

(2009) 05 GUJ CK 0014
In the Gujarat High Court
Case No : Criminal Appeal No. 112 of 1998

Dahyabhai Kalubhai Solanki

APPELLANT

Vs

C.K. Engineering Industries Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Water (Prevention and Control of Pollution) Act, 1974 — Section 21, 24, 25, 26, 43

Citation : (2009) 05 GUJ CK 0014

Hon'ble Judges : H.B. Antani, J

Bench : Single Bench

Advocate : KP Shah and Sunil L. Mehta, No. 1, for the Appellant; Krina Calla, APP for Opponent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

H.B. Antani, J.—The present appeal, preferred u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal passed by the learned Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 2255 of 1990 on 03.04.1997.

2. As per the prosecution case, the appellant, who was serving as Assistant Law Officer with the Gujarat Pollution Control Board, filed criminal complaint against respondent Nos. 1 to 4. The appellant was given authority to file criminal case against respondent Nos. 1 to 4 in the Court of learned Chief Metropolitan Magistrate, Ahmedabad for the offence punishable under Sections 24, 25, 26, 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974. The learned Chief Metropolitan Magistrate, after considering the deposition adduced by the prosecution and the documentary evidence, by judgment and order dated 03.04.1997, acquitted all the accused for the offence with which they were charged. The appellant, being aggrieved by the said order, has preferred the present appeal contending therein that the order passed by the learned Judge is not based on evidence on record of the case and, therefore, the

order is required to be quashed and set aside.

3. It is submitted by learned advocate Mr. Mehta for the appellant that the learned Judge has committed egregious error in acquitting the accused by holding that the provisions of Section 21 of the Act were not complied with by the appellant after taking samples of the polluted water. The learned Judge has also erred in holding that the analyst, who carried out the analysis, was required to be examined and, in view of the non-examination of the analyst, the prosecution has not established the involvement of respondent Nos. 1 to 4 in the commission of offence and, therefore, they are required to be acquitted for the offence punishable under Sections 24, 25, 26, 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974. Thus, it is submitted by the learned advocate that the order passed by the learned Judge suffers from infirmity and, therefore, it is required to be quashed and set aside and respondent Nos. 1 to 4 be convicted for the offence punishable under Sections 24, 25, 26, 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974.

4. Though served, none appears for respondent Nos. 1 to 4. Learned A.P.P. Ms. Krina Calla, representing respondent No. 5-State, submitted that the learned Judge has not considered the oral deposition as well as the documentary evidence in its true perspective while acquitting respondent Nos. 1 to 4 for the offence punishable under Sections 24, 25, 26, 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 and, therefore, the order passed by the learned Judge is required to be quashed and set aside and respondent Nos. 1 to 4 be convicted for the offence punishable under Sections 24, 25, 26, 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974.

5. I have heard learned advocate Mr. Sunil L. Mehta for the appellant and learned A.P.P. Ms. Krina Calla for respondent No. 5-State at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record.

6. Taking into consideration the deposition adduced by the complainants - Dahyabhai Kalubhai Solanki and Sushil Haribhai Vegda, it becomes clear that there was a breach of Rule 27 of the Gujarat Water (Prevention and Control of Pollution) Rules, 1976 (hereinafter referred to as the "Rules 1976"). The said Rule 27 of Rules 1976 reads as under:

(a) The sample shall be collected preferably in polythene container and shall be labelled giving the following details, namely:

(i) the source, and nature of sample,

(ii) the date and time of collection,

(iii) the method of preservation used.

(b) Atleast 2.5 liters of the materials required to be analysed shall be sent in a container, the capacity of which shall not be less than 3 liters and not be more than 5 liter.

(c) The sample shall accompany with the letter from the concerned authority and shall give the number of parameters to be analysed.

(d) The sample shall be preferably transported to the laboratory by a messenger.

(e) The messenger shall take receipt of sample from the laboratory.

(f) Fees for analysis shall be paid either in advance or at the time of submission of sample.

(g) The samples shall be preserved as per the instruction given in IS-2488-1966 and 1968 (Part I, II and III) and IS-4733-1968.

7. Considering the aforesaid Rule and in view of the evidence adduced by the prosecution, it becomes clear that there was complete breach of Rule 27 of Rules 1976 and, in view of breach of Rule 27 of Rules 1976 committed by the appellant, respondent Nos. 1 to 4 are required to be acquitted for the offence punishable under Sections 24, 25, 26, 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974. This Court has, in case of Dahyabhai Kalubhai Solanki Vs. Devine Intermediates and Chemicals and Others, held that when the requirements as laid-down in Rule 27 of Rules 1976 are not complied with, then the accused is entitled to get the acquittal.

8. In view of the aforesaid facts and circumstances of the case, since the breach of Rule 27 of Rules 1976 has been committed by the appellant, respondent Nos. 1 to 4, in my considered view, are rightly acquitted by the learned Judge for the offence punishable under Sections 24, 25, 26, 43 and 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974.

9. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Judge, the Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and this Court is of the opinion that expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, , and (2) State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given

cogent and convincing reasons for acquitting the respondent. The learned advocate for the appellant has failed to convince this Court to take a view contrary to the one already taken by the learned Judge and, therefore, the appeal is liable to be dismissed.

10. For the foregoing reasons, the appeal fails and it is hereby dismissed.