

(2010) 02 GUJ CK 0022
In the Gujarat High Court
Case No : Criminal Appeal No. 649 of 2002

Hasam Rasoolbhai Vora

APPELLANT

Vs

Cesarali Mohammedali Dodia and Another

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)

Citation : (2010) 02 GUJ CK 0022

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

Bench : Single Bench

Advocate : Mirza, for R.R. Marshall, for the Appellant; D.K. Modi, M.D. Modi and Mini Nair, APP, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378(4) of the Code of Criminal Procedure, 1973, is directed against the Judgment and order of acquittal dated 17.02.2001 passed by the learned Judicial Magistrate, First Class (Municipal Court), Surat, in Prevention of Food Adulteration Case No. 59 of 1995, whereby the learned Magistrate has acquitted the respondents - accused from the charges alleged against them.

2. The short facts of the prosecution case is that the complainant, Food Inspector visited the business place of the respondents - accused and purchased the sample of "curd" for the purpose of analysis and after following the due procedure sent the same to the Public analyst, for analysis. In the Report the Public Analyst found that the sample was adulterated. Therefore, on the basis of Report, after obtaining necessary sanction the complainant filed complaint against the respondent - accused.

3. Thereafter the trial was conducted before the learned Magistrate. The prosecution has examined the witnesses and also relied upon the documentary evidence. After considering the oral as well as documentary evidence the learned

Magistrate has acquitted the respondent - accused from the charges alleged against him, vide Judgment and order dated 17.02.2001.

4. Being aggrieved and dissatisfied with the said Judgment and order dated 17.02.2001 passed by the learned Magistrate, in P.F.A. Case No. 59 of 1995, the appellant - Food Inspector, Surat Municipal Corporation, has preferred the above mentioned Criminal Appeal.

5. I have heard Mr. Mirza, for Mr. R.R. Marshal, learned Advocate, appearing on behalf of the appellant, learned Advocate, appearing on behalf of the original accused and learned APP Ms. Mini Nair, appearing on behalf of the respondent No.1 - State. I have also gone through the papers and the Judgment and order passed by the trial Court.

6. Learned Advocate for the appellant has taken me through the evidence of prosecution witnesses and the documentary evidence and submitted that from the above evidence it is established that the prosecution has successfully proved its case beyond reasonable doubt. He has contended that from the complainant - Food Inspector has fully supported the case of the prosecution. He, therefore, contended that the Judgment and order passed by the learned Magistrate is without appreciating the facts and evidence on record.

7. I have gone through the Judgment of the trial Court. I have also perused the reasons assigned by the learned Magistrate.

8. 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.

10. 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.

11. 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.

12. 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.

13. 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,

14. 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.

15. 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 before the trial court and also considered the submissions made by learned Advocate for the appellant. It appears from the record that the prosecution has not followed the provisions of Sections 13(2) of the Act. When the main ingredients is not followed by the prosecution, then the prosecution has no right to say that the trial Court has committed an error in disbelieving the case of the prosecution.

16. The trial court has, after appreciating the oral as well as documentary evidence, has clearly found that when the sample "curd" was kept for more than four months then it loses its fitness and the sample was de-composed. The trial Court, from the record, has also found that both the reports of analyst are contradictory. The learned Magistrate has also found that the story put-forward by the prosecution is not believable. The trial Court has also found that there are serious lacunae 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.

17. Thus, the appellant could not bring home the charge against the respondents - accused in the present Appeal. The prosecution has miserably failed to prove the case against the appellant - accused. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

18. Learned Advocate 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.

19. In above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondents of the charges leveled against them. 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.

20. 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. Hence the appeal is hereby dismissed.

21. In view of above the Appeal is dismissed. The judgment and order dated 17.02.2001 passed by the learned Magistrate, in P.F.A. Case No. 59 of 1995, acquitting the respondents - accused from the charges alleged against them is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P may be sent back to the trial Court.