

Gujarat High Court

State Of Gujarat vs Ambalal Kalabhai Parmar on 12 April, 2023

Bench: Hemant M. Prachchhak

R/CR.A/1009/2006

JUDGMENT DATED: 12/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1009 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |
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STATE OF GUJARAT

Versus

AMBALAL KALABHAI PARMAR & 1 other(s)

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Appearance:

MR HIMANSHU PATEL APP for the Appellant(s) No. 1

MS DHRUTI PANDYA WITH MS. KRUTI M SHAH(2428) for the Opponent(s)/
Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK

Date : 12/04/2023

ORAL JUDGMENT

R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023

1. The appellant - State of Gujarat has preferred the present appeal under Section 378 of Criminal Procedure Code, 1973 against the judgment and order of acquittal dated 31.3.2006 passed by the learned Additional Sessions Judge, Fast Track Court No. 6, Vadodara (hereinafter be referred to as "the Trial Court") in Special Case No. 9 of 2001, whereby the respondents-original accused were acquitted from the charges levelled against them under Sections 7, 12, 13(1)(d), 13(2) of the Prevention of Corruption Act.

2. The facts in brief giving rise to the filing of present appeal are as under:

2.1 The Assistance Director of Anti-Corruption Bureau ("ACB" for short) has received an information that the Police Officers of the Baroda Rural Traffic received illegal gratification amount from the drivers of the passenger vehicles, who ply their vehicles from Baroda to nearby R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 area. Therefore, they have planned to arrange the trap and accordingly, they have arranged one Jeep Car and agreed the driver Riyazhussan Fakirmahomed Ghori to accompany them for arranging the trap. Thereafter, along with two panchas namely Hiteshbhai Kantilal Thaker and Mukeshbhai Vinubhai Shah, serving in the Forest Department, near the office of Assistance Director of ACB, Vadodara, they have started trap with the driver Riyazhussan Fakirmahomed Ghori, and asked the driver to be part of the trap and running trap and for that purpose they have given an instructions as to how he has to act and what is to be done, when he found the police officers at the relevant place. Before proceeding towards the place of trap, they have already performed the first part of the panchnama at the office of Assistance Director of ACB and thereafter, they have also performed the necessary tests. They have taken Rs.500/- as 5 currency notes of Rs.100 and put anthracene powder on it and asked the driver of the Jeep Car that as and when he found any Police Officers at the relevant place, who asked R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 or demanded the money, he has to give those tainted notes and that is how they have prepared the first part of the panchnama at the office of the Assistant Director of the ACB, Vadodara and thereafter they started to reach at Sinor Chokdi, where present two respondents were on duty, the team asked the driver namely Riyazhussan Fakirmahomed Ghori, that as and when those constables demanded the amount, he has to give the said tainted currency notes, upon which the anthracene powder was sprinkled. Thereafter, when they reached near the so called place they found that the respondents police personals were standing on the cross road and without there being any asking, the driver of the jeep car had asked the police personnel that he was having two travel buses and the Jeep Car and for the travel buses, he has already paid certain amounts and now with regard to the Jeep Car he has to pay the amount. Then ultimately they have given the amount of Rs.200/- from the tainted notes of Rs.500/- forcefully and then the raiding party has completed the procedure of the raid and arrested the R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 present respondents accused for the alleged offence and filed the FIR under the provision of Sections 7, 12, 13(1)

(d), 13(2) of the Prevention of Corruption Act, 1988.

3. The charge came to be framed by the Trial Court on 18.6.2005 vide Exhibit 8 for the aforesaid offences against the accused. On being explained it to them, the accused persons have denied having committed any offence. The accused persons pleaded not guilty to the charge and pleaded for Trial and hence, the case was tried by the Trial Court.

4. The prosecution has examined six witnesses to prove the guilt of the accused persons and also produced as many as 8 documentary evidence before the concerned Trial Court to prove the guilt of the accused persons. After going through the oral as well as documentary evidence and after hearing the arguments advances by both the sides, the Trial Court has passed the impugned judgment and order of acquittal dated 31.3.2006 in R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 Special Case No. 9 of 2001, in favour of the present respondents.

5. I have heard Mr. Himanshu Patel, learned APP for the appellant State of Gujarat and Ms. Dhruiti Pandya, learned Counsel appearing for Ms. Kruti M. Shah, learned Counsel for the respondents-accused persons.

6. Mr. Himanshu Patel, learned APP for the appellant State has submitted that it is a running trap and the panchnama of the first part and the second part is completely supported the case of the prosecution and the panchas also supported the case of the prosecution, however, the learned Trial Judge has not considered all these aspects while passing the impugned judgment and order of acquittal. It is further submitted by learned APP that though the acceptance is established beyond reasonable doubt, as both the accused persons found with the tainted currency notes from his possession and therefore, the Trial Court ought to have considered the R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 said aspect and convict the accused persons for the alleged offence of illegal gratification. He has further submitted that the prosecution has examined the witnesses who have fully supported the case of the prosecution and therefore, Trial court ought to have appreciated the evidence led by the prosecution in its true and proper spirit and therefore, the impugned judgment and order of acquittal is erroneous and the same deserves to be quashed and set aside and the respondents accused be convicted for the alleged offence of illegal gratification. Learned APP also further submitted that the sanctioning authority, has after applying the mind and after going through the records available before the sanctioning authority, granted the sanction and therefore, learned Judge ought to have appreciated all these materials produced on record and convict the accused persons for the alleged offence of illegal gratification. He therefore submitted that present Appeal may be allowed and the impugned judgment and order of the Trial Court may be quashed and set aside.

