
(2010) 11 GUJ CK 0077
In the Gujarat High Court
Case No : Criminal Appeal No. 34 of 1998

State of Gujarat

APPELLANT

Vs

Parsottamdas Madandas Adara and Another

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Citation : (2010) 11 GUJ CK 0077

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

Bench : Single Bench

Advocate : H.H. Parikh, for the Appellant; R.C. Kakkad, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The Appellant has preferred the present Appeal u/s 378 of the Code of Criminal Procedure, 1973 against the judgment and Order of acquittal dated 24th October 1997 passed by the learned Judicial Magistrate First Class, Keshod, in Criminal Case No. 914 of 1993 for the offences punishable under the Prevention of Food Adulteration Act, 1954, whereby the learned Magistrate has acquitted the Respondents-accused of the charges levelled against them.

2. The short facts of the prosecution case is that the Appellant is serving as Food Inspector. It is the case of the complainant that on 16th October 1992 at about 15:00 hours, he visited "Paras Stores" and taken the sample of Mouth Freshener after paying consideration. It is also the case of the prosecution that after following due procedure of sealing, the sample was sent to the Public Analyst, Bhuj for analysis. On examination, the Public Analyst found that the said sample was adulterated and is not as per the standard prescribed under the Prevention of Food Adulteration Act. Therefore, after following the due procedure, complaint was filed against the Respondents-accused in the Court of learned Judicial Magistrate First Class, Keshod for violation of Prevention of Food Adulteration Act.

3. Thereafter, statement was recorded of the complainant. Considering the

statement given by the complainant as the prima-facie case was established, charge-sheet came to be issued against the Respondents-accused. Thereafter, trial was conducted before the learned Magistrate. To prove the case of the prosecution, prosecution has produced oral as well as 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 by his judgment and Order of acquittal dated 24th October 1997.

4. Being aggrieved and dissatisfied with the said judgment and Order of acquittal dated 24th October 1997 passed by the learned Judicial Magistrate First Class, Keshod, in Criminal Case No. 914 of 1993, the Appellant-State of Gujarat, has preferred the above mentioned Criminal Appeal.

5. Heard Mr. H.H. Parikh, learned Additional Public Prosecutor for the Appellant-State. I have also gone through the papers and the judgment and Order passed by the learned Magistrate.

6. Mr. Parikh, learned Additional Public Prosecutor, has contended that the judgment and Order of acquittal passed by the learned Magistrate is not proper, legal and it is erroneous. He has also argued that the learned Magistrate has not considered the evidence of the witnesses. He has argued that the learned Magistrate has not considered the fact that the Food Inspector has followed the proper procedure while collecting the sample, etc. are just and proper. The sample was seized and sealed properly. Yet, the learned Magistrate has not considered the evidence of prosecution. He, therefore, contended that the order of acquittal passed by the learned Magistrate is without appreciating the facts and evidence on record and is, therefore, required to be quashed and set aside by this Hon"ble Court.

7. It is 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 Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the Respondents-accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court.

8. Even in a decision of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. (2007)3 SCC 75, the Court has reiterated the powers of the High Court in such cases.

9. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. AIR 2007 SCW 5553 and in Girja Prasad (Dead) by L. Rs. v. state of MP AIR2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

10. 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 Vs. Hemareddy Alias Vemareddy and Another,

11. 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.

12. I have gone through the order of acquittal passed by the learned Magistrate. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned advocates for the parties.

13. The trial Court has, after appreciating the oral as well as documentary evidence, found that prosecution has failed to prove that the Mouth Freshener is for sale. It is the say of the Respondents that the said Mouth Freshener is for household and not for sale. It is observed by the learned Magistrate that prosecution has failed to prove the fact that the Mouth Freshener for sale by leading any cogent evidence. The evidence on record of the panch witnesses is contrary from the oral evidence of the complainant. The sample was taken on 16th October 1992 and complaint was filed in the month of August, 1993. It is also observed by the learned Magistrate that there was gross delay in filing the complaint against the Respondents and it was not properly explained. Even prosecution has failed to follow the mandatory provision of the Act. The Trial Court has also observed that there are serious lacuna 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.

14. Thus, the Appellant could not bring home the charges against the Respondents-accused in the present appeal. The prosecution has miserably failed to prove the case against the Respondents-accused. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

15. Mr. H.H. Parikh, learned Additional Public Prosecutor, 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.

16. In above view of the matter, I am of the considered opinion that the trial Court was completely justified in acquitting the Respondents-accused of the charges levelled against them.

17. 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.

18. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and hence find no

reasons to interfere with the same. Hence the appeal is hereby dismissed. The judgment and Order of acquittal dated 24th October 1997 passed by the learned Judicial Magistrate First Class, Keshod, in Criminal Case No. 914 of 1993 is hereby confirmed. Bail bond, if any, shall stand discharged. Record and Proceedings, if any, be sent back to the trial Court concerned forthwith.