

(2010) 02 GUJ CK 0083
In the Gujarat High Court
Case No : Criminal Appeal No. 1080 of 2003

State of Gujarat	Vs	APPELLANT
Jayantibhai Chaturbhai Patel		RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)(3)
Prevention of Food Adulteration Act, 1954 — Section 16(1)(A)(1), 7(1), 7(5)
Prevention of Food Adulteration Rules, 1955 — Rule 14

Citation : (2010) 02 GUJ CK 0083

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

Bench : Single Bench

Advocate : H.L. Jani, app, for the Appellant; Rakesh R. Patel, 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 5.6.2003 passed by the learned Judicial Magistrate, First Class, Chanasma in Criminal Case No. 210 of 1997, 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 Food Inspector had filed criminal case before the learned Magistrate, Chanasma on the ground that he had purchased the sample of Ghee

from the shop of respondent - accused for the analysis purpose. The said sample was sent to the public analyst and public analyst reported that the

sample of Ghee does was not as per the standards and provisions of the Prevention of Good Adulteration Rules, 1955. Therefore, complaint was

filed for the offences u/s 7(1), 7(5), 16(1)(A)(1) of the Prevention of Food

Adulteration Act, against the accused.

2.2 Therefore, Criminal Case No. 210 of 1997 with respect to the aforesaid offence was filed against the respondent before the learned Judicial

Magistrate, First Class, Chanasma. During the course of investigation, chargesheet was filed against him before the court of learned JMFC,

Chanasma.

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

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

4. It was contended by learned APP Mr. Jani 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 evidence against the present respondent. Learned APP has also taken this Court through the oral as well as the entire

documentary evidence.

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 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.

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. I have perused the oral evidence of complainant - C.

Madanmohan Nair at Exhibit 11, Rakeshbhai Haribhai at Exhibit 37 and Patel Shailesh Somabhai at Exhibit 38. The complainant had not taken

care to clean the bottles while taking the sample and therefore, there is a breach of Rule 14 of the Act and the complainant had not taken to take

such sample of Ghee in liquid form. The complainant has not proved the case against the accused before the trial Court that the accused had

committed any offence under the Act and therefore, the learned trial Court has rightly acquitted the accused by his judgment and order. The

reasons assigned by the learned trial Judge is just and property. Therefore, I am of the opinion that complainant has failed his case and in that

circumstances, it is not required to be interfered with the reasons stated in the judgment and order of the learned trial Court.

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.