Public Prosecutor, has contended that the Judgment and Order of acquittal passed by the learned Judge is not proper, legal and it is erroneous. She has also argued that the learned Judge has not considered the evidence of the witnesses. She has argued that the learned Judge has erred in not appreciating the evidence of Police Sub Inspector. The learned Judge has erred in holding that witnesses examined are interested witnesses and the prosecution has failed to produce individual evidence in support of the evidence of Police Sub Inspector. She, therefore, contended that the order of acquittal passed by the learned Judge is without appreciating the facts and evidence on record and is required to be quashed and set aside by this Hon'ble Court.

7. Mr. Hardik Soni, learned Counsel appearing on behalf of the respondent-accused has supported the order of acquittal passed by the learned Judge and contended that prosecution has not proved the case beyond reasonable doubt against the respondent-accused. Even the prosecution has failed to establish prima-facie case against the accused.

8. It is 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 Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents-accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court. Hence, this appeal requires to be dismissed.

9. 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 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.

10. 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 M.P. reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

11. 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, 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.

12. 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.

13. I have gone through the order of acquittal passed by the learned Magistrate. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned advocates for the parties.

14. The trial Court has, after appreciating the oral as well as documentary evidence, found that the prosecution has failed to prove the case against the respondent-accused beyond reasonable doubt. The prosecution has not prove the

prima-facie case against the respondent-accused. The trial Court has also observed that the witnesses are interested witnesses and therefore, evidence of witnesses cannot be considered. The learned Judge has also observed that prosecution has failed to produce any individual evidence to support their case. 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.

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

16. Ms. Nair, 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.

17. In above view of the matter, I am of the considered opinion that the trial Court was completely justified in acquitting the respondents-accused of the charges levelled against them.

18. 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.

19. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court 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 stand cancelled.