

(2010) 02 GUJ CK 0073
In the Gujarat High Court
Case No : Criminal Appeal No. 694 of 1999

State of Gujarat and Another

APPELLANT

Vs

Kishorbhai Mangubhai Soni

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)(3)
Prevention of Food Adulteration Act, 1954 — Section 16(1), 19(2), 2, 4, 7(1)
Prevention of Food Adulteration Rules, 1955 — Rule 17.03

Citation : (2010) 02 GUJ CK 0073

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

Bench : Single Bench

Advocate : HL Jani, app, for the Appellant; DK Modi and MD Modi, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378(1)(3) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 15.3.1999 passed by the learned Additional Sessions Judge, Vadodara in Criminal Appeal No. 19 of 1998, 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 - Food Inspector purchased groundnut oil from the shop of respondent and after following due procedure sent the sample to the Public Analyst and report revealed that sample did not conform to the provisions of Rule 17.03 of the Prevention of Food Adulteration Act, 1954. Therefore, complaint was filed for the offences u/s 7(1) and 16(1)(A)(i) of the Prevention of Food Adulteration Act, against the accused person.

2.2 Therefore, Criminal Case No. 1823 of 1986 with respect to the aforesaid offence was filed against the respondent before the learned Judicial Magistrate,

First Class, Sankheda.

2.3 To prove the case against the present accused, the prosecution has also produced documentary evidence and has examined three witnesses. After hearing the parties, the learned trial Judge was pleased to convict the accused - respondent by his judgment and order dated 5.2.1998, to undergo rigorous imprisonment for one year with a fine of Rs. 2,000/-, in default, simple imprisonment of 6 months. Against the said judgment and order, the respondent - accused preferred Criminal Appeal being No. 19 of 1998 before the learned Additional Sessions Judge at Vadodara. After hearing the parties, learned Additional Sessions Judge was pleased to acquit the accused by his order dated 15.3.1999.

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

4. It was contended by learned APP Mr. Jani that the judgment and order of the Sessions Court is against the provisions of law; the Sessions 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 APP has also taken this Court through the oral as well as the entire documentary evidence. He has contended that the learned trial Judge has not considered the evidence of the Food Inspector and therefore, it cannot be said that there is a breach of provisions of Section 4 of the Prevention of Food Adulteration Act. He has contended that the learned Judge has not considered the aspect that as per the provisions of Section 2 Sub-section (m), it is prescribed under the Act that if the sample does not conform to the standard as prescribed under the Act, then it is adulterated. The accused had not fulfilled the provisions, therefore, the accused is not entitled for warranty u/s 19(2) of the Act. Therefore, the order is required to be quashed and set aside.

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 MP 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 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 APP for the appellant. It appears from the judgment and order of the learned trial Court that he had not taken into consideration the evidence of the witness led before him in a proper manner and especially, regarding Section 19(2) of the Act. I have also perused the judgment and order passed by the learned Additional Sessions Judge, Vadodara, in which, the learned Sessions Judge has observed that the commodity was not injurious to the public health, the accused should not have convicted and in the analysis report, there was no presence of mineral oil, castor oil and artificial coal tar colour. Even Baudouin test was reported to be in negative, the accused who was simple vendor cannot be held guilty. Thus, from the observation of the record, it is established that the complainant did not follow meticulously the mandatory requirement prescribed under the Act. Therefore also, the judgment and order passed by the learned Additional Sessions Judge, Vadodara is right, just and proper.

6. Learned APP 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.