

(2012) 12 GUJ CK 0060
In the Gujarat High Court
Case No : Criminal Appeal No. 1283 of 1992

State of Gujarat	Vs	APPELLANT
Maheshwari Mills and 1		RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 293
Essential Commodities Act, 1955 — Section 3, 7, 8
Evidence Act, 1872 — Section 45

Citation : (2012) 12 GUJ CK 0060

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : K.P. Raval, app, for the Appellant; A.D. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Ms. Justice Harsha Devani

1. This appeal is directed against the judgement and order dated 30th September, 1992 passed by the learned Special Judge, Court No. 4, Ahmedabad in Special Criminal Case No. 22 of 1991. The charge against the respondents-accused is of contravention of clause 3(d) of the notification dated 7th March, 1988 issued by the Textile Commissioner u/s 17 of the Textile (Control) Order, 1986, which in turn was issued u/s 3 of the Essential Commodities Act which amounts to an offence under sections 7 and 8 of the Essential Commodities Act.

2 A first information report came to be lodged in writing by the Assistant Director, Ministry of Textiles, Regional Office of the Textile Commissioner, Ahmedabad against the respondents alleging that the Textile Commissioner had issued notification dated 7th March, 1988 specifying markings to be made on cloth and yarn by the manufacturers of yarn and cloth in the manner prescribed in the said notification. The respondent M/s Maheshwari Mills Ltd. was a manufacturer as defined under the Textiles (Control) Order and was required to comply with the directions contained in the Textile Commissioner's notification

dated 7th March, 1988 which intends to protect consumers against misleading markings/descriptions on cloth and yarn. That the office inspectors of the said office, viz., Shri R.V. Pancholi and Shri C.S. Singh visited M/s Maheshwari Mills Ltd., Ahmedabad on 24th April, 1990 for inspection of cloth. They had drawn sample from the manufacturer's stamped stocks of blended cloth sort No.: 1658 Dyed Shirting for testing of its composition of fibre contents at the Textile Committee, Laboratories, Coimbatore. M/s Maheshwari Mills Ltd. had stamped on the face plaits of the cloth, the following composition for the cloth: Polyester-68% and Cotton-32%. The test results received from the Laboratories indicate that the cloth sort contained 62.98% Polyester and Cotton 37.02% as against 68% Polyester and 32% Cotton stamped on the cloth by the manufacturer. It was, accordingly, alleged that M/s Maheshwari Mills Ltd., by declaring and stamping wrong fibre compositions for the cloth, have contravened the provisions of the Textile Commissioner's Notification dated 7th March, 1988, and clause 17 of the Textiles (Control) Order, 1986 rendering themselves liable for penal action for violation of the order made u/s 3 of the Essential Commodities Act, 1955 and hence, committed a cognisable offence under the Act which was punishable u/s 7 thereof.

3. Pursuant to the lodging of the aforesaid first information report, investigation came to be carried out and upon culmination of the investigation, a charge-sheet came to be filed before the Special Court, Ahmedabad and came to be registered as Special Criminal Case No. 22/91.

4. The learned Special Judge, after appreciation of the evidence on record, found that the entire prosecution case was based upon the report of the Textile Committee Laboratory on which no reliance could be placed and as such, the accused were entitled to the benefit of doubt and accordingly, held that the prosecution had failed to prove beyond reasonable doubt the charges levelled against the accused.

5. Mr. K.P. Raval, learned Additional Public Prosecutor drew the attention of the court to the depositions of the witnesses as well as the documentary evidence on record. Attention was invited to the notification dated 7th March, 1988 issued by the Textile Commissioner and more particularly, to sub-para (5) of paragraph 6 thereof, to submit that where violation of any of the provisions of the Regulation by any manufacturer including processor or dealer or any person is suspected, the aggrieved person or any registered voluntary consumer association shall be entitled to have such tops, yarn and cloth tested in the laboratory, notified by the Textile Commissioner from time to time. That such laboratory shall issue a test certificate to such aggrieved person or such registered voluntary consumer association to enable them to initiate legal proceedings. It was submitted that in the light of the above provision, after obtaining a sample of the textile material, the same was sent for testing to a laboratory notified by the Textile Commissioner, namely, Central Testing Laboratory, Coimbatore which submitted its report dated 16th July, 1990, opining that the percentage of Cotton was 37.02

and percentage of Polyester was 62.98, whereas the percentage stamped on the cloth was Polyester-62.98 and Cotton 37.02. Thus, what was stamped on the cloth was not in consonance with the actual composition of the said material. Under the circumstances, the learned Special Judge was not justified in not believing the laboratory report and not giving it due credence.

