

(1999) 04 GUJ CK 0019
In the Gujarat High Court
Case No : Criminal Appeal No. 288 of 1990

State of Gujarat	Vs	APPELLANT
Sureshbhai Chhitubhai Patel		RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 120B, 420

Citation : (1999) 04 GUJ CK 0019

Hon'ble Judges : J.M. Panchal, J

Bench : Single Bench

Advocate : S.R. Divetia, app, for the Appellant; J.V. Desai, for Respondent Nos. 1, 2, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—Acquittal of the respondents recorded by the learned Chief Judicial Magistrate, Bharuch in Criminal Case No. 19360/87 of the offences punishable under sections 420, 120B read with section 114 of the Indian Penal Code, is subject matter of challenge in the present appeal, which is filed by the State of Gujarat u/s 378 of the Code of Criminal Procedure, 1973.

2. Natwarbhai Bhagwandas Patel was at the relevant time employed as Assistant Manager of Gujarat State Co-operative Marketing Federation Limited, Ahmedabad. The said Federation is selling fertilizers, pesticides, seeds etc. to different Co-operative Societies. There is one Co-operative Society at Bharuch known as Karela Multi-purpose Co-operative Soceity. The respondent no.1 was president of the said society during October November, 1986; whereas respondent no.2 was Secretary of the said society at the relevant time. According to Natwarbhai Patel, one Rajubhai who was honorary secretary of Karela Multi-purpose Co-operative Society, and one Kalidasbhai who was Manager of Bharuch District Vegetable and Fruit Producers' Co-operative Society Ltd., Bharuch, had approached him in the Office and placed order for pesticides. According to Natwarlal, Rajubhai and Kalidasbhai had demanded delivery of the pesticides

urgently and, therefore, delivery challan was prepared on the basis of which delivery of the goods purchased was given to them from godown. However, after 3 - 4 days of the delivery of goods, Natwarbhai learnt that Rajubhai had committed suicide and, therefore, he made inquiries and learnt that goods purchased was never received by Karela Multipurpose Co. op. Society. He further learnt that the goods were directly sold to Bharuch District Vegetables and Fruits Producers" Co. Op. Society Ltd. and some of the goods were found lying in the godown of the said society at Bharuch. According to Natwarbhai, a cheque for an amount of Rs.63,116.50 ps. which was signed by respondent no.2, was not honoured because of insufficiency of funds. Mr. Natwarbhai was, therefore, of the opinion that five persons, namely, (1) Sureshbhai Chhitubhai, who was President of Karela Multipurpose Co. op. Society, Karela, (2) Shashikant Chunilal Patel, who was Secretary of Karela Multipurpose Co. op. Society, Karela, (3) Kalidasbhai Pujabhai Vasava, in his personal capacity, (4) Kalidasbhai Pujabhai Vasava as Manager of Shree Bharuch District Vegetable and Fruit Producers" Co.operative Society Ltd., and (5) Shambhubhai Zaverbhai Patel, Chairman of Shree Bharuch District Vegetable and Fruit Producers" Co.op. Society Ltd., had in conspiracy with each other committed offences punishable under sections 420, 120B read with section 114 of the Indian Penal Code. He, therefore, filed complaint in the Court of learned Chief Judicial Magistrate, Bharuch against the above-referred to persons for the offences punishable under sections 420, 120B read with section 114 of I.P.C. The complaint was registered as Criminal Inquiry Case No. 49 of 1986. The learned Chief Judicial Magistrate by his order dated November 29, 1986 sent the complaint to Police Inspector, Bharuch City Police Station for investigation u/s 156(3) of the Code of Criminal Procedure, 1973. Police Inspector was directed to submit his report to the Court within two months from the date of the order, which was passed on November 29, 1986. The Police Inspector, Bharuch City Police, accordingly made investigation and chargesheeted only the respondents for the offences punishable under sections 420, 120B read with section 114 of the Indian Penal Code. The learned Chief Judicial Magistrate, Bharuch framed charge against the respondents of the offences punishable under sections 420, 120B and 114 of the Indian Penal Code vide Exh.4. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined ; (i) Natwarbhai Bhagwandas Patel, PW 1, Exh.8, (ii) Kalidasbhai Pujabhai, PW 2, Exh.43, (iii) Vajesinh Motisinh, PW 3, Exh.51, and (iv) Hanumanbhai Devrambhai, PW 4, Exh.57, to prove its case against the respondents. The prosecution also produced relevant documentary evidence to bring home guilt to the respondents. The respondent no.2 submitted an application at Exh.58 u/s 319 of the Code and requested the learned Magistrate to implead Kalidasbhai Pujabhai Vasava as one of the accused in the case. The learned Magistrate after hearing the Counsel for the parties, rejected the said application by an order dated August 19, 1989. After recording of evidence of prosecution witnesses was over, learned Magistrate questioned the respondents generally on the case and recorded their statements u/s 313 of the Code. In their statements, the respondents denied the case of the

prosecution and claimed that all the transactions were entered into by deceased Rajubhai and not by them. However, no evidence in defence was led by any of the respondents.

