

(2015) 04 GUJ CK 0015

In the Gujarat High Court

Case No : Criminal Appeal Nos. 903 and 904 of 1998

State of Gujarat

APPELLANT

Vs

Maheebukhan Firozkhan Pathan and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 29, 42, 50, 52(3)

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) CriLJ 4750

Hon'ble Judges : K.J. Thaker, J.

Bench : Single Bench

Advocate : Monali Bhatt, A.P.P., for the Appellant; Hardik A. Dave, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Thaker, J.—By way of these appeals, the appellant-State has challenged the common judgment and order of the learned Special Judge (NDPS), Surat dated 29.08.1998 rendered in Sessions Case Nos. 282 of 1996 and 173 of 1997, whereby the learned Trial Judge acquitted the original accused-opponents herein of the charges for the offences punishable under Sections 8 , 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act" for short). The brief facts of the prosecution case are that a complaint was lodged by the complainant being II-C.R. No. 212 of 1997 with Athvaline Police Station, Surat, wherein on 28.08.1996, on information that the accused-respondents, herein were keeping and selling the ganja and charas and doing their business of the same without having pass or permit, the complainant S.A. Sardar, P.I., Dy. S.P. A.T.S., B.R. Patil and P.I. M.T. Rana and other police personnel along with his staff and panchas went to the place of the accused and on raiding the said place, they found 908 grams charas, 182 grams ganja and cash of Rs. 2,29,400/- along with other plastic bags, two weighing machines/

equipment. It is further case of the prosecution that on further investigation, sample of ganja and charas were sent for necessary scientific test to Forensic Science Laboratory. On further investigation, it was confirmed that the said sample were ganja and charas.

2. After completion of the investigation, the charge-sheet was filed before the learned Special Judge (NDPS), Surat which was, thereafter, numbered as Sessions Case Nos. 282/1996 and 173/1997. Since the opponents-accused did not plead guilty and claimed to be tried, they were tried for the alleged offences.

3. At the time of trial, in order to bring home the charges levelled against the original accused, the prosecution examined 17 witnesses as well as the prosecution also produced 23 documentary evidences.

4. At the end of the trial and after recording the statement of the accused under Section 313 of Cr.P.C. and hearing the arguments on behalf of the prosecution and the defence, the learned Special Judge (NDPS), Surat acquitted the accused of all the charges levelled against them. On completion of the trial, the Sessions Court passed the judgment and order acquitting the opponents-accused.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order of the acquittal parsed by the learned Sessions Court, the appellant-State has preferred the present Criminal Appeals.

6. Learned APP, vehemently, submitted that looking to the evidence of the complainant and other witnesses, it is proved beyond reasonable doubt that about 908 grams charas and 182 grams ganja were seized from the possession of the accused. She further submitted that from the report of the chemical analyzer, it is proved that the article seized from the accused was ganja and charas. She further submitted that the learned Trial Judge ought not to have acquitted the accused on the ground that the accused were not searched in the presence of a Gazetted Officer. She further submitted that the learned Trial Judge has failed to appreciate the panch witnesses have not supported the case intentionally and they have been declared hostile. She further submitted that the learned Trial Judge erred in acquitting the accused on the ground that no independent witnesses have been examined in this case. She further submitted that the learned Trial Court erred in holding that the Investigating Officer failed to comply with the requirement of Section 42 of NDPS Act. She further submitted that the learned Trial Court has erred in holding that accused persons were found in possession of the muddamal item without holding a pass or permit, and thereby, has erred in passing the impugned judgment and order of acquittal. The learned APP, further, submitted that these Criminal Appeals are required to be allowed and the impugned judgment and order of acquittal passed by the learned Trial Court is required to be quashed and set aside.

7. As against that, learned advocate for the opponents-accused supported the judgment and order of acquittal passed by the Trial Court submitting that the same was passed after appreciating the evidence adduced on record by the

prosecution. Hence, no interference is called for with the same at the hands of this Court. Therefore, the learned counsel requested that the present appeals may be required to be dismissed and the impugned judgment and order of acquittal passed by the learned Trial Court is required to be confirmed.

8. I have heard learned APP for the appellant-State and the learned counsel for the respondents-accused and perused the material on record.

