
(2014) 06 GUJ CK 0018
In the Gujarat High Court
Case No : Criminal Appeal No. 269 of 2000

The State of Gujarat	Vs	APPELLANT
Deepak Madhavrao Chitnis		RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 378, 378(1)(3), 379
Penal Code, 1860 (IPC) — Section 120-B
Prevention of Corruption Act, 1988 — Section 12, 13(1)(D), 13(2), 7

Citation : (2014) 06 GUJ CK 0018

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : K.L. Pandya, APP for Appellant No. 1, Advocate for the Appellant;
Mehul S. Shah, Advocate for Opponent/Respondent No. 1-2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.—Present appeal u/s 378(1)(3) of the Criminal Procedure Code, 1973 has been directed against the judgment and order dated 18/02/2000, passed in Special (ACB) Case No. 8 of 1996 by the learned Special Judge (ACB), Nadiad, whereby, the learned Judge was pleased to acquit the respondents herein - original accused from the offences punishable under Sections 120-B of the Indian Penal Code r/w. Sections 7, 12, 13(1)(D) and 13(2) of the Prevention of Corruption Act, 1988.

2. By order dated 21/06/2001, the present appeal has been admitted.

3. Heard Mr. K.L. Pandya, learned Additional Public Prosecutor, for the appellant - State and Mr. Mehul S. Shah, learned advocate for the respondents - original accused.

4. Brief facts of the prosecution case are that the original complainant - Chandubhai Himatbhai Sodha had taken Rs. 20,000/- from one Ishwarbhai

Motibhai Patel of his village for the purpose of marriage of his sister and mortgaged his land with a condition to give half share of its produces and on a dispute being occurred in the said arrangement, he filed a case before the labour officer. It is the case of the prosecution that the respondent No. 1 herein - original accused No. 1 was handling the proceedings of the said case and for getting the matter in favour of the complainant, the respondent No. 1 herein - original accused No. 1 demanded Rs. 2,000/- from the complainant, which was then decided to be given to the said accused in installments of Rs. 500/- each as the complainant was not having that much amount. Accordingly, for the said alleged demand, the complainant had registered the complaint with the ACB, Nadiad. The complaint was registered against the respondent No. 1 and after following due procedure a trap was laid on 08/01/1996, which was failed as the respondent No. 1 herein - accused No. 1 denied to take the money as the complainant was accompanied with another person. However, on again demanding the money by the respondent No. 1 herein - original accused No. 1, the complainant again approached the ACB, Nadiad and on 05/02/1996 and once again the trap was planned, which was succeeded. The respondent No. 1 herein - original accused No. 1, in collusion with the respondent No. 2 herein - original accused No. 2 had accepted the said amount of illegal gratification and thus, the complaint for the alleged offences has been registered against the present respondents - original accused.

5. In support of its case, the prosecution has recorded statements of witnesses and collected several documentary evidence and after having found sufficient evidence and material against the accused, they came to be arrested and chargesheeted for the alleged offence.

6. As the offences were Sessions triable, the learned Magistrate concerned committed the case to the Sessions Court, Ahmedabad (Rural) at Mirzapur u/s 209 of the Criminal Procedure Code, 1973 (for short "Cr.P.C."). Upon committal of the case to the Sessions Court, the learned trial Judge framed Charge against the accused for the alleged offences. The accused pleaded not guilty and claimed to be tried.

7. In order to bring home the charge, the prosecution has examined as many as 05 witnesses and also produced several documentary evidence.

8. On conclusion of the trial, statements of the accused u/s 313 of Cr.P.C. were recorded and the accused denied involvement in the crime. After hearing both the sides and appreciation of the evidence adduced before the trial Court, the accused came to be acquitted.

9. Learned Additional Public Prosecutor Mr. Pandya has submitted that the learned trial Judge has not properly appreciated the oral as well as documentary evidence produced on record. He submitted that the learned trial Judge ought to have considered the fact that the respondent No. 1 herein-original accused No. 1 had, while performing his duty as an Assistant Government Labour Officer had

