
(2010) 02 GUJ CK 0061
In the Gujarat High Court
Case No : Criminal Appeal No. 978 of 2004

State of Gujarat

APPELLANT

Vs

Navalsinh Jorsing Vala (Darbar)

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1)(3)
Penal Code, 1860 (IPC) — Section 409, 477A

Citation : (2010) 02 GUJ CK 0061

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

Bench : Single Bench

Advocate : PMR DC Sejpai, app, for the Appellant;

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378(1)(3) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 24.10.2003 passed by the learned Judicial Magistrate, First Class, Sanand, in Criminal Case No. 96 of 1988, whereby the respondent - accused have been acquitted of the charges alleged against him.

2. The brief facts of the prosecution case, in short, is that the respondent-accused was serving as Talati-cum-Mantri at village Nani Devti. At that time in 1986 by receipt No. 36 dated 1.6.1986 he has taken Rs. 6700/- from the Principal of Adarsh School, Nani Devti, after signing the voucher. It was alleged that the said amount was not credited in the Daily Books of Accounts on that date and he only credited Rs. 4700/- and he has misappropriated the amount of Rs. 2000/-. Thereby the respondent - accused has committed the offence under Sections 409, 477A of I.P. Code. Therefore, the complaint has been filed against the respondent - accused before Sanand Police Station.

3. Thereafter necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was

arrested and, ultimately, charge-sheet was filed against him before the court of learned Magistrate. The trial was conducted against the respondent.

4. To prove the case against the present accused, the prosecution has examined the witnesses and also produced and relied upon documentary evidence.

5. 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 Magistrate acquitted the respondents of all the charges leveled against them by judgment and order dated 24.10.2003.

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

7. It has been contended by the learned APP 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 offences alleged against the present respondents. Learned APP has also taken this Court through the oral as well as the entire documentary evidence. He, therefore, contented that looking to the oral as well as documentary evidence produced on record on behalf of the prosecution it is clearly established that the prosecution has proved its case against the respondent - beyond reasonable doubt.

8. 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:

4. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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,

14. 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.

15. 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 and learned Advocate for the respondent-State.

16. The trial Court, after considering the evidence produced on record, has observed that the prosecution witnesses Kamabhai Maganbhai, Sagrambhai Chaturbhai and Kamabhai Shankerbhai have expired. The trial Court has observed that witness Prabhudas Chetandas (Exh.34) has deposed that on 1.8.1986 he gave Rs. 6700/- to the accused and for that the accused has issued voucher receipt, however, the prosecution has not produced the said voucher receipt on the record. The trial Court has also clearly observed that the auditor has not deposed in his deposition about misappropriation by the accused. The trial Court has found that the Investigating Officer has never bothered to interrogate the Auditor in connection with the said alleged amount of misappropriation. The trial Court has also observed that the prosecution has not recorded the statement of particular person and they are also not cited as witness to support the case of prosecution. The trial Court has clearly found that from the record produced before the Court it clearly appears that the story put-forward by the prosecution is not believable.

17. 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.

18. 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.

19. 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.

20. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence I find no reasons to interfere with the same. Hence the appeal is hereby dismissed. The Judgment and order dated 24.10.2003 passed by the learned Magistrate, in Criminal Case No. 96 of 1988 is hereby confirmed. Bail Bonds, if any, shall stand cancelled. R & P to be sent to the trial Court.