9. As far as Criminal Appeal No. 903 of 1998 is concerned, during the pendency of the proceedings, respondent Nos. 2 and 3 have passed away and therefore, appeal qua them stands abated.

10. As far as Criminal Case No. 904 of 1998 is concerned, during the pendency of the proceedings, respondent No. 1 has passed away and therefore, appeal qua him stands abated.

11. 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 catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , the Apex Court has narrated 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 judgment of acquittal, the High Court should have borne in mind the well settled principles of law that where two views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

12. 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."

13. Thus, it is a settled principle that while exercising appellate powers, 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.

14. Even in the case of *State of Goa Vs. Sanjay Thakran and Another*, , 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."

15. Similar principle has been laid down by the Apex Court in cases of *State of Uttar Pradesh Vs. Ram Veer Singh and Others*, and in *Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh*, . Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

16. In the case of *Lunaram Vs. Bhupat Singh and Others*, , the Apex Court in Paras-10 and 11 has held as under;

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was

strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post-mortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

17. 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, , 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 in by the prosecution and defence, acquitted the accused in respect of the charges levelled 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,]."

18. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite 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 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."

19. In the recent decision, the Hon"ble Apex Court in Shivasharanappa and Others Vs. State of Karnataka, has held as under:

"That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

20. In light of these facts, the seal on the muddamal at the time of taking them has not been properly mentioned and the documentary evidence is also not properly proved. Panch witnesses have not supported the case of the prosecution and therefore, they were declared hostile in the present case. The provisions of Sections 50 , 52(3) and 57 of the NDPS Act and the Prohibition Act have not been properly followed and the learned Trial Judge has properly scrutinized the section. The learned Trial Judge, after examining about more than seventeen witnesses and while perusing the evidence on record, rightly acquitted the accused-respondents. The learned Trial Court has rightly relied upon the citations/decisions mentioned in its impugned judgment and order, which are correct and proper. The learned Trial Judge rightly acquitted the accused on the ground that the accused were not searched in the presence of a Gazetted Officer and also on the ground that no independent witnesses have been examined in this case. The Investigating Officer failed to comply with the requirement of Section 42 of NDPS Act. The learned Trial Judge, after examining the testimony of the Investigating Officer, came to the conclusion that the complaint was not proper. In view of the ratio laid down in the aforesaid decisions cited by the learned advocate for the accused-respondents, the appeals deserve to be dismissed and the impugned judgment and order passed by the learned Trial Court is required to be confirmed. Learned APP has not been able to bring home the charge by showing that the provisions of Section 42 of the NDPS Act were properly complied with. I am unable to accept the submission of the learned APP that this is a case where I would like to upturn the judgment of the learned Trial Judge which is a well reasoned judgment, and there is no perversity in the same. The evidence of the witnesses also will not permit this Court to take a different view than the one taken by the Trial Court. The learned Trial Court, while discussing the issue in Paragraphs-28 and 29 and on appreciation of evidence on record, has rightly acquitted the accused. It emerges that there is no perversity in the judgment. I am unable to accept the submission made by the learned APP that the judgment lacks appreciation of proper evidence and she has taken this Court through the grounds urged in the appeals. Therefore, these appeals deserve to be dismissed.

21. I find that the Trial Court, while considering the evidence on record, has rightly acquitted the accused persons. The Trial Court has observed that there are various discrepancies in the evidence produced by the prosecution. The Trial Court has doubted the veracity of the investigation. There are loopholes in the evidence and investigation which has been observed by the Trial Court. Moreover, the incident is of the year 1996 and I do not find any strong ground to reverse the decision of the Trial Court. In that view of the matter, the view taken by the Trial Court is not required to be disturbed.

22. I am, therefore, of the considered opinion that the findings recorded by the

Trial Court in acquitting the accused of the charge levelled against him are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the reasonings given and the findings arrived at by the Trial Court. No interference is warranted with the judgment and order of the Trial Court.

23. In view of the above discussions, I am of the opinion that the learned Judge committed no error in passing the impugned judgment and order. Hence, the present appeals deserve to be dismissed. In the result, the appeals fail and are dismissed. The judgment and order of the Trial Court dated 29.08.1998 stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. R & P be sent back to the concerned trial Court, forthwith.