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7. As against that Ms. Dhruiti Pandya, learned Counsel for Ms. Kruti M. Shah, learned Counsel for the respondents has strongly opposed submission made by the learned APP as well as averments of the appeal and submitted that the Trial Court has, after examining the witnesses in detail and after going through the arguments advanced by the concerned parties and demeanor of the witnesses, recorded the findings of acquittal. She has submitted that prima facie the basic ingredients of the offence i.e. demand and acceptance is not established beyond the reasonable doubt, as there was no

demand at all raised by the respondent accused and therefore, learned Judge has rightly considered and appreciated the evidence led by the prosecution, while passing the impugned judgment and order of acquittal and there is no infirmity and illegality in the impugned judgment and order of the Trial Court and hence, the impugned judgment and order of acquittal may be confirmed and this Court may not interfere with the impugned judgment R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 and order of the Trial Court.

8. In support of the order of acquittal, learned Counsel appearing for the respondents has referred to and relied upon the decisions of the Hon'ble Apex Court in case of Chandrappa and others vs. State of Karnataka reported in (2007) 4 SCC 415, more particularly she relied upon paragraph No. 42, wherein the Hon'ble Apex Court has framed the general principle regarding powers of the appellant Court while dealing with an appeal against an order of acquittal. The said paragraph No. 42 reads as under:-

"42.(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 emphasize the reluctance of an appellate Court to interfere with acquittal than to R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 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 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."

9. Learned Counsel for the respondents has referred to and relied upon the observations made in paragraph No. 9 of the decision of the Hon'ble Apex Court in case of State of U.P. vs. Ram Veer Singh and others reported in AIR 2007 SC 3075, which reads as under.

"9. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered

with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh (2002 (2) Supreme

567)]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra (AIR 1973 SC 2622), Ramesh Babulal Doshi v. State of Gujarat (1996 (4) Supreme 167), Jaswant Singh v. State of Haryana (2000 (3) Supreme 320), Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152), State of Punjab v. Karnail Singh (2003 (5) Supreme 508, State of Punjab v. Pohla Singh and Anr. (2003 (7) Supreme 17) and V.N. Ratheesh v. State of Kerala (2006 (10) SCC

617).

10. Learned Counsel for the respondent has relied upon the decision of this Court dated 7.2.2023 in case of The State of Gujarat vs. Ashokbhai Shankerbhai Patil passed in Criminal Appeal No. 123 of 2007. She relied upon the observations made in paragraph No. 12 which read as under:-

12. In the recent decision in the case of K. Shanthamma v. State of Telangana reported in (2022) 4 SCC 574 it has been held as under:

R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 "10. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine qua non for establishing the offence under Section 7 of the PC Act.

11. In P. Satyanarayana Murthy v. State of A.P., this Court has summarised the well-settled law on the subject in para 23 which reads thus: "23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d) (I) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of

illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

11. Learned Counsel for the respondents also relied upon the decision of the Hon'ble Apex Court in case of K. Shanthamma vs. State of Telangana reported in (2022) 4 SCC 574, V. Sejappa vs. State By Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150, State of Gujarat vs. Delipsinh Laxmansinh Rathod reported in 2017 (4) GLR 2957, R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 State of Gujarat vs. Doliben Govindbhai and others reported in 2019 (3) GLH 831.

12. I have perused the relevant materials available on record and evidence led by the prosecution and the arguments advanced by learned APP and the learned Counsel appearing for the respondents. I have also gone through the original records and proceedings of the Appeal as well as impugned judgment and order passed by the Trial Court.

