

(2010) 02 GUJ CK 0044
In the Gujarat High Court
Case No : Criminal Appeal No. 1010 of 2003

State of Gujarat

APPELLANT

Vs

Kamalchand Damabhai Patel (Owner)

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)(3)
Prevention of Food Adulteration Act, 1954 — Section 10(7), 16, 2, 7(1), 7(5)
Prevention of Food Adulteration Rules, 1955 — Rule 14, 44(1)

Citation : (2010) 02 GUJ CK 0044

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

Bench : Single Bench

Advocate : H.L. Jani, app, for the Appellant; J.V. Japee, 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 22.5.2003 passed by the learned Judicial Magistrate, First Class, Gandhinagar in Criminal Case No. 3855 of 1988, 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 trial Judge, Gandhinagar on the ground that he purchased 50 Grams of Curd from the Bhojnalaya of the accused for the purpose of analysis. After following due procedure the said sample was sent to the Public Analyst for analysis, who reported that 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 present respondent - original accused for the offences u/s 2 (1a), (a)(d), (1), (m), 7(1), Rule 44(1), Sections 7(1), 7(5) and 16 of the Prevention of Food Adulteration Act.

2.2 Therefore, Criminal Case No. 3855 of 1988 with respect to the aforesaid offence was filed against the respondent before the learned Judicial Magistrate, First Class, Gandhinagar. During the course of investigation, chargesheet was filed against him before the court of learned JMFC, Gandhinagar.

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

4.2 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. It appears from the record that the complainant had not taken proper care while taking the sample of curd from the accused, even the spoon, which was utilized for sampling, was not neat and clean. The panch witness examined at Exhibit 61, turned hostile before the learned trial Court. Even the Food Inspector had not properly followed the provisions of Section 10(7) and Rule 14 of the Act. Even the report of the public analyst is not reflected anything against the accused, which establish the offence alleged. Therefore, learned trial Judge has rightly assigned the reasons for acquittal of the accused. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

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.