

(2010) 05 GUJ CK 0027
In the Gujarat High Court
Case No : Criminal Appeal No. 24 of 2010

State of Gujarat - for and on behalf of Yogeshchandra M. Soni	APPELLANT
Vs	
Vipulkumar Champaklal Dudhiya	RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1)
Prevention of Food Adulteration Rules, 1955 — Rule 13(2), 14

Citation : (2010) 05 GUJ CK 0027

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : C.M. Shah, Addl. Public Prosecutor, for the Appellant; D.K. Modi and M.D. Modi, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—The appellant, State of Gujarat has preferred this appeal u/s 378 of the Code of Criminal Procedure challenging the order of acquittal dated 31st July, 2009 passed by the Metropolitan Magistrate, Court No. 6, Ahmedabad in Criminal Case No. 3512 of 2008 acquitting the respondent-accused hereinabove of the charge of committing offence punishable u/s 16(1) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "PFA Act" for the sake of brevity).

2. The appellant had taken out an application being Criminal Misc. Application No. 144 of 2010 for seeking leave. While granting leave, this Court on 16.4.2010 had ordered calling for Record & Proceedings before admitting the appeal as there were glaring infirmity noticed in the judgment on the part of the prosecution and Court wanted to verify the same and if the infirmities are born out by the record, then admission of the appeal itself should have been of no use.

3. Accordingly, today after hearing the learned advocates for the parties and perusing the original record and proceedings, this Court is of the view that the

appeal does not deserves to be admitted for the following reasons:

4. The original complainant, Food Inspector in discharge of his duties as such, on 8th May, 2008 visited the premises of the accused, wherein he was dealing in milk preparation and other edible items made of milk. The complainant had been accompanied by his helper also. The accused was present in the shop. After inquiring as to the validity of license etc. and after notifying his intention to collect the sample of Mango Milk Shake, which was said to be kept in 20 liters cane in a deep freeze, he purchased 900 gms. of milk shake from one of the cane. After shaking it properly, the milk shake was firstly taken into steel vessel and after adding requisite amount of formalin preservative and after sealing it properly, one part of the sample food article was sent to the public analyst under the intimation to the Local Health Authority and remaining two parts were sent to the Local Health Authority. The public analyst, in his report opined that on account of presence of synthetic food colours, Tartrazine Yellow, Sunset Yellow, the article was adulterated and hence the prosecution was required to be lodged, which came to be lodged after obtaining appropriate sanction from the competent authority. The Court after recording evidence and appreciating the same, came to the conclusion that on account of glaring lacuna on the part of the prosecution in establishing its case against the respondent hereinabove, acquitted him of the charge of committing offence punishable u/s 16(1) of the PFA Act vide its order dated 31st July, 2009, which is impugned in this appeal.

5. The learned Additional Public Prosecutor could not establish and point out from the record and the memo of the appeal that there was any incorrect finding recorded by the Court, or finding recorded by the Court was not supported by the evidence on record. The Learned Additional Public Prosecutor could not indicate any erroneous finding or reasoning adopted by the Court while recording evidence and rendering the decision impugned in this appeal.

6. Shri Modi submitted that Trial Court's finding with regard to prosecution not establishing the service of notice upon the accused u/s 13(2) of the PFA Act is in itself a serious lacuna, which would render case of the prosecution liable to be discarded. Shri Modi, learned advocate appearing for the respondent invited this Court's attention to the testimony of the Food Inspector, wherein in cross-examination, he has admitted that the Exh.32 acknowledgment receipt bears signature of one Laxmanbhai, on behalf of Vipulbhai, the accused. Exh.32 bears the signature of Laxmanbhai and it is mentioned that it is on behalf of Vipulbhai i.e. the accused. Shri Modi also submitted that Mango Milk is ordinarily containing Mango, water, sugar and milk. He admitted that no standard are prescribed for Mango Milk Shake in Prevention of Food Adulteration Rules. He also admitted that if standard are not prescribed under the Prevention of Food Adulteration Rules and Appendix-B to the Prevention of Food Adulteration Rules, than such food is known as proprietary food. He further admitted that before taking the sample in question, cane containing the Mango Milk Shake was shaken. However, the liquid lying in the cane had not been stirred with the help

of any plunger or any other instrument. He admits that the steel vessel, which he had carried in his kit was used for collecting the sample. He also admitted that the bottles and steel vessel was given to him from the office. Though, he denied that those vessels and bottles were not cleaned. In paragraph-48 in his cross-examination, he also admitted that before pouring the milk shake in the steel vessel, the same was not cleaned as it is not required to be cleaned. He also admitted that he had not added formalin in the 900 gms. of milk shake. He also admitted that glass bottles, wherein ultimately the milk shake was transferred and taken was not cleaned on the spot in presence of the Panch witness.

7. This Court has heard the learned advocates for the parties and perused record and proceedings. Shri Modi is correct in his submissions with regard to Exh.32, which bears signature of one Laxmanbhai on behalf of Vipulbhai. Shri Modi has relied upon the decision of this Court in support of his submissions that in such a situation, it cannot be said that there is a total compliance with Rule 13(2) of the Prevention of Food Adulteration Rules. The decision in case of State of Gujarat v. Dhulabhai Aatabhai in Criminal Appeal No. 204 of 1979 decided on 8.12.1980 as well as the decision of this Court in case of State of Gujarat v. Pradipkumar Vrajlal Kandoi and Anr. reported in 2008 (2) CACC 964, which would show that the contention in this behalf is required to be accepted.

8. This Court has also perused the R & P and it can be said after perusing that the prosecution has not established any nexus and relationship between said Laxmanbhai who is said to have been accepted the documents on behalf of the accused. In light of the aforesaid ratio as it is stated hereinabove, the Court has to accept the submissions.

9. This brings the Court to examine the other aspect with regard to non-compliance with the methodology of collecting food and lack of establishment of compliance with Rule 14. The testimony of the food inspector and the documents on his part referred to hereinabove is clearly go to show that prosecution failed in establishing its case with regard to compliance with Rule 14, which is held to be mandatory in its nature as well as lacuna in collecting the sample and adding the preservative formalin.

10. In view of the aforesaid discussion, this Court is of the view that the order impugned cannot be said to be so perverse so as to call for any interference u/s 378 of the Code of Criminal Procedure. The appeal, is required to be dismissed and accordingly dismissed.