
(2010) 03 GUJ CK 0066
In the Gujarat High Court
Case No : Criminal Appeal No. 516 of 1997

Arjan Lakhman Gohil

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Essential Commodities Act, 1955 — Section 3, 7
Evidence Act, 1872 — Section 24

Citation : (2010) 03 GUJ CK 0066

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Hriday Buch, for R.M. Chhaya, for the Appellant; A.J. Desai, APP, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The appellant - original accused has filed this Appeal u/s 374 of Cr.P.C. challenging the Judgment and order of conviction dated 30.04.1997 passed by the learned Special Judge & Additional Sessions Judge, Junagadh, in Special Criminal Case No. 10 of 1994, whereby the learned Special Judge has held the appellant - accused guilty for the offences charged against him.

2. Brief facts of the prosecution case is that on 21.1.1994 the complainant Bipinchandra Mashru, Co-Operative Officer, Gr-I, along with Shri P.M. Raval, the District Registrar had gone to the field of the appellant - accused at village Motha and found that machine for crushing sugarcane attached with 10 HP Oil Engine was operating and 8 to 10 labourers were working there and were manufacturing jaggery of sugarcane juice in a big pan and about 17 to 18 tonnes of sugarcane was lying there and 400 tins filled with jaggery were lying there. It is alleged that on being asked about the licence for manufacturing jaggery, the accused has replied that he has applied for licence, but has not got the same. Thereafter the complainant recorded the statement of accused and served notice (Exh.8) to

stop manufacturing and production of jaggery. It is also alleged that the District Registrar had also issued notice (Exh.9) by Regd. Post A.D., but the same was not replied by the accused. Thereafter, after obtaining necessary sanction the complaint was lodged against the accused before Una Police Station on 16.4.1994, which was registered as CR No. II-44/1994.

3. On completion of investigation the charge-sheet against the accused came to be submitted before the concerned Court. The prosecution has examined the witnesses and at the end recorded the statement of accused u/s 313 of Cr.P.C. At the conclusion of the trial, after considering the oral as well as documentary evidence led by the parties and the arguments advanced, the learned Special Judge, vide impugned Judgment and order dated 30.4.1997, held the accused - appellant guilty for committing breach of Section 3 of the Essential Commodities Act and u/s 7 of the said Act and ordered the accused to undergo Simple Imprisonment of six months and to pay fine of Rs. 1,000/- i/d to further undergo S.I. for two months.

4. Being aggrieved by and dissatisfied with the Judgment and order dated 30.04.1997 passed by the learned Special Judge & Additional Sessions Judge, Junagadh, in Special Criminal Case No. 10 of 1994, the appellant (original accused) has preferred this Appeal.

5. Heard learned Advocate Shri Hriday Buch, appearing for Mr. Chhaya, on behalf of the appellant - original accused and learned A.P.P. Shri R.C. Kodekar for the respondent - State. I have gone through the Judgment and order passed by the learned Special Judge and also gone through the oral as well as documentary evidence produced before me. I have also gone through the papers produced before me.

6. Learned Advocate Mr. Hriday Buch for the appellant has contended that the prosecution has not examined the material witness Shri P.M. Rawal, Registrar, who was allegedly accompanied and visited the place with the complainant. He has contended that when the raid was carried out by the complainant there were 8 to 10 workers working at the field, however, none of these workers were examined nor their statements were recorded. He has contended that the prosecution has not recorded the statement of any of the independent witnesses. He has also contended that the complainant himself has stated in his cross-examination that no verification was made of the ownership and possession of the field nor any effort was made to find out from the Talati-cum-Mantri as to the fact that the field was owned by the appellant - accused. He has contended that as per panchnama Exh.14 the land was supposed to be the gauchar land and, therefore, independent corroborative evidence ought to have been taken in order to establish the case that the field was of the ownership of the appellant - accused. He has also contended that as per Section 24 of the Indian Evidence Act an extra-judicial confession is a weak piece of evidence which cannot be solely relied upon by the trial Court. He has contended that the investigation was not done in a proper manner and no documents as mentioned by the

complainant were provided by the prosecution to the accused at the time of filing of charge-sheet. He has contended that the muddmal pump which was the link to prove the alleged offence was not seized. He, therefore, contended that the learned Judge has failed to appreciate the material evidence on record and wrongly believed the case of the prosecution and held the appellant - accused guilty for the offences charged against him. Therefore, the conviction and sentence imposed by Learned A.P.P. Shri Desai has supported the Judgment and order of the learned Special Judge. He has contended that from the oral as well as documentary evidence it is established that the prosecution has proved its case beyond reasonable doubt. He, therefore, contended that the trial Court has not committed any error in holding the appellant - accused guilty for the charges levelled against him and, therefore, no interference is required to be called for.

7. I have gone through the Judgment and order of the trial Court. I have also perused the oral as well as documentary evidence on record. The prosecution has examined the complainant vide Exh.6. As per his deposition he had visited the place of offence where he saw that 8 to 10 workers were working and preparing the "Gur" from sugarcane. He has clearly stated in his cross examination that he had not asked any proof from the accused regarding the ownership of the field. He has stated that before visiting the site i.e. on 21.1.1994 he had not seen the accused and thereafter for the first time in the Court he had seen the accused. He had clearly admitted in his cross examination that he had not taken the statement of any independent witnesses who were present at the scene of offence. He has clearly deposed that he has not inquired from the Talati-cum-Mantri about the ownership of the field - scene of offence. He has also deposed that at the time of charge-sheet the complainant has produced the documents, but the copy of the same were not given to the accused. It is clear from the evidence that there is no proof regarding the identification of the accused. From the evidence it is also clearly established that complainant has not taken care to obtain the proof regarding the ownership of the field - scene of offence where the accused was manufacturing and producing the "Gur" from the sugarcane. Further, no material and independent witnesses have been examined by the prosecution. The pump used for preparing "Gur" is also not seized. Therefore, in my opinion, the learned Judge has committed grave error in believing the case of the prosecution. Even the learned APP is not in a position to convince this Court that the prosecution has proved its case beyond reasonable doubt and also unable to say regarding the ownership of the field - scene of offence.

8. From the oral as well as documentary evidence, in my view, the learned trial Judge has erred in holding the appellant - accused for the offences charged against him. Hence, the story put forward by the prosecution is not trustworthy and is doubtful and the prosecution has failed to establish the guilt against the accused and hence, there is error apparent of appreciation of fact and law resulting into miscarriage of justice. Hence, impugned Judgment requires to be quashed and set aside.

9. In view of above, this Appeal is allowed. The Judgment and order dated 30.04.1997 passed by the learned Special Judge & Additional Sessions Judge, Junagadh, in Special Criminal Case No. 10 of 1994, holding the appellant - accused guilty for committing breach of Section 3 of the Essential Commodities Act and u/s 7 of the Act, is hereby quashed and set aside. The appellant - accused is acquitted from the charges levelled against him. Fine, if paid, be refunded to the appellant - accused. Bail Bond, if any, shall stand cancelled. Record & Proceedings be sent to the trial Court immediately.