
(2010) 02 GUJ CK 0108
In the Gujarat High Court
Case No : Criminal Appeal No. 404 of 2004

State of Gujarat

APPELLANT

Vs

Jayeshbhai Jivanlal K.A. Patel and Others

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)(3)
Prevention of Food Adulteration Act, 1954 — Section 11, 16(1)(A), 2(1)(A)(M), 2(1)A, 20
Prevention of Food Adulteration Rules, 1955 — Rule 14

Citation : (2010) 02 GUJ CK 0108

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

Bench : Single Bench

Advocate : A.J. Desai, app, for the Appellant; D.K. Modi and M.D. 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 20.10.2003 passed by the learned 2nd Joint Civil Judge (S.D.) and Judicial Magistrate, First Class, Nadiad in Criminal Case No. 5 of 1999, whereby the accused have been acquitted from the charges leveled against them.

2. The brief facts of the prosecution case are as under:

2.1 The Food Inspector - original complainant purchased sample of Ground-nut Oil (Ganpati Pure Ground-nut Oil) from the shop for the accused No. 1 for the purpose of analysis. That accused No. 2 is the wholesaler of the Ground-nut oil from where the accused No. 1 purchased the oil. That the accused No. 3 is the manufacturer firm of the Ground-nut oil. After following the due procedure the said sample was sent to the public analyst for analysis, who reported the sample does not conform to the standards and provisions laid down under the Prevention of Food Adulteration Act, 1955. Therefore, complaint was filed against the

accused - present respondents for the offences u/s 2(1) A, (A)-(M), 7(1), 7(5) and 16(1)(A) of the Prevention of Food Adulteration Act.

2.2 Therefore, Criminal Case No. 5 of 1999 with respect to the aforesaid offence was filed against the respondents before the learned 2nd Joint Civil Judge (S.D.) and Judicial Magistrate, First Class, Nadiad. During the course of investigation, chargesheet was filed against them before the court of learned JMFC, Nadiad.

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

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. Desai 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. He has contended that there is no breach of Rule 14 as the evidence adduced by the prosecution side regarding the cleanness of the vessel used for sampling.

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. Heard the learned advocates for the parties.

6. 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 record that the prosecution has failed to follow the mandatory provisions u/s 20, 11(c) and Rule 14 of the Act. Even it appears from the judgment and order passed by the learned trial Judge that the sanction, which was passed in favour of the Food Inspector, is not also legal and proper, as the sanctioning officer was In-charge in place of competent officer, who sanctioned the person to lodge complaint under the Act. Even the Food Inspector has totally failed to follow the provisions prescribed under the Act while sampling, sealing and seizing and he has not meticulously followed the provisions of the Act. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

7. 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.

8. 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 them.

9. 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.

10. 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.