
(2000) 08 BOM CK 0059
In the Bombay High Court
Case No : Criminal Appeal No. 27 of 1998

State	Vs	APPELLANT
Datta Ramnath Naik (Shri)		RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377
Prevention of Food Adulteration Act, 1954 — Section 16, 2

Citation : (2001) 5 BomCR 423 : (2001) 1 MhLj 942

Hon'ble Judges : H.L. Gokhale, J;D.K. Trivedi, J

Bench : Division Bench

Advocate : A.P. Lawande, P.P, for the Appellant; S.D. Lotlikar and A.D. Bhobe, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, J.—This is an appeal by the State against the order dated 8th January 1998 passed by the Judicial Magistrate, First Class, Ponda, acquitting the respondent in Criminal Case No. 44/N/1992, which had been filed under the provisions of Prevention of Food Adulteration Act, 1954 (hereinafter referred to as said Act).

2. The charge against the respondent/accused was that on 21st November 1991 at about 3.15 p.m. when the concerned Food Inspector visited the shop of the respondent and when he collected the sample of groundnut oil, on analysis it turned out to be oil from cotton seeds. The respondent was, therefore, charged for misbranding the food item under the provisions of section 2(ix)(c) read with section 2(v)(a) of the said Act and was, accordingly prosecuted u/s 16(a)(i) thereof.

3. The appellant examined three witnesses, that is, the Food Inspector Rajiv Korde (P.W. 1), then, the Public Analyst (P.W. 2) and the panch witness (P.W. 3). As far as P.W. 3 is concerned, he turned hostile, though he admitted having signed the panchanama. The defence of the respondent in his statement u/s 313

Cri.P.C. was that of total denial. The learned Judicial Magistrate, First Class, who heard the matter, found an infirmity with respect to the manner in which the sample was forwarded for analysis inasmuch as, according to him, there was no evidence on record to show that for two days, that is, from 21st November 1991 to 22nd November 1991, with whom the samples were placed. But, that apart, the learned Judge accepted the submission of the defence that there was a possibility of a mistake. The defence taken by the respondent/accused was that the Food Inspector came to the shop suddenly. He did not ask the respondent/accused to sell a particular item, namely, groundnut oil. The Food Inspector himself collected the sample and then forwarded it for analysis later. As canvassed by Mr. Lotlikar, the learned Counsel appearing for the respondent/accused in this Court, the accused was under the impression that what was collected was groundnut oil and it was only when the report of the analyst was received that he realized that it was not groundnut oil but was oil from cotton seeds. The learned trial Judge in paragraph 9 of his order has in terms observed as follows :-

"There is a possibility of purchasing cotton seed oil by the complainant in place of groundnut oil and this possibility cannot be ruled out in the light of the testimony of P.W. 1."

This led to the order of acquittal, which is presently challenged.

4. Mr. Lawande, learned Public Prosecutor, submitted that there is no scope for any such possibility in the instant case. He submitted that immediately at the time of the raid, P.W. 1 took a receipt from the respondent for the payment of the price of the item collected. That receipt clearly stated that what was purchased was groundnut oil. It has been signed by the respondent in English. Thereafter on the same day P.W. 1 recorded in another receipt in Form VI that he had taken the particular food item, that is, groundnut oil, by way of a sample to have it analysed by the Public Analyst. On the carbon copy thereof the respondent has signed in English acknowledging that he had received the original receipt. Lastly the respondent was also given a notice on 21st November 1991 u/s 14-A of the said Act to disclose the source from where the item was purchased and in that notice also groundnut oil was specifically mentioned. Mr. Lawande also referred to the fact that in the panchanama groundnut oil was specifically mentioned.

5. That apart, learned Public Prosecutor submitted that in the statement u/s section 313 Cri.P.C. no such plea of mistake was taken. Not only that, in the cross-examination of P.W. 1 it was not suggested to him that such a thing did happen by mistake. What was suggested to him was that the concerned sample was forcibly taken from the cotton seed oil from the tin kept in the shop. Mr. Lawande, therefore, submits that the contention of the respondent that the respondent/accused was under a mistaken impression is an afterthought. The defence as disclosed in the cross-examination of P.W. 1 was that there was a deliberate act on the part of the prosecution. If that was so, it was on the part of

the accused to have pointed out that the oil collected was not groundnut oil. The respondent/accused ought to have said so at least when the receipt was issued. Thereafter when the receipt in Form VI and subsequently when the notice u/s 14-A of the said Act were sent to the respondent/accused, he could have clarified that what was collected was not groundnut oil but was cotton seed oil. Mr. Lawande, therefore, submitted that the reasoning of the learned trial Judge was erroneous and the respondent/accused ought not to have been permitted the defence of possibility, which the learned Judge has done.