13. It is a case of the prosecution that on the day of incident, the raiding party planned the running trap and for that purpose they took the help of one Riyazhussan Fakirmahomed Ghori, driver of the Jeep Car by hiring his Jeep Car and with the help of him, they have arranged the running trap and when they reached at the cross road of Balasinor, they found that the respondents police personnel were standing on the cross road and without there being any asking by the police personnel, they have R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 forcefully given the money to the respondents accused under the guise that as they are running the travel buses plying on the said route and for that they have already paid certain amounts. Now so far as the Jeep Car is concerned, they have to pay the amount and therefore, they were paying the amount but considering the deposition of p.w. 1-driver of the Jeep Car, who has categorically stated before the Trial Court on oath that the respondents have not demanded money however, they have paid money themselves without any demand by the respondents and ultimately he has declared as hostile witness. In fact the said witness has not supported the case of the prosecution. Even from his cross examination, of P.W. 1, no illicit material was brought by the prosecution on record, which in-turn connect the accused persons in crime in question. Thereafter, they have examined the panch i.e. p.w. 2 Hiteshbhai Kantibhai Thaker, who serving in the Forest Department, near the office of Assistance Director of ACB, Vadodara. He has categorically stated before the Trial Court on oath that R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 there was no demand but they have paid the amount and in-turn he has tried to support the case of the prosecution. The P.W. 3 being an appointing authority, has, after perusing the relevant papers of chargesheet, granted the sanction to prosecute the respondents original accused. The appointing authority has only deposed before the Trial Court that after verifying the materials which are produced before him and after examination of the documents produced before him, he has granted the sanction and permitted to prosecute the respondents accused persons for the alleged offence of illegal gratification. The P.W. 4 who is a complainant, has also investigated the alleged offence and supported the case of prosecution. The said complainant is an interested witness and therefore, he has registered the F.I.R. against the

respondents. From the deposition of the complainant also, nothing serious is turned out against the accused persons.

14. From the deposition of all these witnesses and from R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 the bare perusal of the deposition of the prosecution witnesses and the documentary evidence produced before the Trial Court, prima facie it appears that there was no demand by the accused persons for any amount. Even there was no amount ascertained before the running trap arranged by the trapping officers and therefore, the first ingredients to prove the alleged offence of illegal gratification is not proved beyond the reasonable doubt and hence, learned Trial Judge has rightly passed the impugned judgment and order of acquittal in favour of the accused persons.

15. At this stage, it is relevant to refer to the decision relied upon by learned Counsel for the respondents of the Hon'ble Apex Court in case of P. Satyanarayana Murthy vs. Dist. Inspector of Police reported in AIR 2015 SC 3549, wherein the Hon'ble Apex Court has categorically come to a conclusion that the amount of illegal gratification is the basic ingredients and it is to be proved beyond the reasonable doubt. It is further held by R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 the Hon'ble Apex Court that the proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. meaning thereby the basic requirement of demand or the ailment of demand is to be proved beyond reasonable doubt by the prosecution failing which the case itself not succeed. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. 22. As a corollary, failure to prove the said fact of demand by the prosecution for illegal gratification would be fatal and mere recovery of the amount from the person accused persons is not sufficient to bring the charge against the accused persons under Sections 7 or 13 of the Act and to convict the accused persons in the alleged offence.

16. While considering the Appeal against order of R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 acquittal, it is well settled principle that when two views are possible, the view which is taken by the Trial Court in favour of the accused persons normally to be sustained and no interference is to be called for while dealing with the appeal against the order of acquittal.

17. The judgment which is referred to and relied upon by the learned Counsel for the respondents original accused in the case of Chandrappa (supra) is well settled principle and there is no other opinion.

18. From the overall analysis of the evidence on record and the material placed before the Trial Court, it appears that the main witness of the prosecution has disowned from his version and not supported the case of the prosecution, with regard to the first ingredients of the demand and not supported the contents of the F.I.R.. In my considered opinion, the Trial Court has not committed any error while passing the impugned judgment and order of acquittal. The judgments relied upon by the R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 learned Counsel for the respondents are fully supported the case of the respondents accused persons. When the basic ingredients of demand is not proved by the prosecution by leading any cogent and relevant material evidence,

mere case of recovery is not sufficient to prove the guilt of the accused persons for the offence alleged under Section 7 and 13 of the Prevention and Corruption Act. There are all possibilities that while thrusting the note on the respondents accused persons, the imprint of anthracene power was found on the figure of the respondents accused because of resisting to accept the amount and therefore, that acceptance is also raised a clear doubt and therefore, Trial Court has rightly passed the impugned judgment and order of acquittal and there is no perversity or any illegality committed by the Trial Court while passing the impugned judgment and order of acquittal.

19. It is well settled by catena of decisions that the Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 acquittal is founded. However, Appellate Court 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.

20. Further, 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. Further, 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 R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 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 the accused is connected with the commission of the crime with which he is charged.

21. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the Trial Court's acquittal R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

22. On perusal of the impugned judgment and order, it clearly transpires that the Trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused persons from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the

accused persons beyond reasonable doubt. Therefore, the impugned judgment and order of the Trial Court is sustainable and the present appeal is liable to be dismissed.

23. In view of the evidence on record, it is clearly found that the Trial Court has minutely examined the evidence and has properly appreciated the evidence on record and also not committed any error of fact and law in acquitting R/CR.A/1009/2006 JUDGMENT DATED: 12/04/2023 the accused for the charges levelled against them.

24. In view of the above, the present appeal fails and stands dismissed accordingly. The judgment and order of acquittal dated 31.3.2006 passed by the learned Additional Sessions Judge, Fast Track Court No. 6, Vadodara is hereby confirmed. Bail bond stands cancelled. Record and proceedings, if lying here, be sent back to the concerned Trial Court forthwith.

Sd/-

(HEMANT M. PRACHCHHAK,J) SURESH SOLANKI