6. Reference was made to the provisions of section 293 of the Code of Criminal procedure, 1973 (hereinafter referred to as "the Code") to submit that it is permissible to use the report of a Government Scientific Expert as evidence in any inquiry, trial or other proceedings under the Code. The report of the Central Testing Laboratory, Coimbatore which was a notified laboratory, was, therefore, admissible in evidence during the course of trial, and no adverse inference could be drawn against the prosecution unless the contrary was proved by the accused. It was submitted that the learned Judge has erred in coming to the conclusion that the report (exhibit-23) does not mention whether the expert had carried out the test for blend percentage and had followed the procedure as laid down in IS 3416 : 1988 and that the learned Judge ought to have considered the report given by the expert of the Textile Committee Laboratory, at Coimbatore which is established by the Central Government for the purpose of the Notification dated 7th March, 1988 and that the same could not have been doubted. It was submitted that the reliance placed by the court upon the decision of this court in the case of Suleman Usman Memon Vs. The State of Gujarat, was misconceived inasmuch as, the same pertains to a case under the Prohibition Act regarding the consumption of alcohol and could not be made applicable to textile items. Under the circumstances, the impugned judgement and order of acquittal being erroneous, improper and unjust, the same is required to be quashed and set aside and an order of conviction is required to be passed against the accused.

7. On the other hand, Mr. A.D. Shah, learned counsel for the respondents drew the attention of the court to the communications dated 1st September, 1990 and 6th September, 1990 addressed by the accused to the office of the Textile Commissioner, to point out that various factors could be responsible for variation in the test results and that the method for testing which was required to be followed as per ISI Standard, IS 3416:1988 which is based on Clean Dry Mass. It was submitted that if the concerned laboratory had applied any other method, the variation could be increased to some extent. It was pointed out that even ATIRA was following the same method for testing purposes. Attention was also invited to the report submitted by ATIRA in respect of a sample of the same fabric, which indicated that the percentage of polyester and cotton was as per the markings made on the cloth. It was pointed out that in support of the said report, the defence had examined an expert, at exhibit-38, who had stated that there are three methods prescribed by Indian Standards for finding out blend percentage of cotton and polyester and that the method based on Dry Mass Basis is commonly accepted because it is the most accurate method. The expert, upon perusal of the report of the Central Laboratory Committee, has stated that the said report is silent as regards the method that was followed by the Analyst in

finding out the blend percentage of the sample cloth and does not indicate the calculations for blend percentage. That if the cloth is analysed by the method of adding moisture, the calculations will differ as compared to dry mass basis. Because of human error, tolerance limit of 3% is permissible.

8. Reference was made to the decision of the Supreme Court in the case of Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. and Others, , for the proposition that the expert is not a witness of fact. His evidence is of an advisory character. Credibility of such witness depends on reasons stated in support of his conclusions and data and material furnished which form basis of his conclusions. Referring to the report of the Central Testing Laboratory, it was submitted that the said report does not meet with any of the above requirements, inasmuch as, the said report does not mention any reasons in support of the conclusions arrived at by the expert. Under the circumstances, the learned Special Judge was justified in holding that the said report could not be made the sole basis for convicting the accused in respect of the charges levelled against them.

