

STATE OF GUJARAT

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v.

BHALCHANDRA LAXMISHANKAR DAVE

(Criminal Appeal No. 99 of 2021)

FEBRUARY 02, 2021

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**[ASHOK BHUSHAN, R. SUBHASH REDDY AND  
M. R. SHAH, JJ.]**

*Appeal: Appeal against acquittal – Scope of interference – Conviction of respondent-accused by trial court u/s.7 r/w ss.13(1) and (2) of Prevention of Corruption Act – Acquittal by High Court – On State’s appeal, held: High Court made general observations on the depositions of the witnesses examined – However, there was no re-appreciation of the entire evidence on record in detail, which ought to have been done by High Court while dealing with order of conviction passed by trial court – High Court ought to have appreciated that it was dealing with first appeal against order of conviction passed by trial court – Being the First Appellate Court, High Court ought to have re-appreciated the entire evidence on record without any limitation, which might be there while dealing with an appeal against the order of acquittal passed by trial court – High Court was dealing with the offences under the Prevention of Corruption Act which offences are against the society and, therefore, High Court ought to have been more careful and have gone in detail – Matter remitted to High Court for consideration afresh in accordance with law.*

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*Appeal: Power of High Court to deal with appeal against conviction and appeal against acquittal – Distinction between – Held: An Appellate Court while dealing with an appeal against acquittal passed by trial court is required to 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 trial court – Therefore, while dealing*

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- A *with the cases of acquittal by trial court, the Appellate Court would have certain limitations – However, so far as appeal against order of conviction is concerned, there are no such restrictions and the Court of appeal has wide powers of appreciation of evidence and the High Court to re-appreciate the entire evidence on record being a First Appellate Court – Keeping in mind that once trial court has convicted there shall not be presumption of innocence as would be there in the case of acquittal.*
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**Allowing the appeal and remitting the matter to High Court, the Court**

- C **HELD: 1. The High Court has not strictly proceeded in the manner in which High Court ought to have while dealing with the appeal against the order of conviction. The High Court ought to have appreciated that it was dealing with the first appeal against the order of conviction passed by the trial Court. Being First Appellate Court, the High Court was required to re-appreciate the entire evidence on record and also the reasoning given by the trial Court while convicting the accused. Non-re-appreciation of the evidence on record may affect the case of either the prosecution or even the accused. [Paras 6, 6.1][457-A-B, C-D]**
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- E **2. An Appellate Court while dealing with an appeal against acquittal passed by the trial Court, is required to bear in mind that in case of acquittal there is double presumption in favour of the accused. However, so far as the appeal against the order of conviction is concerned, there are no such restrictions and the Court of appeal has wide powers of appreciation of evidence and the High Court has to re-appreciate the entire evidence on record being a First Appellate Court. Keeping in mind that once the Trial Court has convicted there shall not be presumption of innocence as would be there in the case of acquittal. [Para 6.2][457-E-F; 458-B-C]**
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- G *Umedbhai Jadavbhai v. The State of Gujarat (1978) 1 SCC : [1978] 2 SCR 471 – referred to.*

**3. Perusal of the impugned judgment and order of acquittal passed by the High Court, showed that High Court decision was based on totally erroneous view of law by ignoring the settled**

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legal position. The approach of the High Court in dealing/non- A  
dealing with the evidence was patently illegal leading to grave  
miscarriage of justice. Therefore, the impugned judgment and  
order passed by the High Court acquitting the respondent-  
accused without adverting to the reasons given by the trial Court  
while convicting the accused and without re-appreciating the B  
entire evidence on record in detail cannot be sustained and the  
same deserves to be quashed and set aside. Therefore, matter  
deserves to be remanded to the High Court to consider and deal  
with the appeal afresh in accordance with law and on its own  
merits. The High Court ought to have appreciated that it was C  
dealing with the offences under the Prevention of Corruption Act  
which offences are against the society and therefore the High  
Court ought to have been more careful and ought to have gone  
in detail. [Para 7][458-D-F]

Case Law Reference

[1978] 2 SCR 471 referred to. Para 6 D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 99 of 2021.

From the Judgment and Order dated 12.01.2015 of the High Court  
of Gujarat at Ahmedabad in Criminal Appeal No. 92 of 2003. E

J. S. Attri, Sr. Adv., Aniruddha P. Mayee, Haresh Raichura, Saroj  
Raichura, Kalp Raichura, Ram Bhaduria, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**M. R. SHAH, J.** F

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment  
and order dated 12.01.2015 passed by the High Court of Gujarat in  
Criminal Appeal No.92 of 2003 by which the High Court has acquitted  
the respondent herein – original accused for the offences under Section G  
7 read with Sections 13(1) & 13(2) of the Prevention of Corruption Act  
(hereinafter referred to as ‘the Act’) by quashing and setting aside the  
judgment and order of conviction passed by the Learned Special Judge,  
Bharuch, the State of Gujarat has preferred the present appeal.

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A           3. The respondent herein – original accused (hereinafter referred to as ‘the accused’) who was working as Assistant Director in ITI, Gandhi Nagar was charged for the offences punishable under Section 7 read with Sections 13(1) and 13(2) of the Act.

