

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL APPEAL No. 465 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

HONOURABLE MR.JUSTICE G.B.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

JADEJA MALUBHA KALUBHA - Opponent(s)

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Appearance :

Mr.L.R. PUJARI, ADDL PUBLIC PROSECUTOR for Appellant(s) : 1,
 NOTICE NOT RECD BACK for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

and

HONOURABLE MR.JUSTICE G.B.SHAH

Date : 31/01/2012

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)

The matter is notified with a remark that, "Notice is not received back".

On perusal of papers it is noticed that on 19th January 2012, the Court passed the following order:

“The matter is notified at Sr. No.7 for final hearing. The remark column shows thatailable warrant is duly executed. The opponent has neither appeared through an Advocate nor in person.

Registry is directed to issue **fresh NOTICE** intimating that the hearing of the matter is kept on **24.01.2012**. Learned APP to effect **direct service through the Police Inspector** within whose jurisdiction the opponent is residing. The **Police Inspector shall intimate the opponent that the hearing of the matter is kept on 24.01.2012**.

A copy of this order be made available to learned APP for its onward communication for compliance.”

2. Today, learned Additional Public Prosecutor (APP), Mr.L.R. Pujari made available for perusal a fax message received from the ASI, Morvi City dated 23rd January 2012 intimating the learned APP, Mr.Pujari that in the matter of Sessions case No.25 of 1989 of Sessions Court, Morvi which arose from Morvi City Crime Register No.99 of 1989 (sic., No.199 of 1989), notice for Jadeja Malubha Kalubha, residing at Village Sakat Sanal of Morvi Taluka is received. On inquiry about the said notice it is learnt that said Shri

Jadeja Malubha Kalubha is at present sent to a hospital at Rajkot for treatment by one Dr.Shri Babarkhan of Morvi. Said Jadeja Malubha Kalubha, at present, is not able to walk and is under treatment. In this regard statement of son of Jadeja Malubha Kalubha (Rajendrasinh) is recorded and a copy of said statement along with certificate of medical treatment is also enclosed.

On perusal of the statement of Shri Rajendrasinh Malubha Jadeja (son of Jadeja Malubha Kalubha), aged 55 years, residing at Village Sakat Sanala, Taluka Morvi, having Mobile No.9674070277, it is noticed that said Shri Rajendrasinh has stated that,

“Today with reference to notice of the High Court for my father- Jadeja Malubha Kalubha, you inquired, in response to which I am stating that at present Jadeja Malubha Kalubha is sick and at present he is not able to make movement and at present my elder son, named, Harpalsinh and my nephew Bhagiratsinh have taken to Parth Hospital at Rajkot for getting MRI done. My father is under treatment of Dr.Babarkhan of Morvi for quite some time. At present he is not taking food and is not able to make movement. His mind is also not working and at present my father is at Rajkot Hospital. At present he is not at the residence. I am producing the papers of treatment of my father from Dr.Babarkhan

of Morvi before you. At present my father is at Rajkot Hospital and the doctor has told me that my father is at last stage and my father is not able to go to any place.”

3. Taking into consideration the contents of the aforesaid communication it was deemed fit to examine the matter on merits. Accordingly, the learned APP was asked to argue the matter.

4. The learned APP invited attention of the Court to the Charge, Exhibit 1 at page 3. The accused was charged for the offence under section 17, 18 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') that as on 10th July 1989, at 4.45 PM in Morvi Taluka, near new Bus Stand, opium weighing 1 KG and 150 Grams was kept by the accused for the purpose of sale, that the accused has sold some opium and an amount of Rs.225/- as sale proceeds of opium was also found from his possession. Thus, he has committed the offence under the aforesaid sections. The case was investigated by PSI, City Police Station, Morvi and after collecting the evidence related to the said charge sheet, the accused was produced before the Court of the learned Judicial Magistrate, First Class, Morvi, on having found some substance in the accusations against the accused and after receipt of report of the Chemical Analyzer the accused was kept present before the learned Judicial Magistrate, First Class, Morvi and after verifying the facts about supplying

copies of Police papers, the accused was committed for trial to the Court of Sessions as the offence is triable by the Court of Sessions.

