**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL NO. 382 of 1997**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE S.H.VORA**
**and**
**HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

==========

| | | |
|---|---|---|
| 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 ? | |

==========

STATE OF GUJARAT
Versus
RAIB JUSAB SAMA MUSALMAN

==========

Appearance:
MS CM SHAH APP for the Appellant(s) No. 1
MR EE SAIYED(725) for the Opponent(s)/Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE S.H.VORA**
and
**HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

**Date : 19/07/2022**

**ORAL JUDGMENT**
**(PER : HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN)**

1. This Appeal is filed by the appellant – State of Gujarat under Section 378 of the Criminal Procedure Code, 1973 against the judgment and order dated 28/01/1997 passed by the learned Additional Sessions Judge, Palanpur in

Sessions Case No.96/96 acquitting the respondent – original accused from the offence punishable under sections 489(a), 489(b) and 489(c)of Indian Penal Code.

2. The case of the prosecution in nutshell is as under:-

On 22/3/1995 owner of Prabhat Saw Mill named Laxmidas Patel visited the Bank for depositing Rs.25,000/- in Bank of Baroda Bank, Palanpur. As such he had placed the notes of denomination of Rs.100 and Rs.50 before the cashier and when the cashier was counting, some doubt was created regarding 20 notes of Rs.100 i.e. total Rs.2000/-. As such, the Manager was informed accordingly and upon checking the notes, it was found to be counterfeit and as a result, the notes were seized and complaint was filed by the Senior Manager of Bank of Baroda, Palanpur in Palanpur Town Police Station.

Initially investigation was carried out by Head Constable Rajabhai Virabhai. The notes were sent to Government Press, Devas for checking. Thereafter, the investigating officer investigated regarding involvement of the accused and as the accused was not found, "A" Sumary was filed by the then investigating officer, Palanpur Police Station.

Thereafter, on 9/5/1996 upon Fax massage received through D.S.P. Office, as an accused of counterfeit notes

was arrested in Bhuj Police Station, on the basis of the Transfer Warrant, present respondent accused was arrested, investigation was carried out, and statements were recorded and as Certificate from the Government Press, Devas was received stating the 20 notes being counterfeit notes, chargesheet was filed against the present respondent accused.

Upon committal of the case to the Sessions Court, learned Sessions Judge framed charge at Exh.4 against the respondent accused for the aforesaid offences. The respondent accused pleaded not guilty and claimed to be tried.

In order to bring home charge, the prosecution has examined 7 witnesses and also produced 7 documentary evidences before the learned trial Court, more particularly described in para 4 of the impugned judgment and order.



3. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondent accused so as to obtain explanation/answer as provided u/s. 313 of the Code of Criminal Procedure. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him.

4. We have heard learned APP Ms. Shah for the appellant – State and have minutely examined the record and proceedings provided to us during the course of hearing. Learned APP has submitted that the prosecution case is supported by deposition of the investigating officer and P.S.I. Nathekhan Muradkhan PW No.6 and P.I. Balvant Mulji PW No.7, who have carried the investigation and received the information of counterfeit notes in Bhuj and the counterfeit notes found in this case are from the same serial numbers as being the Fax message by the D.S.P. Office. Except this, no other discriminating evidence has been placed on record.

5. Per contra, learned advocate Mr. E.E. Saiyed appearing for respondent – original accused has submitted that nothing incriminating is coming out from the evidence of the prosecution so as to connect the respondent accused with the crime in question.



6. Heard the leaned advocates for the respective parties at length and perused the impugned judgement and order of acquittal passed by the trial court as well as the entire record and proceedings.

7. Before adverting to the facts of the case, it would be worthwhile to refer to the scope in Acquittal Appeals. It is well settled by is catena of decisions that an appellate Court has full Power to review, re-appreciate and consider the

Evidence upon which the order of Acquittal is founded. However, the Appellate Court must bear in mind that in case of Acquittal, there is prejudice 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 reaffirmed and strengthened by the trial Court.

8. We have carefully gone through the entire evidence of main witness PW No.1 – Laxmidas Patel who is the person who had come for depositing the amount in the Bank who is the owner from of Prabhat sow mill. It reveals from the evidence that 20 counterfeit notes were seized when he was depositing the amount but he was unknown to the fact as to how the notes had travelled to him. It is also admitted that nothing comes out from the evidence of PW No.1 as to involvement of the present respondent accused. It also comes out from the evidence of the PW No.1 that the notes were received by him during the transaction of his business but it has not come out from his evidence that the present accused had handed over these notes in transaction of some business with him.