9. A perusal of the record of the case and more particularly, the depositions of the witnesses and the documentary evidence which has come on record indicates that the case of the prosecution is that the samples of cloth had been obtained by the Office Inspectors from the Regional office of the Textile Commissioner bearing stamps showing composition of the cloth as Polyester 68% and Cotton 32%. A sample of the said cloth was sent to the Central Testing Laboratory, Coimbatore. The said laboratory submitted a report to the effect that the cloth contained 62.98% polyester and 37.02% cotton. Accordingly, it was alleged that the accused had contravened the provisions of clause 3(d) of the Notification dated 7th March, 1988 issued by the Textile Commissioner u/s 17 of the Textile (Control) Order, 1986, by declaring and stamping wrong fibre compositions for the cloth, which was an offence u/s 7 of the Essential Commodities Act. Thus, the prosecution case is evidently based upon the report of the Central Testing Laboratory indicating that the percentage of Polyester and Cotton is not the same as shown on the stamping made on the face plaits of the cloth.

10. In this regard, it may be germane to refer to the provisions of sub-para (5) of paragraph 6 of the Notification dated 7th March, 1988 which provides that any person aggrieved on account of any violation of the provisions of the Regulation by any manufacturer, may get a sample of such cloth tested in the laboratory notified by the Textile Commissioner from time to time. The said laboratory shall issue a test certificate to such aggrieved person or such registered voluntary consumer association to enable them to initiate legal proceedings. On a plain reading of the said provision, it is apparent that the same does not provide that test report submitted by the notified Laboratory shall be conclusive evidence against the accused. Besides, it is an undisputed position that the specification of blend composition of textile is specified in the Indian Standards. IS 11195-1985 provides for the tests in respect of the blended composition of textiles. Paragraph 3 thereof makes provision for "Tests" and lays down the manner in which the

tests are to be conducted. Paragraph 3.2 thereof enumerates the standards on methods of tests for quantitative chemical analysis of mixtures of fibres which shall be used as applicable. The Indian Standard IS 3416:1988 provides for the method for quantitative chemical analysis of mixtures of polyester fibre with cotton or regenerated cellulose and prescribes a method for quantitative analysis of binary mixtures of polyester fibres and cotton or regenerated cellulose fibre in any form, such as fibre, yarn or fabric. The said standard also provides for the method of testing and the calculations thereof and also for submission of report. Under the said standard, the report shall include the following information: (a) Type of material, (b) Percentage of component fibres in the mixture (individual and average), (c) Method of calculation used and (d) Number of specimens tested. Thus, the standard provides for inclusion of the above referred information in the testing report.

11. In the case of *Ramesh Chandra Agrawal v. Regency Hospital Ltd. and others* (supra), the Supreme Court was dealing with an issue relating to expert opinion. The court held as thus:

11) EXPERT OPINION:

The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

- i) that the expert must be within a recognized field of expertise
- ii) that the evidence must be based on reliable principles, and
- iii) that the expert must be qualified in that discipline.

[See *Errors, Medicine and the Law*, Alan Merry and Alexander McCall Smith, 2001 ed., Cambridge University Press, p. 178]

12) Section 45 of the Indian Evidence Act speaks of expert evidence. It reads as under:

45. Opinions of experts-When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such person called experts. Illustrations:

(a) The question is, whether the death of A was caused by poison. The opinions

of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinion of experts on the question whether the two documents were written by the same person or by different persons are relevant.

13) The importance of the provision has been explained in the case of *State of Himachal Pradesh Vs. Jai Lal and Others*, . It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

14) It is not the province of the expert to act as Judge or Jury. It is stated in *Mt. Titli Vs. Alfred Robert Jones* that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

15) An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (*See Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and Others*) [Criminal Appeal Nos. 1191-1194 of 2005 alongwith Civil Appeal No. 1727 of 2007, decided on 7.8.2009].

16) In the case of State of Maharashtra Vs. Damu Shinde and Others, , it has been laid down that without examining the expert as a witness in Court, no reliance can be placed on an opinion alone. In this regard, it has been observed in The State (Delhi Administration) Vs. Pali Ram, that "no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him."

17) In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rest on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference: "Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value.

12. Having regard to the principles laid down in the above decision, it is apparent that the evidentiary value of the opinion of the expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus, the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be crosschecked. Therefore, the emphasis has been on the data on the basis of which the opinion is formed. Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value. The facts of the present case are required to be tested in the light of the principles laid down in the above decision.

