

(2010) 02 GUJ CK 0087
In the Gujarat High Court
Case No : Criminal Appeal No. 193 of 2003

State of Gujarat

APPELLANT

Vs

Hasmukhbhai Nemchand Shah

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Prevention of Food Adulteration Act, 1954 — Section 13(2), 20
Prevention of Food Adulteration Rules, 1955 — Rule 14, 44

Citation : (2010) 02 GUJ CK 0087

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

Bench : Single Bench

Advocate : H.L. Jani, app, for the Appellant; M.D. Modi, 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 25.10.2002 passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural), Navrangpura, Ahmedabad, in Criminal Case

No. 1452 of 1994, whereby the accused has been acquitted of the charges leveled against him.

2. The brief facts of the prosecution case are that on 21.07.1993, at about 9.45 a.m., the complainant visited the shop of the accused along with

the panchas where the complainant found that the accused had kept 2 k.g. pepper in an iron box for retail selling. The complainant, Food

Inspector took the sample of pepper from the shop of the accused for the purpose of analysis. After following due procedure, the sample was sent

to the Public Analyst for the purpose of analysis as per the provisions of the Act, whose report indicates that the sample is adulterated and a

complaint was filed in the Court of learned Chief Judicial Magistrate, which came to be registered as Criminal Case No. 1452 of 1994 under the

provisions of the Prevention of Food Adulteration Rules, 1955 (for short "PFA Rules").

3. To prove the case against the present accused, the prosecution has examined the witnesses and also produced documentary evidence.

4. At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the

defence, the learned trial Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 25.10.2002.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial Court the appellant State has preferred the present

appeal.

6. It was contended by Mr. H.L. Jani, learned APP 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 offence against the present respondent. Learned APP contended that the trial Court has erred in appreciating

that there is a breach of Rule 14 of the Rules as the vessel used for taking the sample was not cleaned on the spot and appreciated that there is a

prohibition of using mineral oil in pepper under Rule 44(aaa) of the Rules. Learned APP has also taken this Court through the oral as well as the

entire documentary evidence.

7. At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order

of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. In the case of M.S.

Narayana Menon @ Mani Vs. State of Kerala and Another, the Apex Court has narrated about the powers of the High Court in appeal against

the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction.

Even while exercising an appellate power against a judgment of acquittal, the

High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

8. Further, in the case of *Chandrappa and Others Vs. State of Karnataka*, the Apex Court laid down the following principles:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

[1] An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

[2] 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.

[3] Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "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.

[4] 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.

[5] 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.

9. 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.

10. 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 judgment 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.

11. 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 2007

AIR SCW 5553 and in Girja Prasad (Dead) by LRs v. State of MP reported in 2007 AIR SCW 5589. Thus, the powers which this Court may

exercise against an order of acquittal are well settled.

12. 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.

13. Thus, in case the appellate court agrees with the reasons and the opinion given by the trial court, then the discussion of evidence is not necessary.

14. 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-State. The trial court has clearly recorded a finding that the

prosecution has failed to prove the procedure under Rule 44(aaa) of the PFA Rules which is mandatory and has also failed to prove the provisions

of Section 13(2) of the PFA Act. I have also perused the documentary evidence and evidence of the witnesses from which it appears that the

prosecution has not followed the provisions of Section 20 of the PFA Act and Rule 14 of the PFA Rules. Thus, from the evidence itself it is

established that the prosecution has not proved its case beyond reasonable doubt.

15. Mr. H.L. Jani 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.

16. 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.

17. 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.

18. I, 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 bonds, if any, stands cancelled. R & P to be sent back

to the trial Court immediately.