

(2010) 12 GUJ CK 0034
In the Gujarat High Court
Case No : Criminal Appeal No. 558 of 2003

Ashwinbhai H. Acharya Food Inspector	APPELLANT
Vs	
Dilipbhai Jayantilal and Another	RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2010) 4 Crimes 253

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

Bench : Single Bench

Advocate : Utpal M. Panchal, for the Appellant; H.L. Jani, Ld. Addl. Public Prosecutor for Opponent 2, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellant has preferred the present Appeal u/s 374 of the Code of Criminal Procedure, 1973 against the judgment and Order of acquittal dated 05th January 2002 passed by the learned Judicial Magistrate First Class (Municipal), Rajkot, in Criminal Case No. 364 of 1992 for the offences punishable under the Prevention of Food Adulteration Act, 1954, whereby the learned Magistrate has acquitted the Respondent No. 1—accused of the charges levelled against him.

2. The short facts of the prosecution case is that the Appellant is serving as Food Inspector. It is the case of the prosecution that on 16th June 1992 visited the shop of the Respondent No. 1—accused and had taken three glass each of 200 m.l. Rose Cold Drink as sample after paying consideration. It is also the case of the complainant that sample was taken in presence of panch witness. It is also the case of the prosecution that after following due procedure of sealing, the sample was sent to the Public Analyst, Baroda for analysis. On examination, the Public Analyst found that the said sample was adulterated and is not as per the standard prescribed under the Prevention of Food Adulteration Act. Therefore, after following the due procedure, complaint was filed against the Respondent

No. 1 accused in the Court of learned Judicial Magistrate First Class (Municipal), Rajkot for violation of provision of Section 7 read with Section 16 of the Prevention of Food Adulteration Act.

3. Thereafter, statement of complainant was recorded. Considering the statement given by the complainant as the prima-facie case was established, charge-sheet came to be issued against the Respondent No. 1-accused. Thereafter, trial was conducted before the learned Magistrate. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence. After considering the oral as well as documentary evidence, the learned Magistrate has acquitted the Respondent No. 1 accused from the charges alleged against him by his judgment and Order of acquittal dated 05th January 2002.

4. Being aggrieved and dissatisfied with the said judgment and Order of acquittal dated 05th January 2002 passed by the learned Judicial Magistrate First Class (Municipal), Rajkot, in Criminal Case No. 364 of 1992, the Appellant-Food Inspector, has preferred the above mentioned Criminal Appeal.

5. Heard Mr. Utpal Panchal, learned Counsel for the Appellant-Food Inspector. I have also gone through the papers and the judgment and Order of acquittal passed by the learned Magistrate.

6. Mr. Panchal, learned Counsel for the Appellant, has contended that the judgment and Order of acquittal passed by the learned Magistrate is not proper, legal and it is erroneous. He has also argued that the learned Magistrate has not considered the evidence of the witnesses. He has argued that the learned Magistrate has not considered the fact that the Food Inspector has followed proper procedure while collecting the sample, etc. are just and proper. The sample was seized and sealed properly. Yet, the learned Magistrate has not considered the evidence of prosecution. He, therefore, contended that the order of acquittal passed by the learned Magistrate is without appreciating the facts and evidence on record and is, therefore, required to be quashed and set aside by this Hon"ble Court.

7. It is a settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the Respondent accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court.

8. Even in a decision of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. Reported in (2007)3 SCC 75, the Court has reiterated the powers of the High Court in such cases.

9. Similar principle has been laid down by the Apex Court in the cases of State of

Uttar Pradesh v. Ram Veer Singh & Ors, reported in AIR 2007 SCW 5553 and in Girja Prasad (Dead) by L Rs v. state of MP, reported in AIR2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

10. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, 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 Alias Vemareddy and Another,

11. 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.

12. I have gone through the order of acquittal passed by the learned Magistrate. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned advocates for the parties.

13. The trial Court has, after appreciating the oral as well as documentary evidence, found that the prosecution has not proved the case against the Respondent No. 1 accused beyond reasonable doubt. It is also observed by the learned Magistrate that the prosecution has not followed the mandatory provision of Rule 14 of the Rules. It is also observed by the learned Magistrate that there are contradiction in the statement of complainant and the witnesses. The trial Court has also observed that there are serious lacuna in the oral as well as documentary evidence of prosecution. Nothing is produced on record of this appeal to rebut the concrete findings of the Trial Court.

14. Thus, the Appellant could not bring home the charges against the Respondent No. 1 accused in the present appeal. The prosecution has miserably failed to prove the case against the Respondent No. 1-accused. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

15. Mr. Utpal Panchal, learned Counsel for the Appellant, is not in a position to show any evidence to take a contrary view in the matter or that the approach of the trial Court is vitiated by some manifest illegality or that the decision is perverse or that the trial Court has ignored the material evidence on record.

16. In above view of the matter, I am of the considered opinion that the trial Court was completely justified in acquitting the Respondent No. 1-accused of the charges levelled against him.

17. 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.

18. I am, therefore, in complete agreement with the findings, ultimate conclusion

and the resultant order of acquittal recorded by the trial Court and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. The judgment and Order of acquittal dated 05th January 2002 passed by the learned Judicial Magistrate First Class (Municipal), Rajkot, in Criminal Case No. 364 of 1992 is hereby confirmed. Bail bond, if any, shall stand discharged. Record and Proceedings, if any, be sent back to the trial Court concerned forthwith.