13. The evidence on record indicates that insofar as the oral evidence led by the prosecution is concerned, the same mainly pertains to the collection of the sample of the blended fabric and sending the same to the laboratory for testing thereof. Insofar as the report submitted by the Central Testing Laboratory, Coimbatore is concerned, the same only mentions the percentage composition of the blended fabric. The report is totally silent as regards the manner in which the testing has been carried out and the basis on which the expert has come to the conclusion regarding the percentage composition of the fabric. Moreover, except for producing such report on the record, the prosecution has not led any evidence in support thereof by examining the expert to point out the manner in

which the testing had been carried out or the basis on which the conclusion has been arrived at by the expert.

14. On the other hand, the defence had also produced an analysis report submitted by ATIRA and has examined an expert witness. The report of ATIRA reveals that the composition of the blended fabric is as per the markings stamped on the face plaits of the cloth. It has been argued by the learned Additional Public Prosecutor that the ATIRA is not a notified Laboratory under the notification issued by the Textile Commissioner. Though, no evidence has been brought on record to indicate that the ATIRA has not been notified as a laboratory by the Textile Commissioner, there is no evidence to the contrary also. However, even if much credence is not attributed to the report of the ATIRA, it is for the prosecution to prove its case beyond reasonable doubt by leading cogent and convincing reasons. In the present case, except for the laboratory report given by the Central Testing Laboratory, Coimbatore, which merely states the percentage composition of the blended fabric, there is absolutely no material in support of the conclusions arrived at by the expert, including the method of analysis adopted by the expert. Under the circumstances, by mere dint of the fact that Central Testing Laboratory is a laboratory notified by the Textile Commissioner under the notification dated 7th March, 1988, the report submitted by the said laboratory which merely states the percentage of Polyester and Cotton in the sample cloth without anything more, cannot be placed at so high a pedestal so as to base a conviction thereon. As held by the Supreme Court in the decision cited above, an expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. In the present case, apart from the fact that no expert has been examined by the prosecution, the report submitted by the Central Testing Laboratory does not contain the material together with the reasons which induced the expert to come to the conclusion on the basis of which the Court may form its own judgment by its own observation of those materials. Under the circumstances, no reliance can be placed on such report which does not even mention the nature of the tests which were carried out for the purpose of testing the composition of the blended fabric. As noticed earlier, the report of the Central Testing Laboratory forms the fulcrum of the prosecution case, on the basis of which the prosecution seeks an order of conviction against the accused. As held by the Supreme Court in the case of Ramesh Chandra Agrawal (*supra*), where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value. In the premises aforesaid, in the light of the fact that this court has found that the report cannot be relied upon without any supporting evidence to show as to how the expert has come to the conclusion regarding the percentage of Polyester and Cotton contained in the sample cloth, evidently the prosecution has failed to

prove its case against the accused beyond reasonable doubt.

15. The learned Special Judge has, in the impugned judgement, observed that looking to the report exhibit-23, the same by itself does not indicate that the expert had followed all the procedure laid down by the Indian Standards method. Merely conclusion or opinion about composition of fibre contained in the test report is of no evidentiary value because it does not contain any factual data or method adopted by the expert while carrying out the test. The accused have been prosecuted for stamping misleading marks on the cloth-dyeing shirting on sort No. 1658. The whole prosecution case is based on the test report of the Central Textile Committee Laboratory report, exhibit-23. If no reliance can be placed on this report, the whole prosecution case falls to the ground. The court has observed that in the notification itself, it is mentioned that all tests which may be carried out in pursuance of this Regulation shall be with reference to the standards prescribed by the Bureau of Indian Standards. The Textile Committee Laboratory had ignored this provision which is mentioned in clause 3(f) of the notification and as such, no reliance can be placed on such test report.

16. In the opinion of this court, the findings recorded by the learned Special Judge are in consonance with the law laid down by the Supreme Court in the above referred decision. Under the circumstances, from the evidence which has come on record, it is not possible to state that the learned Special Judge has committed any legal error in arriving at the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. In the result, the appeal fails and is, accordingly, dismissed.

Record & Proceedings to be sent back forthwith.