
(2015) 04 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 2286 of 2004

State of Gujarat	Vs	APPELLANT
Pathubhai Virsangbhai Chaudhari and Others		RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 302, 34
Prevention of Corruption Act, 1988 — Section 12, 13(1)(d), 13(2), 3, 7

Citation : (2015) 04 GUJ CK 0030

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Monali Bhatt, APP, for the Appellant; K.B. Anandjiwala, Senior Advocate and V.K. Anandjiwala, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 10.9.2004 passed by the learned Special Judge (ACB), Mehsana in Special Case (ACB) No. 20/2000, whereby, the learned trial Judge acquitted the original accused - the respondents herein, of the charges for the offence punishable under section 7, 8, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act.

2. The brief facts of the prosecution case are that the complainant Amrutbhai Maganbhai Desai, who is driver of Matador Taxi and is driving his Metador as a passenger taxi from Patan to Chanasma to Radhanpur High Way Road, At Mehsana. At Mehsana cross roads, occasionally one Traffic Inspector Dilipsinh was standing and before four months of complaint, he was collecting Rs. 200/- as monthly fees in-between 1st to 10th date of each month, for not detaining his vehicle, and since last three months he is not collecting money saying that the complainant had helped in arresting the traffic officer of Patan so that you are

not trustworthy so you have to give money to any of the following persons namely Thakor Ranchhodji, Chamanji or Pathuji Chaudhari at Radhanpur cross-roads. The complainant was also instructed to make the entry in their book each time after giving money. The complainant does not want to give the money, he approached ACB Office, Mehsana and gave a complaint on 10.10.1997 in presence of Mr. Pathan, Police Inspector, ACB, Mehsana. Thereafter, the Panchas were called and the said Panchas were introduced to complainant. The complainant was instructed to give Rs. 200/- four notes each of Rs. 50/- and numbers of the said notes were recorded in the first part of the panchnama. Thereafter, all notes were checked under ultra violet lamp and duly checked before and after suing the anthracene powder on it. Thereafter, after following necessary procedure, the Raiding party arranged the trap and on success of the trap, detailed panchnama was drawn. The currency notes numbers were tallied with first part of the panchnama. These notes were signed by the panchas. Detailed panchnama was signed by the panchas who were there and also by the Investigating Officer. The currency notes were attached. The statements of the witnesses were recorded. Thereafter, the offence was registered and during the course of investigation, respondents were arrested and, ultimately, charge-sheet was filed against them, which was numbered as Special Case (ACB) No. 20 of 2000. The trial was initiated against the respondents.

3. To prove the case against the present accused, the prosecution has examined six witnesses and also produced twelve documentary evidence.

4. At the end of trial, after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 10.9.2004.

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.

6. It was contended by learned APP Ms. Bhatt 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 all the ingredients of alleged charges against the present respondents. Ms. Bhatt learned APP has relied on the decision of this Court in the case of State of Gujarat Vs. Kalusinh Shirsinh Rahevar, and requested that this Court should overturn the judgment of the trial Court. She has also relied on demand made by the accused and the evidence of the complainant, wherein, it was specifically stated by the accused regarding the amount to be paid to him. She has also relied on the testimony of the Investigating Authority and submitted that it cannot be said that the prosecution witnesses were known or were not independent witnesses. All the ingredients required under section 3 of the then Prevention of Corruption Act are satisfied, and therefore, the judgment holding that the witnesses were (i) not independent; (ii) there are discrepancy in the evidence and (iii) there was no

demand, acceptance and recovery belies theory of non-acceptance or taken by the accused. Learned APP has also taken this court through the oral as well as the entire documentary evidence and submitted that the present appeal deserves to be allowed.

