

(2010) 02 GUJ CK 0060
In the Gujarat High Court
Case No : Criminal Appeal No. 932 of 2003

State of Gujarat

APPELLANT

Vs

Naresh Kanaiyalal and Another

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 114, 370

Citation : (2010) 02 GUJ CK 0060

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

Bench : Single Bench

Advocate : P.K. Jani, Public Prosecutor, for the Appellant; Piyush Brahmhatt and Monali K. Barot for Opponent 2, for the Respondent

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 judgment and order of acquittal dated 31.3.2003 passed by the learned Metropolitan Magistrate, Court No. 16, Ahmedabad in Criminal Case No. 2139/1996, whereby the accused have been acquitted of the charges u/s 370 and 114 of IPC, leveled against them.

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

2.1 As per the case of the prosecution, on 4.6.1996, at about 2.00pm in the noon, he brought Rs. 30,000/- being the collection of the day and kept the same in the cupboard. However, he did not lock the cupboard and went to the shop. Thereafter, due to some social work, he had to go out of station and returned to his house only on 10.6.1996 at about 8.00pm in the evening. At that time, he did not find Rs. 30,000/- kept in the cupboard. Thereafter, he enquired about the same but nothing was disclosed. Thereafter, he continued personal inquiry with regard to the theft of Rs. 30,000/-. That further case of the prosecution is that on 20.6.1996, the complainant kept Rs. 50,000/- in the cupboard, out of which Rs. 20,000/- was of his brother " Yogeshbhai and Rs. 15,000/- was of his another

brother " Chandreshbhai and remaining amount of his own. Thereafter, after taking dinner, they all went to sleep and as per routine, he went to his shop and returned at about 8.00pm. As he had to give some money to the private parties, he opened the cupboard, but he did not find any money. Thereafter, he asked other family members, but they were not knowing anything about the same. That during the private inquiry, he came to know that the present respondents-accused had committed the theft of his Rs. 50,000/- and Rs. 30,000/-.

2.2 Therefore, a complaint with respect to the aforesaid offence was filed against the respondents with the Kalupur Police Station. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondents were arrested and, ultimately, charge-sheet was filed against him before the court of learned Metropolitan Magistrate Court No. 16, Ahmedabad, which was numbered as Criminal Case No. 2139/1996. The trial was initiated against the respondents.

2.3 To prove the case against the present accused, the prosecution has examined five witnesses and also produced documentary evidence.

2.4 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 defence, the learned trial Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 31.3.2003.

2.5 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial Court the appellant State has preferred the present appeal.

3. It was contended by learned PP Mr PK Jani that the judgment and order of the trial Court is against the provisions of law; the trial 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 PP has also taken This Court through the oral as well as the entire documentary evidence.

4. 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 judgment 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.

4.1 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.

4.2 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.

4.3 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 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.

4.4 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.

4.5 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.

4.6 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.

5. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned APP for the appellant-State. The trial court while considering the oral as well as documentary evidence has clearly observed that the prosecution has not produced any eye witness to prove the case. Simply, the respondents were booked by the complainant only on doubt. No doubt, the panchnama of scene of place was drawn in the presence of panch witness, but some prima-facie evidence is required to be produced against the respondents-accused but the prosecution has not produced any direct evidence to connect the respondents-accused with the crime in question. The prosecution has miserably failed to prove the case against the accused beyond any reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

6. Mr. PK Jani learned PP 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.

6. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondents of the charges leveled against them.

7. 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.

8. 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. R & P to be sent back to the trial Court, forthwith. Bail bond, if any, stands cancelled.