

(2009) 09 GUJ CK 0012
In the Gujarat High Court
Case No : Criminal Appeal No. 255 of 2000

State of Gujarat	Vs	APPELLANT
Radheshyam Champalal Patel		RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (2009) 09 GUJ CK 0012

Hon'ble Judges : Z.K. Saiyed, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 17.1.2000 passed by the learned Addl. Sessions Judge & Special Judge, Vadodara in Special Case No. 10/1991 whereby the accused has been acquitted of the charges u/s 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, leveled against him.

2.0 The brief facts of the prosecution case are as under:

2.1 That the complainant is a student and his sister namely Lilaben was admitted in Primary Health Centre at village Tejgadh for the treatment of snake bite on 28.7.88. At that time, the accused was serving as a Medical officer, and was giving treatment to the complainant's sister and accused asked the complainant that he has given injection and demanded Rs. 200/- from the complainant. The complainant told the accused that he is poor and he may reduce the amount. So the accused has demanded Rs. 115/- from the complainant so that he can take his sister from the hospital. The complainant gave introduction of peon, who was serving in the same hospital. The accused asked to give money afterwards. The

complainant took his sister on 31.7.88 from the hospital. Thereafter, the complainant's brother-in-law asked the complainant that accused was calling him. The complainant went to meet the accused and at that time accused had demanded money and asked to give money on or before dated 2.8.88.

2.2 Therefore, a complaint with respect to the aforesaid offence was filed against the respondent with the ACB Police Station, Vadodara. Thereafter, the police has called two panchas and drawn preliminary panchnama and carried out the trap in which the accused was caught red handed. Thereafter, necessary investigation was carried out and statements of witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, charge-sheet was filed against him, which was numbered as Special Case No. 10/1991. The trial was initiated against the respondent.

2.3 To prove the case against the present accused, the prosecution has examined the following witnesses:

Hemsingbhai Nagjibhai Rathwa Ex. 13

Chandrasinh Padhiyar Ex. 17

PD Patel Ex. 24

RM Upadhyay Ex. 26

PR Shah Ex. 33

MG Shaikh Ex. 37

IO Shri Saiyed. Ex. 42

To prove the case, the prosecution has also produced the following documentary evidence.

Complaint Ex. 14

Panchnama Ex. 18

Receipt Ex. 19

Sanction order Ex. 25

OPD discharge papers Ex. 27

Case papers Ex. 29

Copy of register for medicines used Ex. 31

Bill of medicine Ex. 34

Bill of medicines Ex. 35

Yadi for calling of panchas Ex. 44

Letter written to Assistant Commissioner Ex. 45

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 Sessions Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 17.1.2000.

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

3.0 It was contended by learned APP that the judgment and order of the Sessions Court is against the provisions of law; the Sessions 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 APP has also taken this court through the oral as well as the entire documentary evidence.

4.0 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 M.P. 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. We have gone through the judgment and order passed by the trial court. We 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 sanction for prosecution granted is not proper. The witnesses who are crucial are not examined. In that view of the matter, from the evidence available on record, it was not possible to base the conviction. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

6. Mr. Kodekar 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.

6. In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

7. We 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. We are, 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. Bail bond stands cancelled. R & P to be sent back to the trial Court, forthwith.