The accused was read over the charge and was explained the same. On asking as to whether he pleads guilty or he claims to be tried, the accused claimed to be tried.

5. The prosecution to prove its case, produced certain documents and also examined the following witnesses :

- (i) Witness Dalpatsinh Himatsinh Rathod, PSI, Exh.6,
- (ii) Suresh Dhirajlal, Exhibit 10,
- (iii) Vallabhdas Mulji, Exhibit 11,
- (iv) Natubha Gagubha, Exhibit 12,
- (v) Ranvirsinh Dadubha, Exhibit 13,
- (vi) Maheshchandra Chandrashankar Raval, Exhibit 14,
- (vii) Jubeda Ranabhai, Exhibit 16,
- (viii) Pravinsinh Malubha, Exhibit 18,
- (ix) Manishankar Shivram, Exhibit 24,
- (x) Bhavarsinh Jivansinh, Exhibit 26,
- (xi) Valji Gandabhai, Exhibit 28,
- (xii) Isha Ibrahim, Exhibit 29,
- (xiii) Vasantbhai Chimanbhai, Exhibit 31,
- (xiv) Harcharan Kanjibhai Sharma, Exhibit 33, and
- (xv) Ambalal Dungarsinh, Exhibit 34.

6. The learned APP, Mr.Pujari vehemently submitted that the learned Judge has committed error in not believing the case of the prosecution and acquitting the accused of the charges levelled against him by judgement and order dated 19th March 1990 in Sessions case No.25 of 1989 . The learned APP invited attention of the Court to the F.I.R., Exhibit 9, page 23, and the deposition of the Police personnel, viz., PW-2 (Exh.10), PW-3 (Exh.11), PW-4 (Exh.12), PW-5 (Exh.13), and PW-6 (Exh.14), and submitted that the learned Judge ought to have appreciated that the prosecution was able to establish the guilt of the accused and the learned Judge ought to have convicted him for the offences for which he was charged.

7. On a careful consideration of the judgement, we are in agreement with the evidence recorded by the learned Judge. After appreciating the evidence led before him, mainly the learned Judge has considered three aspects, viz., (i) flaw in sealing process of the muddamal opium, (ii) flaw in establishing the identity of the muddamal, which was sent to the Chemical Analyzer, and (iii) the contradictory facts coming on record about the Police party which had intercepted the accused with opium on the day of the incident near new S.T. Bus Stand.

The learned Judge has considered the ratio laid down by the Hon'ble the Apex Court and this Court in various decisions which were cited before him.

8. It is well settled principle of law that in acquittal appeal where there is a possibility of two views, the one which is favourable to the accused should be adopted. It is also well settled principle of law that the Appellate Court would be slow in interfering with an order of acquittal until and unless the judgement of the Trial Court is perverse or demonstrably unsustainable. In the present appeal, we find that the reasons given by the trial Court are plausible, cogent and convincing. Thus, in light of the evidence on record, it cannot be said that the Trial Court has committed any error in acquitting the accused.

It is a settled legal position that in acquittal appeal, the Appellate Court is neither required to re-write the judgment nor to give a fresh reasoning, when the reasons assigned by the court below are found just and proper. Such principle is laid down by the Hon'ble the Apex Court in the case of **State of Karnataka Vs. Hemareddy**, reported in A.I.R. 1981 SC 1417, wherein it is held as under:

“ This Court has observed in *Girija Nandini Devi Vs. Bigendra Nandini Chaudhary*, (1967) 1 SCR 93 : (A.I.R. 1967 SC 1124) 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.”

9. 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.

10. In view of the above, this Court finds no substance in the appeal. Consequently, the judgement and order dated 19th March 1990 rendered by the learned Additional Sessions Judge, Morvi in Sessions case No.25 of 1989 is upheld. The Criminal Appeal is dismissed. Bail bonds issued against the respondent-accused are cancelled.

(RAVI R. TRIPATHI, J.)

(G.B. SHAH, J.)