

(2009) 10 GUJ CK 0113
In the Gujarat High Court
Case No : Criminal Appeal No. 1102 of 1992

Suresh H. Rajput

APPELLANT

Vs

Pravinbhai Bhikhubhai Contractor and Another

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Prevention of Food Adulteration Act, 1954 — Section 16, 2(1), 7

Citation : (2009) 10 GUJ CK 0113

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

Bench : Single Bench

Advocate : Pranav G. Desai, s 1, for the Appellant; SB Bundela, for Harin P. Raval, for Opponents 1 and Kartik Pandya, Assistant Public Prosecutor for Opponents 2, 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 24.4.1991 passed by learned Judicial Magistrate, First Class (Municipal Court), Vadodara in Criminal Case No. 2327 of 1987 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 Appellant is the original complainant who had filed a criminal case against the original accused in the Court of learned Judicial Magistrate, First Class (Municipal Court), Vadodara being Criminal Case No. 2327 of 1987 for committing offences punishable under Sections 2(1)(a), 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the said Act"). It was submitted that the appellant was working at the relevant time as a Food Inspector in the Baroda Municipal Corporation area and he is a public servant. The learned Magistrate, after the trial, is pleased to discharge respondent-accused by giving benefit of doubt by judgment and order dated

24.4.1991 in Criminal Case No. 2327 of 1987 inspite of the fact that prosecution has undoubtedly proved charges levelled against the accused.

2.2 Mr. Pranav Desai, learned advocate appears on behalf of the appellant-Baroda Municipal Corporation. He has contended that the learned Judge has not considered the oral evidence as well as documentary evidence produced by the prosecution. He has also contended that the learned Judge has also not considered the provisions of Section 2(1)(a), 7 and 16 of the Prevention of Food Adulteration Act. He has vehemently argued that the judgment and order of the learned Judge is against the provisions of law and the same requires to be set aside.

3. To prove the case the prosecution has examined oral as well as documentary evidence just to prove the case of the prosecution. At the end of trial and after hearing arguments on behalf of prosecution and the defence, the Judicial Magistrate, First Class (Municipal Court), Vaddoara acquitted the respondent-accused of the charges leveled against him by judgment and order dated 24.4.1991.

3. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Judicial Magistrate, First Class (Municipal Court), Vaddoara, the appellant has preferred the present appeal.

4. Mr. Pranav Desai, learned advocate for the appellant has contended that the judgment and order of the learned Judge is against the provisions of law; the learned Judge 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 the evidence against the present accused.

5. Learned Advocates appearing for the respondents 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 has 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 of the charges leveled 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 views 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 emphasise 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 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.

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 Advocate for the appellant. I have also considered the provisions of Section 2(1)(a), 7 and 16 of the Prevention of Food Adulteration Act. From the perusal of the papers, I am of the firm opinion that I have not found any illegality or irregularity from the judgment and order of the learned Judge. 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.