
(2008) 11 GUJ CK 0001
In the Gujarat High Court
Case No : Criminal Appeal No. 595 of 1999

State of Gujarat	Vs	APPELLANT
Alihusain Ibrahimbhai Tarvadi		RESPONDENT

Date of Decision : 24-11-2008

Acts Referred:

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

Citation : (2008) 11 GUJ CK 0001

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : K.C. Shah, APP 1, for the Appellant; D.C. Sejpal, for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The State of Gujarat preferred this appeal u/s 378 of the Code of Criminal Procedure [for short "Cr. P.C."] challenging the legality and validity of the impugned judgment and order rendered by the Ld. Judicial Magistrate First Class, Chotila [for short "the Ld. Magistrate"] on 26/2/1999 in Criminal Case No. 274 of 1995. The Ld. Magistrate was pleased to acquit the respondent - accused from the charge of the offences punishable u/s 7(1) read with Section 16 of the Prevention of Food Adulteration Act, 1954 [for short "the Act"].

2. The short facts leading to this case are that on 26/10/1994 Food Inspector Mr. Chaudhary visited the shop of the respondent - accused and collected sample of puffed rice [Mamra] in presence of panch witness. The sample was duly collected, packed and sealed. The same was forwarded to public analyst for analysis. The same was found to be adulterated and not conforming with the standards laid down under the Act and the Rules made thereunder. After obtaining due sanction for launching prosecution against respondent - accused, Food Inspector Mr. Chaudhary filed a private criminal complaint in the Court of

the Ld. Magistrate against the respondent - accused. After recording necessary evidence for the purpose of framing charge, Ld. Magistrate framed charge against the accused at exh. 38. The accused did not plead guilty and claimed to be tried and, therefore, the prosecution adduced its oral and documentary evidence. The deposition of Food Inspector Mr. Chaudhary was recorded at exh. 15 and the deposition of panch witness Vinodray Parekh was recorded at exh. 40. No more witnesses were examined. During the course of deposition of Food Inspector, relevant documentary evidence was produced and proved by the prosecution. After the completion of the evidence, the Ld. Magistrate recorded further statement of the accused u/s 313 of the Cr.P.C wherein the accused categorically submitted that the puffed rice [Mamra] was not stored in his shop for the purpose of sale, but was kept for his personal consumption and for household use. That at the time when the Food Inspector collected the sample, he had drawn the attention of the Food Inspector that the food article was not meant for sale. He, therefore, stated that he was falsely implicated in this case.

2.1. Appreciating the oral and documentary evidence on record and after considering the arguments advanced on behalf of both the sides, the Ld. Magistrate delivered the impugned judgment acquitting the respondent - accused from the charge of the commission of offences under the Act.

3. Ld. APP Mr. Shah for the appellant submitted that the impugned judgment delivered by the Ld. Magistrate is contrary to law and evidence on record. It is submitted that the Ld. Magistrate erred in coming to the conclusion that the food article which was seized from the shop of the accused was not stored by the accused for the purpose of sale and was stored by him for his household use. That it has come in evidence that the accused at the relevant time used to sell food article from his shop. That merely because the shop and his residential premises are situated in one unit, it cannot be presumed that the food article in question was kept by him in his shop not for sale. That on the contrary, the presumption would be that he stored the food article in his shop for the purpose of sale. Therefore, it is submitted that the appeal be allowed and the impugned judgment and order rendered by the Ld. Magistrate in recording acquittal of the respondent - accused be set aside and the respondent - accused be convicted for the offences charged against him and appropriate sentence be awarded in accordance with law.

3.1. On behalf of the respondent - accused, supporting the findings arrived at by the Ld. Magistrate recording the acquittal, learned advocate Mr. D.C. Sejpal submitted that considering the evidence adduced by the prosecution itself, the accused succeeded in showing that the food article seized from his shop was meant not for sale but for his personal household usage. It is submitted that considering the deposition of Food Inspector and testimony of panch witness, the accused successfully established his defence. It is further submitted that this being acquittal appeal u/s 378 of the Cr.P.C., even if two views are possible, the view leading to the acquittal of the accused be adopted. Therefore, it is

submitted that the appeal be dismissed.

4. Before the evidence adduced by the prosecution in this matter is re-appreciated and re-analyzed, it would be necessary to consider the principle established by the Hon'ble the Supreme Court in the case Chandrappa and Others Vs. State of Karnataka, wherein in connection with acquittal appeal u/s 378 of the Cr. P.C., Hon'ble the Apex Court has observed as under:

An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

If two reasonable views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not be disturbed by the appellate court.

5. Keeping in light the principle established by the Hon'ble the Supreme Court and re-appreciating and re-analyzing the evidence on record and especially considering the topography of the residential house and the shop of the accused as emerging from the testimonies of the Food Inspector and the panch, it becomes clear that on the front side of the residential house of the accused, there was a shop. In other words, the residential house and the shop consist of the same premises. Food Inspector Mr. Chaudhary in his deposition at exh. 15 in cross-examination on behalf of the defence admitted the above topographical situation regarding the location of the shop of the accused and his residential house. It further transpires that there was a common door in between the house of the accused and his shop. Therefore, virtually the shop and the residential house was one unit. Panch Vinodray examined by the prosecution, in his deposition at exh. 40 stated that the front portion of the house of the accused was used by the accused for the purpose of shop and the rear portion was used

for residential purposes. He further stated that the packets containing puffed rice [Mamra] were kept near the door in the shop which was used for going inside the house of the accused. He further categorically admitted that those packets were not lying in the shop where other food articles were kept for the purpose of sale. He further submitted that the Food Inspector had asked the accused as to the source from where the accused had purchased the puffed rice and the accused had replied that he had purchased those packets from a hawker for the purpose of his personal consumption and household use. He deposed that despite this, the Food Inspector collected the sample. It is further pertinent to note that in a statement recorded u/s 313 of the Cr. P.C, the accused stated that his shop and his house are situated in one common premises and he had purchased the puffed rice [Mamra] for his household use and personal consumption and that he had disclosed this fact before the Food Inspector, yet the Food Inspector collected the sample.

6. Considering the impugned judgment and especially para. 12 of the judgment, it transpires that the Ld. Magistrate discussed the above aspect of the evidence and came to the conclusion that the food article puffed rice was not kept by the accused for the purpose of sale, but was kept for the purpose of his personal consumption and his household use. Re-appreciating the evidence on record, this Court does not find any factual error committed by the Ld. Magistrate while appreciating the evidence on record. It can be said that generally the presumption may be that article kept in a shop is meant for sale. However, in the instant case, the evidence adduced by the prosecution itself reveals otherwise, that the article was not stored for the purpose of sale.

6.1. Since the puffed rice stored by the accused was not meant for the purpose of sale as revealed from the evidence on record, it would not be necessary for this Court to deal with other aspects of the matter regarding seizure, sealing, packing, misbranding, etc.

7. Considering the case of Chandrappa v. State of Karnataka [supra], it is clear that if two views are possible, the view leading to the acquittal of the accused shall have to be preferred. Thus, there is nothing that the Ld. Magistrate committed any illegality or any irregularity while appreciating the evidence on record. Under such circumstances, considering the peculiar facts and circumstances of this case emerging from the evidence of the prosecution, the appeal deserves to be dismissed.

For the foregoing reasons, the appeal stands dismissed.