7. Per contra, Mr. K.B. Anandjiwala learned Senior Advocate assisted by Mr. V.K. Anandjiwala learned advocate for respondents has submitted that the respondents have never demanded the amount. The finding of fact cannot be found fault with. According to Mr. Anandjiwala, the respondents are wrongly involved in the present case. Mr. Anandjiwala learned advocate has relied on the decision of the Apex Court in the case of State of Punjab Vs. Madan Mohan Lal Verma, and in the case of Hari Dev Sharma Vs. State (Delhi Administration), , and submitted that the present appeal deserves to be dismissed.

8. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , the Apex Court has narrated 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." 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, 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."

10. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/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 the case of *State of Goa Vs. Sanjay Thakran and Another*, , 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." 12. Similar principle has been laid down by the Apex Court in cases of *State of Uttar Pradesh Vs. Ram Veer Singh and Others*, and in *Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh*, . Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

13. In the case of *Lunaram Vs. Bhupat Singh and Others*, , the Apex Court in para 10 and 11 has held as under;

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody

would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

14. Even in a recent decision of the Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, , the Apex Court in para 4 has held as under:

"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan Vs. Sohan Lal and Others, " 15. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite 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 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." 16. In a recent decision, the Hon"ble Apex Court in Shivasharanappa and Others Vs. State of Karnataka, has held as under;

"That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence." 17. 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.

18. I have gone through the judgment and order of acquittal 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 Ms. Bhatt learned APP for the appellant-State and Mr. K.B. Anandjiwala learned senior advocate appearing for the respondents-accused. On going through the entire evidence, the finding of facts cannot be interfered with and cannot be said to be perverse. The judgment of the learned trial Judge cannot be found fault with. The learned trial Judge has given cogent and convincing reasons, more particularly, in paras-16, 17 and 18 of the judgment and on the basis of the totality of the decisions relied on by learned senior advocate Mr. Anandjiwala for the respondents touching the principle on which conviction could have been based, has found against the prosecution. There is serious contradiction in the evidence of complainant. There is no demand, no acceptance and no recovery. The respondent No. 1 is not Government servant. The complainant who has thrust the money to respondent No. 1. The respondent No. 4 who is police personnel, was not on duty, and therefore, no case is made out for interference. It goes without saying that the learned trial Judge while dealing with the discrepancy which has come on record, has rightly discussed the same in the judgment and the learned trial Judge has very elaborately discussed that there was no acceptance. There is discrepancy in recording the evidence of complainant and panch witnesses. The learned trial Judge has, in my opinion, rightly acquitted the accused. On the touch-stone of the decision of the Apex Court in the case of Muralidhar @ Gidda and Another Vs. State of Karnataka, , wherein, parameters to interfere in acquittal appeals are reiterated, are kept in mind by this Court, and therefore, when there was no demand, no acceptance and no evidence against the accused, the present appeal deserves to be dismissed. I am fortified in my view by the decisions of the Hon'ble Apex Court in the case of Muralidhar @ Gidda and Another Vs. State of Karnataka, , and in the case of Satvir Singh Vs. State of Delhi, .

19. In light of the decision of this Court in the case of Bhanushankar Popatlal vs. State of Gujarat rendered in Criminal Appeal No. 463 of 1978 and in the case of Dilipsingh Dulesingh Rehavar v. State of Gujarat, rendered in Criminal Appeal No. 22/2010, I do not find any merits in the submissions made by the learned APP Ms. Bhatt to up-turn the judgment of the learned trial Judge. The impugned judgment being in consonance with the principles of Evidence Act also cannot be found fault with. The documentary evidence on record will not permit this court to take a different view than taken by the learned trial Judge. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Even looking to the evidence on record, Id. APP is not able to bring home the charge levelled against the accused and persuaded this Court to take a different view than that taken by the learned trial Judge. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

20. 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 leveled against them. 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. 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.

21. In the result, the present appeal is hereby dismissed. The impugned judgment and order of acquittal is confirmed. The respondents-accused are acquitted of all the charges levelled against them. R and P to be sent back to the trial Court. Bail and bail bond, if any, stands cancelled. Surety also, if any given, stands discharged.