

(2009) 11 GUJ CK 0090
In the Gujarat High Court
Case No : Criminal Appeal No. 212 of 1992

Kanatilal M. Limbachia

APPELLANT

Vs

Kanubhai S. Barot and Another

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248, 378
Prevention of Food Adulteration Act, 1954 — Section 16, 7(1)

Citation : (2009) 11 GUJ CK 0090

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

Bench : Single Bench

Advocate : Deep D. Vyas, for the Appellant; Vivek Barot, for Opponent 1 and H.L. Jani, Additional Public Prosecutor for Opponent 2, 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 3.12.19901 passed by the learned Chief Judicial Magistrate, First Class, Navsari in Criminal Case No. 5807 of 1985, whereby the accused has been acquitted from the charges leveled against him.

2. The brief facts of the prosecution case are as under:

2.1 The complainant is a Food Inspector. On 27.2.1985, the said Food Inspector took sample of milk from the respondent No. 1. In presence of panchas, the appellant - complainant approached respondent No. 1 - accused and asked for sample for analysis. The said sample was sent for analysis and same was not found as per standard. Therefore, compliant for the offences punishable under Sections 7(1) and 16 of the Prevention of Food Adulteration Act, 1955 before learned Chief Judicial Magistrate First Class, Navsari.

2.2 Therefore, Criminal Case No. 5807 of 1985 with respect to the aforesaid offences was filed against the respondents before the learned Chief Judicial

Magistrate, First Class, Navsari. Necessary investigation was carried out and statements of several witnesses were recorded. Ultimately, charge-sheet was filed against them before the court of learned Chief Judicial Magistrate First Class, Navsari. After hearing the parties and perusing documentary as well as oral evidence, the learned Judge has acquitted the accused under Sections 248 of the Code of Criminal Procedure for the offences punishable under Sections 7(1) and 16 of the Prevention of Food Adulteration Act.

2.3 To prove the case against the present accused, the appellant produced oral as well as documentary evidence.

2.4 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned trial Court the appellant has preferred the present appeal.

3. It was contended by learned Counsel Mr. Deep D. Vyas that the judgment and order of the trial Court is against the provisions of law; the trial Court 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 evidence against the present respondent. Learned Counsel has also taken this Court through the oral as well as the entire documentary evidence.

4. 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 judgement 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.

4.1 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 M.P. reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

4.2 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.

4.3 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.

5. 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 Counsel for the appellant. The trial court has clearly recorded a finding that complainant has failed to prove the case against the accused. Thus, from the evidence itself it is established that the appellant has not proved its case beyond reasonable doubt.

6. Mr. Vyas, learned Counsel 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.

7. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

8. 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.

9. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence I find no reasons to interfere with the same. Hence the appeal is hereby dismissed. Bail bond, if any, stands cancelled. Record and proceedings to be sent back to trial Court, forthwith.