B           3.1 The Learned Special Judge, Bharuch after full-fledged trial and appreciation of the entire evidence on record and by detailed judgment and order convicted the accused under Section 7 read with Sections 13(1) and 13(2) of the Act. The Learned Special Judge held the accused guilty and convicted the accused for the aforesaid offences and imposed the sentence of 5 years imprisonment and with fine of Rs.10,000/-.

C           3.2 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the Learned Special Judge in Special A.C.B. Case No.14/2000 - the accused preferred appeal before the High Court being Criminal Appeal No.92 of 2003. By the impugned judgment and order, the High Court without any detailed re-appreciation of the entire evidence on record, has acquitted the accused for the offences for which he was convicted.

D           4. Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the High Court, the State of Gujarat has preferred the present appeal.

E           5. We have heard Ms. Deepanwita Priyanka, Learned Advocate appearing on behalf of State of Gujarat and Shri J.S. Attri, Learned Senior Advocate and Shri Haresh Raichura, Learned Advocate appearing on behalf of respondent – accused.

F           5.1. Number of submissions have been made by learned counsels of the respective parties. However, for the reasons stated herein below, we propose to remand the matter to the High Court, any observation made by this Court may affect either the prosecution or the defence, we refrain from dealing with the submissions made by the Learned counsels appearing on behalf of the respective parties on merits.

G           6. We have gone through the detailed judgment and order of conviction passed by the Learned Trial Court and also the evidence on record laid down by the prosecution as well as the defence. We have perused the impugned judgment and order of acquittal passed by the High Court to ascertain whether the High Court has conformed to the

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principles while exercising in the criminal appeal against the judgment and order of conviction. We find that the High Court has not strictly proceeded in the manner in which High Court ought to have while dealing with the appeal against the order of conviction. On perusal of the impugned judgment and order of acquittal passed by the High Court, we find that, as such, there is no re-appreciation of the entire evidence on record in detail while acquitting the respondent – accused. The High Court has only made general observations on the depositions of the witnesses examined. However, there is no re-appreciation of the entire evidence on record in detail, which ought to have been done by the High Court while dealing with the judgment and order of conviction passed by the Learned Trial Court.

6.1 The High Court ought to have appreciated that it was dealing with the first appeal against the order of conviction passed by the Learned trial Court. Being First Appellate Court, the High Court was required to re-appreciate the entire evidence on record and also the reasoning given by the Learned trial Court while convicting the accused. Non-re-appreciation of the evidence on record may affect the case of either the prosecution or even the accused. Being the First Appellate Court the High Court ought to have re-appreciated the entire evidence on record without any limitation, which might be there while dealing with an appeal against the order of acquittal passed by the Learned Trial Court.

6.2 An Appellate Court while dealing with an appeal against acquittal passed by the Learned trial Court, is required to 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. Therefore, while dealing with the cases of acquittal by the trial Court, the Appellate Court would have certain limitations. Even in the case of acquittal passed by the Learned Trial Court, in the case of *Umedbhai Jadavbhai vs. The State of Gujarat*, (1978) 1 SCC 228, it is observed and held by this Court that “Once the appeal is entertained against the order of acquittal, the High Court is

- A entitled to re-appreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. The High Court would be justified against an acquittal passed by the Learned Trial Court even on re-appreciation of the entire evidence independently and come to its
- B own conclusion that acquittal is perverse and manifestly erroneous”. However, so far as the appeal against the order of conviction is concerned, there are no such restrictions and the Court of appeal has wide powers of appreciation of evidence and the High Court has to re-appreciate the entire evidence on record being a First Appellate Court. Keeping in mind
- C that once the Learned Trial Court has convicted there shall not be presumption of innocence as would be there in the case of acquittal.

7. On perusal of the impugned judgment and order of acquittal passed by the High Court, we find that High Court decision is based on totally erroneous view of law by ignoring the settled legal position. The
- D approach of the High Court in dealing/non-dealing with the evidence was patently illegal leading to grave miscarriage of justice. Therefore, we are of the firm opinion that the impugned judgment and order passed by the High Court acquitting the respondent – accused without adverting to the reasons given by the Learned trial Court while convicting the
- E accused and without re- appreciating the entire evidence on record in detail cannot be sustained and the same deserves to be quashed and set aside. We are of the opinion that therefore matter deserves to be remanded to the High Court to consider and deal with the appeal afresh in accordance with law and on its own merits keeping in mind the observations made hereinabove. The High Court ought to have
- F appreciated that it was dealing with the offences under the Prevention of Corruption Act which offences are against the society. And therefore the High Court ought to have been more careful and ought to have gone in detail. We do not approve the manner in which the High Court has dealt with the appeal.

- G 8. In view of the above and for the reasons stated hereinabove and without expressing anything on merits of the case, the present appeal is allowed. The impugned judgment and order dated 12.01.2015 in Criminal Appeal No.92 of 2003 passed by the High Court acquitting the accused for the offences under the Act for which he was tried is hereby quashed
- H and set aside. The appeal before the High Court is restored to its original

file. The High Court to decide and dispose of the appeal in accordance A  
with law and on its own merits bearing in mind the observations made  
hereinabove. At the cost of repetition we observe that we have not  
expressed anything on merits in favour of either prosecution or even the  
accused and the High Court to decide and dispose of the appeal on its  
own merits as observed hereinabove.

Devika Gujral

Appeal allowed and matter remitted to High Court.