

(2010) 02 GUJ CK 0092
In the Gujarat High Court
Case No : Criminal Appeal No. 2327 of 2009

D.G. Patel Food Inspector

APPELLANT

Vs

Gautambhai Haribhai Patel and Others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 7(1)(2)
Prevention of Food Adulteration Rules, 1955 — Rule 32

Citation : (2010) 02 GUJ CK 0092

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

Bench : Single Bench

Advocate : Shaili A Kapadia, for the Appellant; D.C. Sajpal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of

acquittal dated 31.03.2009 passed by the learned Metropolitan Magistrate, Court No. 6, Ahmedabad in Criminal Case No. 17 of 2002, whereby

the accused has been acquitted of the charges leveled against him for the offence punishable u/s 16(1)(a)(1) r/w. Section 7(1)(2) of the Prevention of Food Adulteration Act.

2. The brief facts of the prosecution case are that the appellant was serving as a Food Inspector in the Health Flying Squad Department of

Ahmedabad Municipal Corporation. It is alleged that on 21.03.2002 at about 11.30 a.m., the appellant accompanied by his peon Haribhai G.

Parmar visited Uday Beverages, Shree Khodiyarnagar, Vasna Police Chowki Road, Vasna, Ahmedabad wherein the respondent No. 1 was

present and doing the business. The appellant has inquired about the place of business. It is alleged that the appellant has asked about the pouch of

water. The respondent has replied that it is pure drinking water of silver brand and the price of one packet of pouch of 250 ml is Rs. 1/-. It is

alleged that the appellant has paid Rs. 36/- in cash and purchased 36 packets of pure drinking water of silver brand, each packet containing 250

ml. The sample was sent for analysis to the Public Analyst as per the provisions of the Act, whose report indicates that the sample is adulterated.

On the basis of the said fact complaint was filed in the Court of learned Metropolitan Magistrate which came to be registered as Criminal Case

No. 17 of 2002.

3. At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the

defence, the learned Sessions Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 16.05.2009.

4. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court the appellant has preferred the present appeal.

5. Heard learned advocate Ms. Shaili Kapadia for the appellant and learned APP Mr. D.C. Sajpal for the respondent No. 2 - State.

6. Learned advocate Ms. Shaili Kapadia for the appellant submitted that the impugned judgment and order of the learned Magistrate is bad in law,

against the settled principles of the Act and the Prevention of Food Adulteration Rules and learned Magistrate erred in appreciating the established

principles of law. It is submitted that the learned Magistrate has erred in appreciating that the report of the Public analyst clearly reveals that the

sample which is of pure drinking water is clearly adulterated as it contains 200 ml which cannot be more than 20 ml. It was contended by learned

advocate for the appellant that the judgment and order of the learned Magistrate is against the provisions of law; the learned Magistrate has not

properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved

the whole ingredients of the offence against the present respondents. Learned advocate for the appellant has also taken this Court through the oral

as well as the entire documentary evidence.

7. At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order

of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. In the case of M.S.

Narayana Menon @ Mani Vs. State of Kerala and Another, the Apex Court has narrated about the powers of the High Court in appeal against

the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction.

Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of

law that where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

8. Further, in the case of Chandrappa and Others Vs. State of Karnataka, the Apex Court laid down the following principles:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with

an appeal against an order of acquittal emerge:

[1] An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the

evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted

conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such

phraseologies are more in the nature of "flourishes of language" to emphasis the reluctance of an appellate court to interfere with acquittal than to

curtail the power of the court to review the evidence and to come to its own conclusion.

[4] An appellate court, however, must 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.

[5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal

recorded by the trial court.

9. Thus, it is a settled principle that while exercising appellate power, even if two reasonable conclusions are possible on the basis of the evidence

on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

10. Even in a recent 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. In para 16 of the said decision the Court has observed as under:

16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would

not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion

arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two

views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the

appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court

has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances,

to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is

connected with the commission of the crime he is charged with.

11. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR

2007 SCW 5553 and in Girja Prasad (Dead) by LRs v. state of MP reported in AIR 2007 SCW 5589. Thus, the powers which this Court may

exercise against an order of acquittal are well settled.

12. 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 reasonings,

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, wherein, it is held as under:

This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, that it is not the duty of the appellate court when it

agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court

expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

13. 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.

14. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the

trial court and also considered the submissions made by learned advocate for the appellant. The trial Court has given the finding that the sanctioning

authority has not evaluated that there is violation of Rule 32(e) of the Prevention of Food Adulteration Rules The trial Court has also rightly come

to the conclusion that the notice u/s 13(2) of the Prevention of Food Adulteration Act has been served upon the accused, but the prosecution has

failed to prove it and, therefore, the prosecution has committed the breach of law. Thus, from the evidence itself it is established that the

prosecution has not proved its case beyond reasonable doubt.

15. Ms. Shaili Kapadia, learned advocate for the appellant is not in a position to show any evidence to take a contrary view of 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 the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent of the

charges leveled against him.

17. I am of the view 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 court below

and hence find no reasons to interfere with the same and hence the appeal deserves to be dismissed.

19. In view of the above, the appeal fails and is dismissed. Bail bond, if any, stands cancelled.