
(2010) 02 GUJ CK 0072
In the Gujarat High Court
Case No : Criminal Appeal No. 971 of 2003

State of Gujarat	Vs	APPELLANT
Mukeshkumar Kurjibhai Bhut and Others		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 13(2)
Prevention of Food Adulteration Rules, 1955 — Rule 14

Citation : (2010) 02 GUJ CK 0072

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

Bench : Single Bench

Advocate : P.K. Jani, P.P, for the Appellant; Tushar L. Sheth, for Opponents 1 - 3 and P.B. Khandheria, for Opponents 1 - 3, 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 12.05.2003 passed by the learned 2nd Joint Judicial Magistrate, First Class, Gondal, in Criminal Case No. 888 of 1995, whereby the learned Magistrate has acquitted the respondents - accused from the charges alleged against them.

2. The short facts of the prosecution case is that the complainant, Food Inspector visited the business place of the respondents - accused and purchased the sample of "ground-nut oil from the oil mill of accused for the purpose of analysis and after following the due procedure sent the same to the Public analyst, for analysis. In the Report the Public Analyst found that the sample does not conform to the standards, as prescribed under the provisions of the Prevention of Food Adulteration Act. Thereafter, on the basis of Report, after obtaining necessary sanction the complainant filed complaint against the respondents - accused.

3. Thereafter the trial was conducted before the learned Magistrate. The

prosecution has examined the witnesses and also relied upon the documentary evidence. After considering the oral as well as documentary evidence the learned Magistrate has acquitted the respondents - accused from the charges alleged against them, vide Judgment and order dated 12.05.2003.

4. Being aggrieved and dissatisfied with the said Judgment and order dated 12.05.2003 passed by the learned Magistrate, in Criminal Case No. 888 of 1995, the appellant - State of Gujarat, has preferred the above mentioned Criminal Appeal.

5. I have heard learned P.P., appearing on behalf of the appellant - State. I have also gone through the papers and the Judgment and order passed by the trial Court.

6. Learned PP for the appellant has taken me through the evidence of prosecution witnesses and the documentary evidence and submitted that from the above evidence it is established that the prosecution has successfully proved its case beyond reasonable doubt. He has contended that there is no provision to serve the notice u/s 13(2) to the accused within a period of 10 days, but what is required is that the notice u/s 13(2) should be issued to the accused within a period of 10 days and it is not required to be served on the accused within 10 days. He, therefore, contended that the Judgment and order passed by the learned Magistrate is without appreciating the facts and evidence on record.

7. I have gone through the Judgment of the trial Court. I have also perused the reasons assigned by the learned Magistrate.

8. 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 view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

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.

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 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.

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 reasoning, 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 v. Hemareddy reported in AIR 1981 SC 1417.

13. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower 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 before the trial court and also considered the submissions made by learned Advocate for the appellant. It appears from the record that the prosecution has failed to follow the mandatory provisions of the Rules. When the mandatory provision of Rule is not followed by the prosecution, then the prosecution has no right to say that the trial Court has committed an error in disbelieving the case of the prosecution.

15. The trial court has, after appreciating the oral as well as documentary evidence, has clearly observed that there is a breach of Section 13(2) as in the notice it is not mentioned as to in which Court the complaint is filed and, therefore, the benefit should go to the accused. The trial Court has also observed that as per Section 13(2) the notice should be served to the accused within 10 days and in the present case the notices are issued long after 10 days. The trial Court has found that from the evidence it is clearly established that the prosecution has failed to follow the mandatory provision of Rule 14 of Prevention of Food Adulteration of Rules. The learned Magistrate has also found that the story put-forward by the prosecution is not believable. The trial Court has also found that there are serious lacunae in the oral as well as documentary evidence of prosecution. Nothing is produced on record of this appeal to rebut the concrete findings of the trial Court.

16. Thus, the appellant could not bring home the charge against the respondents - accused in the present Appeal. The prosecution has miserably failed to prove the case against the appellant - accused. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

17. Learned PP is not in a position to show any evidence to take a contrary view in 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.

18. In above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondents of the charges leveled against them. 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.

19. 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.

20. In view of above the Appeal is dismissed. The judgment and order dated 12.05.2003 passed by the learned Magistrate, in Criminal Case No. 888 of 1995 acquitting the respondents - accused from the charges alleged against them is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P may be sent back to the trial Court.