

(2009) 10 GUJ CK 0111
In the Gujarat High Court

Case No : Criminal Appeal No. 1021 of 1992 and Criminal Revision Application
No. 305 of 1992

State of Gujarat

APPELLANT

Vs

Nitinbhai Harkishanlal Mistry

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 192, 420, 423, 467

Citation : (2009) 10 GUJ CK 0111

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

Bench : Single Bench

Advocate : Kartik Pandya, apps 1, for the Appellant; Adil Mehta, for Opponents
1, 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 15.7.1992 passed by learned Judicial Magistrate, First Class, Valsad in Criminal Case No. 2284 of 1988 whereby the respondent-accused person was acquitted of the charges levelled against him.

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

2.1 The respondent accused was chargesheeted before the Court of learned Judicial Magistrate, First Class, Valsad in Criminal Case No. 2284 of 1988 for the offence punishable under Sections 192, 423 and 467 of the Indian Penal Code. The learned Magistrate after recording the necessary evidence led by the complainant by judgment and order dated 15.7.1992 was pleased to acquit the respondent accused for the offence with which he was charged.

2.2 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned Judicial Magistrate, First Class, Valsad, the appellant has

preferred the present appeal.

3. To prove the case the prosecution has examined 9 prosecution witnesses and one defence witness.

4. Heard Mr. Kartik Pandya, learned APP for the appellant-State. He has contended that the present respondent was chargesheeted for the offences punishable under Sections 192, 423 and 467 of the Indian Penal Code. He has read the oral as well as documentary evidence and contended that the prosecution has already proved its case before the learned Judge but the learned Judge has not considered the oral and documentary evidence in proper way. It was 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 evidence against the present respondent. He therefore submitted that the appeal be allowed and the judgment and order of the trial court be set aside.

5. Mr. Adil Mirza, learned Advocate appearing for the respondent submitted that the prosecution has failed to establish the case against the respondent accused. It is submitted that there is no evidence worth the name to show that the respondent accused had committed the alleged offence levelled against him. It is submitted that the prosecution has failed to establish the case against the accused and the trial court has rightly acquitted the respondent accused of the charges levelled against him.

6. 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.

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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 v. Hemareddy reported in AIR 1981 SC 1417 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.

6.6 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.

7. 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. I have perused the oral evidence produced by the prosecution in criminal case. From the complaint it was established before the learned Judge that the alleged offence which was committed by the respondent for the offence of Section 420 of IPC but from the perusal of the complaint itself the complainant has never explained any ingredients of the said provisions. From the oral evidence of the witness Exh.64 Shri Veljibhai Govindbhai Shah and Jayaben Veljibhai Exh.69 they are relative witness of the complainant and they were not declared hostile before the learned Judge. From the oral evidence it was established before the learned Judge that only to gain something more and more from the respondent that complaint was filed by the complainant. Even from the perusal of the papers Shri Jayantilal who is a material witness, he has not been examined by the prosecution. It was also established before the learned Judge that one Flat of Hira Moti Apartment, Flat No. 103 was also given to the complainant and just from the legal transaction and just to avoid that procedure that complaint was filed by the complainant. I have not found any illegality or infirmity to show that the learned Judge has committed any wrong. I am 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. Bail bond, if any, shall stand cancelled.

In view of the appeal is dismissed, Criminal Revision Application No. 305 of 1992 is also dismissed.