3. On appreciation of evidence led by the prosecution, learned Chief Judicial Magistrate concluded that the order for purchase of pesticides was placed on November 14, 1986 by deceased Rajubhai as well as Kalidasbhai Pujabhai and not by any of the respondents. The learned Magistrate held that delivery of the goods purchased was also taken by deceased Rajubhai and also by Kalidasbhai Pujabhai and not by any of the respondents. After referring to the evidence of Natwarbhai Bhagwandas Patel, who was Assistant Manager of Gujarat State Co. Op. Marketing Federation Ltd., the learned Magistrate deduced that nothing was stated by the said witness against respondent no.1 and even business on credit was also done by the Federation with Karela Multipurpose Co. op. Society, as a result of which ingredients of the offences punishable under sections 420, 120(B) read with section 114 of I.P.C. were not established by the prosecution. In ultimate decision, learned Magistrate has acquitted the respondents by judgment and order dated January 17, 1990, giving rise to the present appeal.

4. Mr. S.R. Divetia, learned Counsel for the appellant submitted that the respondent no.1 at the relevant time was President of Karela Multipurpose Co. op. Society; whereas respondent no.2 was Secretary of the said Society and as pesticide was purchased by deceased Rajubhai for the said society, the respondents ought to have been convicted of the offences with which they were charged. The learned Counsel emphasised that respondent no.2 had signed the cheque which was not honoured by Bank and as his design to deceive Gujarat State Co. Op. Marketing Federation Ltd., Ahmedabad is evident, the appeal should be allowed. The learned Counsel pleaded that criminal conspiracy can be proved by prosecution either by direct evidence or by circumstantial evidence and as criminal conspiracy is proved by the prosecution in this case by circumstantial evidence, acquittal of the respondents recorded by the learned Chief Judicial Magistrate should be set aside. What was claimed was that there was dishonest intention on the part of the respondents at the time when purchase of pesticide was made by deceased Rajubhai and Kalidasbhai and, therefore, appeal should be accepted.

5. Mr. J.V. Desai, learned Counsel for the respondents submitted that the evidence led by prosecution is neither cogent nor reliable to sustain charges levelled against the respondents and, therefore, the appeal should be dismissed. It was claimed that the view taken by the Trial Court Trial Court is reasonable and therefore, the acquittal of the respondents should be confirmed by the Court.

6. Leaned Counsel for the appellant has taken me through the entire evidence on record. It is an admitted position that neither respondent no.1, nor respondent no.2 had approached Natwarbhai Bhagwandas Patel for the purchase of pesticides on behalf of Karela Multipurpose Co. op. Society Ltd., nor placed any order for purchase of pesticides on behalf of the said society. It is also an

admitted position that delivery of purchased pesticides was neither taken by respondent no.1 nor taken by respondent no.2. On the contrary, as admitted by witness Natwarbhai, delivery of pesticides was taken by deceased Rajubhai and Kalidasbhai. If one reads the complaint filed by Natwarbhai Patel which was filed before the learned Chief Judicial Magistrate, it becomes clear that it was the case of the complainant that Kalidasbhai who was Manager of Bharuch District Vegetables and Fruits Producers' Co. op. Society Ltd, was also party to conspiracy to cheat Gujarat State Co. Op. Marketing Federation Ltd. However, after report of investigating officer, no steps were taken by the original complainant to implead Kalidasbhai as one of the accused in the case. Though respondent no.2 had submitted an application u/s 319 of the Code praying the learned Magistrate to implead Kalidasbhai as one of the accused in the case, the said application was rejected and the matter rested there. There is no manner of doubt that there was no direct contract between Gujarat State Co. Op. Marketing Federation Ltd., Ahmedabad and the respondents for the purpose of purchase of pesticides. There was no direct communication between the complainant and the respondents regarding purchase of pesticides and, therefore, in my view, the question of cheating by the respondents does not arise in the facts of the case. The prosecution has failed to lead any evidence which would establish that dishonest intention if at all exhibited by deceased Rajubhai and Kalidasbhai was shared by present respondents. It is true that criminal conspiracy can be proved either by direct evidence or by circumstantial evidence, but the circumstances which are sought to be proved must establish beyond reasonable doubt an agreement between two or more persons to commit an offence and onus of proof is heavy on the prosecution. On the facts and in the circumstances of the case, I am of the opinion that the prosecution has failed to establish beyond reasonable doubt that there was an agreement between the respondents and/or others to commit offence. It is also relevant to note that post-dated cheque given for goods already delivered, which was not honoured for insufficiency of funds, would not constitute any offence u/s 420 of I.P.C. It is an admitted position that a suit is already filed by Gujarat State Co-operative Marketing Federation Ltd. against Karela Multi-purpose Co-operative Society and others to recover amount due and there is no manner of doubt that the complaint was filed with regard to civil disputes, as goods were also sold to the Federation on credit. Moreover, in this case, investigating officer was not examined at all. Examination of investigating officer is not only important from the view point of prosecution, but also important from the view point of the accused. Because of non-examination of the investigation officer, the accused would be prejudiced and would be deprived of the opportunity to establish credibility of the witnesses by proving contradictions in earlier statements. Having regard to the totality of the facts and circumstances of the case, I am of the view that no error is committed by the learned Magistrate in acquitting the respondents of the offences punishable under sections 420, 120B read with section 114 of the Indian Penal Code and the appeal cannot be accepted.

This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe demeanour of the witnesses. As I am in general agreement with the view expressed by the learned Judge, I do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in my view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, , and (2) State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, . On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents. The learned Additional Public Prosecutor has failed to convince me to take the view contrary to the one already taken by the learned Judge and therefore, the appeal is liable to be rejected.

For the foregoing reasons, I do not see any merits in the appeal. The appeal, therefore, fails and is dismissed.