
(1995) 01 GUJ CK 0035
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Gobar @ Gopal Tapubhai Dholariya

RESPONDENT

Date of Decision : 31-01-1995

Acts Referred:

Bombay Prevention of Food Adulteration Rules, 1958 — Rule 14
Criminal Procedure Code, 1973 (CrPC) — Section 378
Prevention of Food Adulteration Act, 1954 — Section 16, 7(1)(5), 7(1)(5)

Citation : (1996) 1 GLR 137

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—In this appeal u/s 378 of the Code of Criminal Procedure, 1973 (Code), the appellate-State has questioned the legality and validity of the order of acquittal recorded by the learned Additional Sessions Judge, Junagadh in Criminal Appeal No. 49 of 1988 on 28-2-1991, reversing the judgment and order of conviction passed by the learned IInd Jt. J.M.F.C, Junagadh in Criminal Case No. 5068 of 1985 on 27-5-1988.

2. The respondents is the original accused. The original complainant - Food Inspector visited the shop of the original accused on 20-7-1985 and found groundnut oil adulterated. The accused is dealing in grossery and cutlery items in the name of Geeta Cutlery Store at Bhesan in Junagadh District. The sample of ground-nut oil was collected and after observing necessary procedure, the said sample was sent to the Public Analyst for analysis. It was reported by the Public Analyst that the sample of ground-nut oil taken by the Food Inspector from the shop of the accused was not conforming to the required statutory standard. Therefore, the complaint was filed against the accused and the accused was charged for the offences punishable u/s 7(1)(5) and Section 16 of the Prevention of Food Adulteration Act, 1954. (Act).

3. The accused contested the version of the complainant and denied the charges levelled against the accused. After appreciation of evidence led by the

prosecution witnesses, the learned 2nd Joint J.M.F.C. at Junagadh found accused guilty for the offence punishable u/s 16 of the Act and sentenced him to undergo Rigorous Imprisonment for six months and a fine of Rs. 1,000/- in default, to undergo further Rigorous Imprisonment for two months. The conviction and sentence order of the trial Court was passed on 27-5-1988 in Criminal Case No. 5068 of 1985.

4. The original accused challenged the conviction and sentence order for the offence punishable u/s 7(1)(5) read with Section 16 of the Act by filing an appeal being Criminal Appeal No. 49 of 1988 in Sessions Court at Junagadh. The appellate Court found accused not guilty and reversed the order of conviction and sentence recorded by the trial Court, on 28-2-1991. Hence this acquittal appeal.

5. The learned Additional Sessions Judge at Junagadh while passing the impugned judgment and order of acquittal reversing judgment and order of conviction and sentence passed by the trial Court, has relied on the decision of Division Bench of this Court passed in Criminal Appeal No. 1184 of 1978 decided on 11-9-1980.

6. The appellate Court in Para 9 of its judgment has observed that the prosecution has failed to show that the material requirement of Rule 14 of the Bombay Prevention of Food Adulteration Rules, 1955 (Rules) were observed. It is also observed by the appellate Court that the prosecution did not examine person who had dealt with glass bottle in which sample of ground-nut oil was collected. There was no evidence to show that the material requirements of Rule 14 of the Rules were observed. Rule 14 reads as under:

Manner of sending samples for analysis: Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed.

7. Rule 14 is mandatory. Non-observance thereof will be fatal to the prosecution case. This aspect, as such is not disputed in this appeal, with the result, since the prosecution has failed to show that material requirements of Rule 14 of the Rules are satisfied, the impugned acquittal order cannot be disturbed. It would not be necessary to address to the other infirmities considered by the appellate Court, since the appeal is liable to be dismissed against the impugned order of acquittal on this sole ground.

8. Merely because on assessment of evidence, the trial Court could also take a different view, will not be a sufficient ground to disturb impugned acquittal order. This proposition is very well established by catena of judicial pronouncement. It is a settled proposition of law that where two reasonable conclusions are drawn on the evidence on record, the High Court should not (sic.) as a matter of judicial caution refrain from interfering with the order of acquittal recorded by the Court below. It is held by the Apex Court in *Ganesh Bhavan Patel and Another Vs.*

State of Maharashtra, that if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible and not dislodged or demolished, the High Court should not disturb the acquittal recorded by the trial Court following the dictum of the Privy Council in *Sheo Swarup and Others vs. King Emperor* .

9. Since this Court broadly agrees with the ultimate conclusion reached by the trial Court while passing acquittal order, it will not be necessary to reiterate or repeat all the grounds on which the acquittal is founded upon. This proposition is very well settled by the Apex Court in *State of Karnataka Vs. Hemareddy Alias Vemareddy and Another*, .

10. Having regard to the facts and circumstances of the case and the discussions made in the judgment of the lower appellate Court, this Court has no hesitation in finding that the impugned acquittal order is justified and acquittal appeal on hand is meritless. In the result, this appeal is required to be dismissed. Accordingly it is dismissed. The judgment and order passed by the learned Additional Sessions Judge, Junagadh in Criminal Appeal No. 49 of 1988 is confirmed.