6. Mr. Lotlikar, learned Counsel appearing for the respondent, on the other hand, submitted that the fact is that such defence can be legally possible in the facts of the case and the learned trial Judge has permitted it. The submission of Mr. Lotlikar is that when the Food Inspector came to the shop, he did not come on any complaint. It has also been brought on record that there was no complaint against the respondent/accused in the past leading to the particular visit of the Food Inspector. It has also been established after analysis that the sample when checked by the Public Analyst was found to be another type of edible oil instead of groundnut oil. It is not a case of adulteration. Mr. Lotlikar submitted that in the shop there were different types of containers in which these oils were kept and from the evidence on record it is clear that P.W. 1 did not ask the respondent/accused to sell to him groundnut oil or oil from any particular container. The examination-in-chief of P.W. 1 discloses that he entered the shop, he disclosed his identity and, thereafter, he immediately collected a sample of groundnut oil and took a receipt. It is also clear from the evidence of P.W. 1 that he could not identify groundnut oil and cotton seed oil by colour or smell but he could only identify the coconut oil from its smell. This being the position, Mr. Lotlikar submitted that on the facts of the case if the learned trial Judge has accepted the possibility of legal defence, in appeal against acquittal the findings ought not to be disturbed.

7. Mr. Lotlikar, learned Counsel appearing for the respondent/accused, relied upon two Judgments in this behalf. Firstly he referred to and relied upon a Judgment of this Court in *The State Vs. Vithal Maruti Patil*, . In that matter a Division Bench of this Court Per Gajendragadkar, J., (as he then was in this Court) has observed as follows :-

"Inevitably, therefore, the Government Pleader must satisfy the High Court in appeals against acquittals that the conclusions of the trial Court are not at all possible on the evidence on the record. In other words, the High Court must not only come to the conclusion that the offence is proved beyond a reasonable doubt; but must also feel satisfied that it is difficult, if not impossible, to see how a contrary view can be held on the material available in the case."

He referred to and relied upon a recent Judgment of the Apex Court in *Dhanna, etc., v. State of Madhya Pradesh*, reported in 1996 Cri.L.J. 3516, wherein the Apex Court has observed as follows :---

"No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusions whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the Appellate Court has to bear in mind: first, that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial Court acquitted him he would retain that benefit in the Appellate Court also. Thus, Appellate Court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed."

Mr. Lotlikar, therefore, submitted that this Court ought not to entertain this appeal particularly when the impugned Judgment and Order acquitting the respondent/accused was concerning an incident which took place way back in the year 1991.

8. We have given our anxious consideration to the submissions canvassed by both the Counsel. It is no doubt true that the defence canvassed on behalf of the respondent/accused appears almost in the nature of afterthought and not exactly borne out in the manner in which P.W. 1 is cross-examined nor is it so taken in the Statement u/s section 313 Cri.P.C.. However, considering the fact that this is not a case of raid on a complaint or a case of adulteration as such, we are of the view that the legally possible defence when accepted by the trial Court need not be interfered with in an appeal when so many years have gone by after the date of the incident. We have got to remember that this is an appeal against acquittal and as observed by the Division Bench of this Court as well as by the Apex Court in an appeal against acquittal a stricter standard is required and this Court will have to hold that the view taken by the trial Court is perverse. The submission on behalf of the respondent has been that he was all throughout under the impression that the oil collected was of groundnut and that it is only after the analysis that he came to know that what was collected was not ground nut oil and that defence has been accepted by the trial Court as a possible one. In the facts of the present case, in our opinion, it cannot be said that such a view is a difficult, perverse or impermissible view from the material on record. In the circumstances, the appeal is not entertained and the same is, hereby, dismissed.