

(2009) 11 GUJ CK 0052
In the Gujarat High Court
Case No : Criminal Appeal No. 932 of 1993

R.G. Bendbar

APPELLANT

Vs

Maheshkumar Nagindas Shah and Another

RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(1), 313, 378
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2009) 11 GUJ CK 0052

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

Bench : Single Bench

Advocate : Pranav G. Desai, for the Appellant; 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 23.4.1991 passed by the learned Judicial Magistrate, Municipal Court, Baroda, in Criminal Case No. 2040 of 1988, 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 appellant was working as Food Inspector under Vadodara Municipal Corporation. He is original complainant and had filed criminal case before the learned trial Judge, Rajkot on the ground that on 8.3.1988, the complainant made visit to the shop of accused and he took sample of coconut oil for analysis purpose, for he paid Rs. 15/- towards the said oil. The said sample was taken in presence of panchas and the procedure of taking sealing and sending the sample was meticulously followed as per the mandatory provisions of the Prevention of Food Adulteration Act. The sample was sent for analysis to the Laboratory and report of the Laboratory was not found as per the standard prescribed under the Act and after verifying the report of analysis, the sample was not found as per

the mandatory provisions. Therefore, complaint was filed on 29.3.1988 for the offences u/s 7 and 16 of the Prevention of Food Adulteration Act.

2.2 Therefore, Criminal Case No. 2040 of 1988 with respect to the aforesaid offence was filed against the respondents before the learned Judicial Magistrate, Municipal Court, Vadodara. Necessary investigation was carried out and during the course of investigation, chargesheet was filed against him before the court of learned JMFC, Baroda. The statement of the accused u/s 313 of Cr.P.C., has been recorded during the course of trial.

2.3 To prove the case against the present accused, the appellant has produced documentary as well as oral evidence. To prove the case, appellant has examined one witness. After hearing the parties, the learned trial Judge, Baroda, has acquitted the accused u/s 248(1) of Code of Criminal Procedure for the offences alleged against the accused under Sections 7 and 16 of the Food Adulteration Act.

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

4. It was contended by learned Counsel Mr. Pranav Desai 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.

4.1 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.

4.2 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.

4.3 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.

4.4 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.

5. I have gone through the judgment, analysis report Exhibit 22 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 the accused has not committed any offence under the Act. In short, the the reasons assigned by the trial Court are just and proper and I do not find any reason to interfere with. Thus, from the evidence itself it is established that the appellant has not proved its case beyond reasonable doubt.

6. 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 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.