

(2010) 01 GAU CK 0030
In the Gauhati High Court
Case No : Criminal Appeal No. 476 of 1998

State of Gujarat

APPELLANT

Vs

Sanjay Kumar Nagindas Shah Vendor and Ors.

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Criminal Procedure Code, 1973 — Section 378
Criminal Procedure Code, 1973 (CrPC) — Section 378
Prevention of Food Adulteration Act, 1954 — Section 16(1)(A)(1)(2), 16(1)(A)(1)(2)
Prevention of Food Adulteration Rules, 1955 — Rule 32(e), 32(e)

Citation : (2012) 1 Crimes 340

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

Bench : Single Bench

Advocate : For the Appellants: Mr. Maulik Nanavati, APP, For the Opponents 1-5: Notice Served, For the Opponents 2-5: Mr. D.K. Modi and Mr. M.D. Modi.
Advocates., Advocates appearing for Parties

Judgement

1. The present appeal, under Section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 23.1.1998 passed by the learned Civil Judge (JD) & JMFC. Chhota Udepur, in Criminal Case No. 611 of 1994 whereby the learned Magistrate has acquitted the respondents/accused from the charges levelled against them.

2. The short facts of the prosecution case is that the complainant. Food inspector, visited the business place, viz. Sanjay Provision Stores of accused No. 1 and purchased the 3 packets. 50 pouch in each packet, of "Zatpat Gutka" for the purpose of analysis and after following the due procedure sent the same to the Public Analyst, for analysis. As there was no lot number or batch number the Public Analyst vide report dated 16.2.1993 declared the said sample as misbranded as on the said packets there was no batch number. Code number or lot number and also there was no mention about the date of production and, therefore, there was a breach of Rule 32(E) of P.F.A. Rules, 1955. Therefore, on 3.8.1994 the Local Authority has granted sanction to file complaint against the

respondents/accused. Therefore, complaint under the provision of Section 16(1)(A)(1)(2) of the P.F.A. Act has been filed 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 23.1.1998.

4. Being aggrieved and dissatisfied with the said judgment and order dated 23.1.1998 passed by the learned Magistrate, in Criminal Case No. 611 of 1994, the appellant State of Gujarat, has preferred the above mentioned Criminal Appeal.

5. I have heard learned A.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 APP 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 while taking the sample the complainant has properly followed the provisions of the Act and, therefore, the evidence of the complainant Food Inspector is believable. He also contended that as per Rule 32(e) and (f) the date of manufacturing, date of packing and proper weight is required to be mentioned on the articles and the said rule came into force with effect from 1.3.1980 and, therefore, the decision of the Hon'ble Supreme Court, relied upon by the trial Court, is not applicable in the facts of the present case. 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 @ Man v. State of Kerala & Anr.*, (2006) 6 SCC 39, 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 wellsettled principles of law that where two views 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 evidences 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., 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 reappraise 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.?

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., 2007 AIR SCW 5553 and in Girja Prasad (Dead) by LRs v. State of M.P., 2007 AIR 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 rewrite 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, 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.

15. The trial court has, after appreciating the oral as well as documentary evidence, has clearly observed that as per the report of Public Analyst the weight of pouch of Gutka is 3 grams and as per Rule (f) of the Rules there is no need to mention the month and year of manufacturing on the packet weighing less than

20 grams. The trial Court has also observed that the complainant has clearly admitted in his cross examination that the weight of one unit of Gutkha is about 4 grams and if the weight of the pouch is not more than 50 grams then there is no need to mention the Batch number, code number, or date on the pouch. The trial Court has also relied on the decision of the Hon"bie Apex Court and clearly observed that the provisions of Section 32(F) is not applicable and even the provision of Section 32(E) is invalid. The trial Court has found that looking to the facts of the case the prosecution has failed to prove its case beyond reasonable doubt. The learned Magistrate has also found that the story putforward 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 respondentsaccused 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 APP 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 levelled 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 23.1.1998 passed by the learned Magistrate, in Criminal Case No. 611 of 1994 acquitting the respondents/accused from the charges levelled against them is hereby confirmed, Bail bonds, if any. shall stand cancelled. R & P may be sent back to the trial Court.