made demand of illegal gratification from the complainant and as a part of the said alleged demand, the respondent No. 2 herein - original accused No. 2 had accepted the amount of illegal gratification from the complainant. The learned Additional Public Prosecutor also submitted that the learned trial Judge has failed to appreciate the fact that the said alleged transaction was made and the offence was committed by the respondents, which was witnessed by the panch-witnesses. The learned Additional Public Prosecutor further submitted that on 08/01/1996, the first trap was laid against the accused, however, as one another person was accompanied with the complainant, the accused had not accepted the bribe, however, on 05/02/1996, the said alleged transaction between the complainant and the respondents had been completed and the respondents - accused were caught red-handed, however, the learned trial Judge has materially erred in not considering the fact of two traps laid against the accused and eventually, commission of the alleged offence by the respondents - accused. The learned Additional Public Prosecutor also submitted that the evidence of the complainant supports the case of the prosecution, which also gets corroboration from the evidence of panch-witness - Ranjitsinh Udesinh Jadeja, exh. 65, who has also fully supported the case of the prosecution that the respondent No. 2 herein - original accused No. 2 had accepted the alleged illegal gratification, which was also technically proved by way of presence of anthracene powder marks on the hands of the accused. The learned Additional Public Prosecutor also submitted that the learned trial Judge has failed to appreciate the fact that only with a view to defend his case, the respondent No. 1 herein - original accused No. 1 has created some false documentary evidence and this conduct of the respondent itself is suggestive of the fact of commission of the alleged offence by the accused. The learned Additional Public Prosecutor also submitted that the learned trial Judge has failed to appreciate the fact that demand, acceptance and recovery of illegal gratification is proved beyond reasonable doubt. The learned Additional Public Prosecutor submitted that the learned trial Judge has accordingly erred in holding that the prosecution has not proved the case against the respondents beyond reasonable doubt and thereby, has committed error in acquitting the respondents - accused. Last but not the least, the learned Additional Public Prosecutor has submitted that the present appeal application may be allowed in the interest of justice.

10. Per contra, Mr. Shah, learned advocate for the respondents has submitted that the trial court has rightly appreciated the evidence which is forthcoming on the record and the reasons recorded by it for recording a finding of acquittal are reasonable and justifiable. He further submitted that there are glaring and major contradictions and material amendments without any explanation in the deposition of the prosecution witnesses and also subsequent additions and alterations, which seriously affect the root of the matter. Therefore, the respondents have rightly been acquitted by the trial court. The learned advocate for the respondents further submitted that this being an appeal against the order of acquittal, the judgment and order delivered by the trial court deserves to be

upheld as proper, as plausible reasons for acquittal have been recorded. Eventually, he submitted that the present appeal may be dismissed.

11. I have considered the above-referred rival submissions made by the learned advocates for the parties. I have also carefully gone through the judgment and order dated 18/02/2000, passed by the learned Special Judge (ACB), Nadiad in Special (ACB) Case No. 8 of 1996. Referring to the deposition of complainant - Chandubhai Himatbhai Sodha, recorded at exh. 39 and referring to the deposition of Ranjitsinh Udesinh Vaghela, recorded at exh. 65, who is the panch-witness of the Panchnama carried out on the day of the raid, there has been vital contradictions regarding the alleged demand, alleged to have been made by the respondent No. 1-original accused No. 1 and the same has been dealt with by the learned trial Judge at length in the impugned judgment and order. There also appear vital contradictions in the timings narrated by the aforesaid witnesses and the timings narrated there in the document, more particularly, the Complaint and the Panchnama carried out by the concerned official. So far as signal to be given after the alleged demand to be made by the respondent No. 1 - original accused No. 1, also appears contradictory so far as above-referred two witnesses are concerned. It is deposed by the complainant that the original accused No. 1 - respondent No. 1 herein had told him to handover the money to the original accused No. 2 - respondent No. 2 herein and according to him, thereafter, he has informed panch-witness to stay there only in the office and he had gone in the toilet, situated there in the said lobby and in the said premises and in the toilet, he informed Mr. Joshi, Police Inspector, that the concerned official had told him to give money to the peon and Mr. Joshi replied that if demand be made, he should give him the money and thereafter, the complainant alone, alleged to have gone to the accused No. 2 - respondent No. 2 herein, after having one round of the entire premises and he alleged to have handed over the money to accused No. 2. On this point, so far as panch-witness is concerned, he has deposed that the accused No. 1 - respondent No. 1 herein had informed to handover the amount to the accused No. 2 - respondent No. 2 herein i.e. Peon and thereafter, they both i.e. the complainant and the panch-witness came out from the office and the amount was handed over to the accused No. 2 there and then only and the above contradiction, in my view, is definitely the vital contradiction, which has been dealt with by the learned trial Judge at length in the impugned judgment and order, and I do not find any perversity or any arbitrariness in the said observations, conclusion and the findings arrived at by the learned trial Judge.

