IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 16 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE K.J.THAKER

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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 or any order made thereunder ?

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STATE OF GUJARAT....Appellant(s)

Versus

KANTIBHAI KHATUBHAI PARMAR & 1....Opponent(s)/Respondent(s)

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Appearance:

MS MONALI BHATT APP for the Appellant

MR BB NAIK SENIOR ADVOCATE with MR PARTHIV A BHATT, ADVOCATE for the Respondents

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CORAM: **HONOURABLE MR.JUSTICE K.J.THAKER**

Date : 26/02/2015

ORAL JUDGMENT

1. The present appeal, under section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 5.10.2001 passed by the learned Special Judge, Sabarkantha at Himatnagar in Special Case No. 3/1995, whereby, the learned trial Judge acquitted the original accused – the respondents herein, of the charges for the offence punishable under Section 7,12,13(1)(d), 1,2, 3 read with section 13(2) of the of Prevention of Corruption Act.

2. The brief facts of the prosecution case are that the accused no. 1 was serving as a jamadar while accused no. 2 was working as a Police Constable at Chithoda Out Post of Vijaynagar Taluka. That the Police Inspector of Vijaynagar Police Station had filed a complaint against the complainant under the Prohibition Act. The accused came to know about this fact and that the complainant was on bail. That prior to two-three days before 31.10.1994, the accused met the complainant and demanded Rs. 600/- as installment as the complainant was carrying on the business of liquor. The said amount of Rs. 600/- was

received by the accused. That accused no. 1 received Rs. 400/- and accused no. 2 received Rs. 200/-. The complainant was further asked to give more amount at the time of Diwali. That on 6.11.1994, the accused demanded the amount for New Year. As the complainant did not want to give the amount of bribe, on 7.11.1994 the complainant approached the ACB, Office, Ahmedabad and lodged the complaint. Thereafter, on 8.11.1994, the Panchas were called and the said Panchas were introduced to complainant. PI Mr. Puvar explained the anthracene powder treatment properly and working of Ultra violet lamp. Thereafter, after following necessary procedure, the Raiding party arranged the trap and on success of the trap, detailed panchnama was drawn. The currency notes numbers were tallied with first part of the panchnama. These notes were signed by the panchas. Detailed panchnama was signed by the panchas who were there and also by the Investigating Officer. The currency notes were attached. The statements of the witnesses were recorded. Thereafter, the offence was registered and further investigation was carried out by the Himatnagar ACB. During the course of

investigation, respondents were arrested and, ultimately, charge-sheet was filed against them, which was numbered as Special Case No. 3 of 1995. The trial was initiated against the respondents.

3. To prove the case against the present accused, the prosecution has examined witnesses and also produced documentary evidence.

4. At the end of trial, after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 5.10.2001.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial Court the appellant State has preferred the present appeal.

6. It was contended by learned APP Ms. Bhatt that the judgment and order of the trial Court is against the provisions of law; the trial Court 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 alleged charges against the present respondents. Learned APP has also taken this court through the oral as well as the entire documentary evidence and submitted that the present appeal deserves to be allowed.

7. As against this, Mr. BB Naik learned senior advocate for respondents has submitted that the respondents have never demanded the amount. The finding of fact cannot be found fault with. According to Mr. Naik, that very foundation of the fact that both the accused were demanding money is not correct and but the complaint was under the Prohibition Act was lodged against the complainant by the police, and therefore, the respondents are wrongly involved in the present case. The complainant was accused in the said case, and therefore, the present appeal deserves to be dismissed. Mr. Naik learned advocate has replied on the decision of the Apex Court in the case of **State of Punjab vs. Madan Mohan Lal Verma, reported in (2013) 14 SCC 153** and

in the case of **Hari Dev Sharma v. State (Delhi Administration), reported in AIR 1976 SC 1489.**

8. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In the case of "M.S. NARAYANA MENON @ MANI VS. STATE OF KERALA & ANR", (2006) 6 S.C.C. 39, the Apex Court has narrated 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 view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

9. Further, in the case of ***"CHANDRAPPA Vs. STATE OF KARNATAKA"***, reported in (2007) 4

S.C.C. 415, the Apex Court 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, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
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> [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.
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> [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 curtain extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasis 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.
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> [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.
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> [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."

10. Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views / 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.

11. Even in the case of "***STATE OF GOA Vs. SANJAY THAKRAN & ANR.***", reported in (2007) 3 S.C.C. 75, the Apex 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."

12. Similar principle has been laid down by the Apex Court in cases of "***STATE OF UTTAR PRADESH VS. RAM VEER SINGH & ORS.***", 2007 A.I.R. S.C.W. 5553 and in "***GIRJA PRASAD (DEAD) BY L.R.s VS. STATE OF MP***", 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this

Court may exercise against an order of acquittal, are well settled.