9. So far as recovery of counterfeit notes is concerned, Panchnama is made out, counterfeit notes are seized, which

cannot be denied but to connect the accused with the counterfeit notes, no evidence has been adduced by the prosecution. Mr.Mava Mula is the person who was informed by the cashier regarding counterfeit notes and the Bank Manager filed the complaint accordingly. In the evidence of the Bank Manager, no incriminating case is made out against the respondent accused to connect him with the crime in question.

10. It is also on record that the investigation was handed over initially to Rajabhai Pirabhai, Head Constable, LCB, Palanpur who has sent the notes for checking after duly filling of the form to the Government Press and thereafter he tried to trace out the accused but nobody was found and therefore, he filed "A" Summary in the case. Thus, at the initial stage itself when the investigation was set in motion, nobody was found to be the culprit behind the counterfeit notes so the investigation was shut-down by filing "A" Summary. As such, thereafter, in the year 1996 one Fax message was received by the office of the DSP, Palanpur stating that an accused is found in Bhuj for the offence of counterfeit notes. On the basis of Transfer Warrant, the present respondent accused was arrested on 22/5/1996 from Bhuj Sub Jail and brought to Palanpur, as per the deposition of PSI , Palanpur – Nathekhan PW No.6. From his cross examination, nothing comes out on record to connect the present respondent accused with the offence. It is admitted by the PSI PW No.6 that except Fax message, no

evidence is against the respondent herein – original accused.

11. As per the evidence of Mr.Ansari, P.I. CID Crime, Ahmedabad - PW No.7, he was the person who has sent the Fax massage from his office to all the police stations in the State, as a case being CR No.84 of 1996 was filed of counterfeit notes in Bhuj Police Station and statement of serial numbers of counterfeit notes was also prepared, which was sent to all the DSPs along with the Fax Message. It is admitted by the PW No.7 in his cross examination that statement has not been prepared in his presence and he has no knowledge regarding investigation of Bhuj Case being CR No.84 of 1996.

12. For the sake of arguments, even if the accused is arrested in case of counterfeit notes in connection with Bhuj Case being CR No.906 of 1996 and statement has been sent by Fax, this aspect also does not point out any incriminating evidence against the respondent accused for his involvement in the present case.

13. The prosecution has not been able to prove the presence of the present accused in Palanpur. No business transaction with the PW No.1 has been proved. No material is found in the present offence from the respondent accuse which can relate the respondent accused with the present offence. Merely on the basis of Transfer Warrant, the

accused has been implicate in this case. From the entire evidence on record, no iota of evidence comes on record to point out the guilt of the present respondent accused. Under the circumstances, the learned trial judge has rightly acquitted the respondent accused for the reasons stated in the impugned judgement and order.

14. It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons. A beneficial reference of the decision of the Supreme Court in the case of **State of Rajasthan versus Ram Niwas** reported in **(2010) 15 SCC 463** be made in this regard. In the said case, it has been observed as under:-

> *"6. This Court has held in Kalyan v. State of U.P., (2001) 9 SCC 632 :*
>
> *"8. The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial court.*

*Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. In Kali Ram V. State of Himachal Pradesh, (1973) 2 SCC 808, this Court observed that the golden thread which runs through the web of administration of justice in criminal case 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 Court further observed:*



*"27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is*

*irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice Such a risk can be minimised but not ruled out altogether It may in this connection be apposite to refer to the following observations of Sir Carleton Alien quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:*



*"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and*

*society is in a state of chaos."*

*28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahebrao, (1973) 2 SCC 793, as is clear from the following observations:*

*"Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations."*

*“9. The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact; (ii) the noninterference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court."*

*8. In Arulvelu and another versus State reported in (2009) 10 Supreme Court Cases 206, the Supreme Court after discussing the earlier judgments, observed in para No. 36 as under:*

> *"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*

15. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the 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. (**Ramesh Babulal Doshi V. State of Gujarat** (**1996) 9 SCC 225**). In the instant case, the learned APP for the appellant 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.

16. In the case of **Ram Kumar v. State of Haryana**, reported in **AIR 1995 SC 280**, 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."*

17. As observed by the Hon'ble Supreme Court in the case of **Rajesh Singh & Others vs. State of Uttar Pradesh** reported in **(2011) 11 SCC 444** and in the case of **Bhaiyamiyan Alias Jardar Khan and Another** vs. **State of**

**Madhya Pradesh** reported in **(2011) 6 SCC 394**, 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 in 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.

18. 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 under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

19. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed.



**(S.H.VORA, J)**

**(RAJENDRA M. SAREEN,J)**

R.H. PARMAR.