11.1. It is pertinent to note that prior to 05/02/1996, the complainant herein had also lodged one complaint on 08/01/1996 against the present accused No. 1 - respondent No. 1 herein only and the raid was also carried out by the same official i.e. Mr. Joshi, Police Inspector, which had failed as the respondent No. 1 herein - original accused No. 1 neither asked for the amount nor even had heard the complainant because, at the relevant point of time, the respondent No. 1 herein - original accused No. 1 was leaving his office and they met on the staircase. By way clarification that as the another person was there with the

complainant at that point of time i.e. on 08/01/1996, the respondent No. 1 herein - original accused No. 1 had not made any positive demand but there appears no substance in the same, more particularly, because the said complainant alleged to have visited the office of the respondent No. 1 herein - original accused No. 1 along with another person i.e. the panch-witness referred herein above on 05/02/1996 and at the same time, he had not found any unnatural conduct of the complainant as had been found on 08/01/1996.

11.2 It is important to note that all the witnesses, who have been examined by the prosecution in light of the alleged complaint filed by the complainant against the respondent No. 1, none has supported the case of the complainant and this point has also discussed at length by the learned trial Judge. Referring to the document at exh. 46, the learned trial Judge has observed that, "simply by referring the said document, it was clear that unless and until the complainant returns the amount to Ishwarbhai, the question of receiving share from the produces of the said land, does not arise and considering the said fact, it appears that the complainant has filed false complaint against the accused No. 1 as he was to get nothing from the produces of the land, which is suggestive of the fact that the complainant has not come with the clean hands".

12. It is important to note that Anjanaben Mangubhai Dave, whose deposition has been recorded vide exh. 49 was head of the office, where the respondent No. 1 herein - original accused No. 1 was working and as such, the respondent No. 1 herein - original accused No. 1 was working under said Anjanaben Mangubhai Dave. It has also come on record that the office cabin of Anjanaben Mangubhai Dave and the office cabin of the respondent No. 1 herein - original accused No. 1 were adjacent to each other and there was simply one glass in between the said offices and the upper portion of the said glass was open. It has also come on record that in the office cabin of respondent No. 1 herein - original accused No. 1, another table of another Labour Officer namely Shri P.V. Trivedi was also there, who was also on duty on the day of raid i.e. 05/02/1996. It is important to note that the prosecution has not examined the said important witness whose presence was supposed to be there in the office cabin on his table when the complainant and the panch-witness had visited the respondent No. 1 herein - original accused No. 1 in the said office cabin, for the reasons best known to the prosecution. No explanation has been forthcoming on record to the effect that at the relevant point of time, he was not present in the said office cabin. Much has been argued by the learned Additional Public Prosecutor to the effect that so far as column related to complaint's case No. 21 of 1995 was concerned, in the original register, the respondent No. 1 herein - original accused No. 1 had later on added and inserted the writing to the effect that the said case was disposed of. But, in fact, on 05/02/1996, during raid when the said register was called for by Anjanaben Mangubhai Dave and also obtained the zerox copy of the same, the said writing was not there and this conduct of respondent No. 1 herein - original accused No. 1 definitely goes against him and indirectly it gives strength to the case of the complainant. This aspect has been dealt by the learned trial

Judge at length. I have gone through the same and I find myself in agreement with the same. Over and above, it is important to note that in the examination-in-chief, in Para 5, it is deposed by said Anjanaben Mangubhai Dave that when she saw the complaint register, the relevant columns were blank and hence, she informed one Pravinaben to complete the register and then produced before her. I do not find any reason to give such instructions to said Pravinaben on the day of raid when it came to the notice of a superior officer, who is, as such, the head of the office that the necessary columns of the register were blank, then, for what she gave instructions to said Pravinaben to complete the said register and if at all, if we presume that the respondent No. 1 herein - original accused No. 1 had added the relevant portion in the said register after 05/02/1996, then also, in my view, it was the directions given by the superior officer through Pravinaben and the respondent No. 1 herein - original accused No. 1 complied the same and there appears nothing wrong in his conduct. On the contrary, the conduct of Anjanaben Mangubhai Dave raises so many questions, which is, as such, right now not required to be discussed.

13. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi Vs. State of Gujarat,). In the instant case, the learned Additional Public Prosecutor has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

14. In the case of Ram Kumar Vs. State of Haryana, , Supreme Court has held as under:

The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. Are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.

15. As observed by the Hon''ble Supreme Court in the case of Rajesh Singh and Others Vs. State of U.P., and in the case of Bhaiyamiyan @ Jardar Khan and Another Vs. State of Madhya Pradesh, , while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the

acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

16. Thus, considering the above evidence forthcoming of record, so also, considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal u/s 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

17. In view of the aforesaid discussion, this Court finds no substance in the present appeal and accordingly, the same is dismissed. The impugned judgment and order dated 18/02/2000, passed in Special (ACB) Case No. 8 of 1996 by the learned Special Judge (ACB), Nadiad, is confirmed. Bail Bonds, if any, shall stand cancelled.

17.1. The office shall send back the Record & Proceeding, if called for, to the trial court forthwith, after following the due procedure.