

(2009) 10 GUJ CK 0047
In the Gujarat High Court
Case No : Criminal Appeal No. 641 of 1992

State of Gujarat

APPELLANT

Vs

Narshibhai Haribhai Harijan

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1)B, 85(1)(3)
Criminal Procedure Code, 1973 (CrPC) — Section 378

Citation : (2009) 10 GUJ CK 0047

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

Bench : Single Bench

Advocate : Chetna M. Shah, APP 1, 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 judgment and order of acquittal dated 30.4.1992 passed by learned Judicial Magistrate, First Class, Amreli in Summary Case No. 614 of 1990 whereby the respondent-accused was acquitted of the charges levelled against him.

2. The brief facts of the prosecution case is that the respondent was arrested in connection with the offence registered on 13.2.1990 wherein the respondent-accused had committed offence punishable u/s 66(1)(B) and Section 85(1)(3) of the Bombay Prohibition Act and he was sent to the medical authority and his blood was obtained and expert opinion was also attached with the investigation papers. During the oral evidence produced by the prosecution the material witness who is Doctor P.W. No. 1 Dr. Aasar. From his oral evidence has stated that Form "A" and Form "B" was filled up by him and the same has been produced at Exh.30. But from the oral evidence of this witness, he has failed to establish that proper care and caution was taken by him during the blood which was obtained from the accused. Even he is unable to prove that syringe and niddle was properly sterilized. The prosecution also examined two panchas, P.W.2

and P.W.3, they turned hostile. From the oral evidence and documentary evidence, the prosecution has failed to establish his version.

3. The respondent pleaded not guilty to the charge and claimed to be tried. The learned Magistrate was pleased to acquit the respondent by judgment and order dated 30.4.1992 for the offence with which he was charged.

4. To prove the case of the prosecution, the prosecution has examined the witnesses and also produced the documentary evidence.

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 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.

5.1 Further, in the case of Chandrappa and Others Vs. State of Karnataka, the Apex Court has 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 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 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.

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.

6. 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. It is already established before the learned Judge that the expert report of the doctor is doubtful and the procedure is also not followed and the panchas were also turned hostile. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. 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. 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 levelled against him. I am 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. Bail bond, if any, shall stand cancelled.