
(2009) 07 GUJ CK 0046
In the Gujarat High Court
Case No : Criminal Appeal No. 1354 of 1999

State of Gujarat	Vs	APPELLANT
Manubhai Baldevbhai Patel and Others		RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Citation : (2009) 07 GUJ CK 0046

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

Bench : Division Bench

Advocate : M.L. Shah, app, for the Appellant; Nanavaty, for Opponents 1, 3 - 4, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

Original accused No. 2 has expired and therefore, the appeal qua him stood abated vide order dated 2207.2004.

1. This appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 30.10.1999 passed by the learned Special Judge, Junagadh in Sessions Case No. 17 of 1989, whereby, the respondents-accused persons have been acquitted from the charges leveled against them.

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

2.1 On 26.10.1988, the complainant, Ratilal Trikamlal Makwana and his brother Vinubhai were present in their factory situated near Sambalpur area of Rajkot City. At around 1030 hrs., the respondents came to their factory and gave their identification as Officers of the Sales Tax Department. Thereafter, respondent No. 1 asked them to show the Accounts and Stock Books of the factory for necessary verification. After verification, the respondents informed that the Books of the factory were required to be seized as there were several irregularities in it to

which the complainant requested that the Books may not be seized. At that time, the respondents informed that the same may not be seized if he pays an amount of Rs. 20,000/- to them. Lastly, they agreed to settle the issue at Rs. 10,000/-. The complainant told them that the same will be paid by the evening.

2.2 Therefore, a complaint with respect to the aforesaid offence was filed against the respondents with A.C.B., Junagadh and a trap was laid. Ultimately, the respondents were caught accepting bribe red-handed and therefore, prosecution was initiated against them before the Court below.

2.3 On production of the accused, charge was framed against them but, as they pleaded not guilty, trial was initiated. To prove the case against the respondents, the prosecution had examined seven witnesses and had placed reliance upon several documentary evidence. On submission of the closing purshis, the further statement of the accused u/s 313 of Cr.P.C. was recorded. Ultimately, the learned Asst. Sessions Judge acquitted the respondents of all the charges leveled against him, by impugned judgment and order. 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. 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, it is established that the prosecution has proved the ingredients of the offence against the respondent beyond doubt. Learned APP has taken us through the oral as well as the documentary evidence available on record.

4. Learned Advocate for the respondents-accused, have submitted that the prosecution had failed to establish the guilt of the respondents beyond doubt. He has submitted that on close scrutiny of the evidence of the witnesses, it is evident that the same do not support the case of the prosecution. Hence, the Court below was completely justified in acquitting the respondents and no interference is called for from this Court in this appeal.

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, 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.

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 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.

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 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.

5.5 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.

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 before the Court below and also considered the submissions made by learned Counsel for the respective parties. The Court below, after appreciating the evidence on record, has found that the entire investigation carried out by the investigating Officer was not impartial. The panchas were not independent. In fact, it appears from the evidence of the I.O. that he himself had not seen any of the respondents accepting bribe money. Moreover, no spots of anthracene powder were found on the hands of any of the accused persons. It appears that the respondents have been falsely implicated in the alleged offence to achieve some ulterior motive. Thus, from the evidence it is established that the prosecution has not proved its case beyond reasonable doubt.

7. Learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has

ignored the material evidence on record.

8. In above view of the matter, we are of the considered opinion that the Court below was completely justified in acquitting the respondents of the charges leveled against him. We find that the findings recorded by the Court below 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.

9. The appeal is, accordingly, dismissed. Bail bonds, if any, shall stand cancelled.