13. In the case of "***LUNA RAM VS. BHUPAT SINGH AND ORS.***", reported in (2009) SCC 749, the Apex Court in para 10 and 11 has held as under;

> "10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.
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> 11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

14. Even in a recent decision of the Apex Court in the case of "***MOOKKIAH AND ANR. VS. STATE, REP. BY THE INSPECTOR OF POLICE, TAMIL***

NADU", reported in AIR 2013 SC 321, the Apex Court in para 4 has held as under:

> "4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such

> merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC573]"

15. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite 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***", AIR 1981, SC 1417, wherein it is held as under;

> "...This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary (1967) 1 SCR 93:(AIR 1967 SC 1124) that it is not the duty of the Appellate 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."

16. In a recent decision, the Hon'ble Apex Court in "***SHIVASHARANAPPA & ORS. VS. STATE OF KARNATAKA***", JT 2013 (7) SC 66 has held as under;

> “That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence.”

17. 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.

18. 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 APP for the appellant-State. On going through the entire evidence, the finding of facts cannot be interfered with and cannot be said to be perverse. The judgment of the learned trial Judge cannot be found fault with. The learned trial Judge has given cogent and convincing reasons, more particularly, the main fact that presence of accused no. 1 was neither found at the time of trap nor was he ever caught with money so as to accept the same, and therefore, as far as accused no. 1 is concerned, neither section 7,12,13(1)(d), 1,2, 3 nor section

13(2) of the Prevention of Corruption Act, can be made applicable and the charge levelled against accused no. 1 vide Ex. 20 has not been brought home by the prosecution successfully even before this Court. Ms. Bhatt learned APP has relied on the decision of this Court in the case of **State of Gujarat v. Kalusinh Rahevar, reported in 2014(3) GLH 76** and requested that this Court should at least upturn the judgment of the trial Court qua accused no. 2 as he was found accepting the bribe money. So far as accused no. 2 is concerned, I am convinced with the submission made by Ms. Bhatt learned APP that there was acceptance and the evidence at page 60 to 62 showing that the accused no. 2 had gone to the shop of complainant. The marks of anthracene powder was found present on the backside pocket of the trouser of accused no.1. The theory that the complainant was very much there and on reaching there, the accused no. 2 demanded money. Ms. Bhatt learned APP has further relied on the evidence of PW-4 and PW-7 and submitted that the judgment is perverse qua accused no. 2. It goes without saying that the learned trial Judge while dealing with the discrepancy which has come on record, has

rightly discussed the same in para-14,15 and 17 and the learned trial Judge has very elaborately discussed that there was no acceptance. There is discrepancy in recording the evidence of complainant and PW-1 as there was no anthracene powder found on the finger of the accused. Had he accepted the amount and the same is put in the pocket then also anthracene powder is found on his finger tip, but the same was not found on the finger tip of the accused. The learned trial Judge has, in my opinion, has rightly acquitted the accused. Further, the place from where the currency notes were found, has been deliberately added. Further, in para-21, the learned trial Judge has rightly held that the complainant has improved his version which was never there in the complaint naming that he has given money to accused no. 2, which is concocted one. I am not delving into procedural deficiency but the decisions cited by the learned trial Judge and the latest decision on which Mr. Naik has placed reliance, will ennure for the benefit of the accused and no other view then that taken by the learned trial Judge can be taken by this Court. On the touch-stone of the decision of

the Apex Court in the case of **Murlidhar alias Gidda and another vs. State of Karnataka, reported in AIR 2014 SC 2200,** wherein, parameters to interfere in acquittal appeals are reiterated, are kept in mind by this Court, and therefore, when there was no demand, no acceptance and no evidence against the accused, the present appeal deserves to be dismissed. I am fortified in my view by the decisions of the Hon'ble Apex Court in the case of **Muralidhar alias Gidda and another v. State of Karnataka reported in AIR 2014 SC 2200,** and in the case of **Satvir Singh v. State of Delhi thru CBI, reported in AIR 2014 SC 3798**.

19. In light of the decision of this Court in the case of **Bhanushankar Popatlal vs. State of Gujarat** rendered in **Criminal Appeal No. 463 of 1978,** I do not find any merits in the submissions made by the learned APP Ms. Bhatt to up-turn the judgment of the learned trial Judge. The impugned judgment being in consonance with the principles of Evidence Act also cannot be found fault with. The documentary evidence on record will not permit this court to take a different view that than

taken by the learned trial Judge. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Even looking to the evidence on record, ld. APP is not able to bring home the charge levelled against the accused and persuaded this Court to take a different view than that taken by the learned trial Judge. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

20. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondents of the charges leveled against them. I find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same.

21. In the result, the present appeal is

hereby dismissed. The impugned judgment and order of acquittal is confirmed. The respondents-accused are acquitted of all the charges levelled against them. R & P to be sent back to the trial Court. Bail and bail bond, if any, stands cancelled. Surety also, if any given, stands discharged.

(K.J.THAKER, J)

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