

(2020) 02 BOM CK 0054
In the Bombay High Court
Case No : Criminal Appeal No. 32 Of 2004

State Of Maharashtra

APPELLANT

Vs

Ashishkumar Dineshkumar Patel

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Prevention Of Food Adulteration Act, 1954 — Section 2(ia)(a), 2(ia)(m), 7(i), 10(7), 16
Code Of Criminal Procedure, 1973 — Section 342
Prevention Of Food Adulteration Rules, 1955 — Rule 14

Citation : (2020) 02 BOM CK 0054

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : S.V. Gavand, Spenta Havewala

Final Decision : Dismissed

Judgement

1. This is an appeal filed by the State impugning an order and judgment dated 21st July 2003 passed by the Chief Judicial Magistrate, Pune, acquitting

accused of charges under Section 7 (i) read with Section 2 (ia) (a), 2 (ia) (m) punishable under Section 16 (Penalties) of Prevention of Food

Adulteration Act 1954 (PFA).

2. On 13th February 2020 since nobody was present in Court representing respondent, the Court appointed Ms. Spenta Havewala, an Advocate, as

Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Ms. Spenta

Havewala, learned Amicus Curiae, for it has been of immense value in rendering the judgment.

3. The learned Amicus submitted that the Court need not go into the facts of the case because it is settled law that the Food Inspector should take the

samples in clean and dried containers or bottles. Ms. Havewala relied on a judgment of this Court in B.A. Samant V/s. The State of Maharashtra 1968

SCC Online Bom 115 and submitted that the failure on the part of PW-1, the Food Inspector, to take samples in clean and dried bottles, which to his

knowledge were clean and dried, would certainly affect the credibility of prosecution's case. Ms. Havewala pointed out that in his cross

examination, PW-1, the Food Inspector, has admitted that he did not clean the sample bottles on spot. Ms. Havewala pointed out that though PW-1

says that on the previous day he verified that the sample bottles were clean and dried, also admits that his deposition that he verified the sample bottles

was for the first time in his examination in chief. PW-2, who is the panch witness, says on 24th November 2000, Food Inspector Joshi did not call him

and told him to sign on some papers. PW-2 also says that the bottles were not cleaned in his presence and there were 2-3 seals on each sample bottle.

Paragraphs 20 to 23 of B.A. Samant (supra) read as under :

20. In my judgment the contentions raised by Mr. Peerbhoy on behalf of the accused must be upheld in the present case, because, in the first place,

there is no evidence to show that the Food Inspector complied with the provisions of Section 10(7) by taking independent witnesses for the purpose of

entering, inspecting and taking sample from the shop of the accused. It was only after the bottles were filled in and the labels were put that witness

Gopinath was made to sign on them. Secondly, the Food Inspector himself has not cared to state in his evidence that he had taken the samples in clean

and dry bottles as required by Rule 14 of the Prevention of Food Adulteration Rules. It is true that breaches in the performance of his duties under

Section 10(7) and Rule 14 may not necessarily result in vitiating the trial. But they certainly affect his credibility. A Food Inspector, who does not care

to follow strictly the mandatory provisions of the Prevention of Food Adulteration Act, 1954 and the rules with which he is vitally concerned cannot be

assumed to have much regard for truth even supposing that he may be truthful, I think, the rule of prudence requires the Court to insist on some

corroboration to his evidence. In the present case, as stated above, the Food Inspector did not even care to examine the witness who had

accompanied him. It may be argued that it is not necessary for him to examine the witness who accompanied him. Whenever his evidence is

challenged or is liable to be challenged, it is desirable that the witness who accompanied the Food Inspector should be examined, so that the evidence of the witness will lend assurance and corroboration to the evidence given by the Food Inspector. It is necessary to guard against baseless allegation which might be made by the accused against him particularly because the Food Inspectors are likely to forget one or the other of the provisions laid down under the Prevention of Food Adulteration Act and the rules made thereunder, with regard to the manner in which the samples have to be taken and forwarded for analysis.

21. In the present case, however, witness Gopinath has been examined by the defence and he has stated emphatically that he did not see the empty bottles at all. The argument of Mr. Rege that no such case was put to the Foods Inspector by the accused is of no avail because the accused in this case was unrepresented and the Food Inspector himself did not state in his evidence that he had used clean and dry bottles as required by Rule 14; and, therefore, it was not necessary to ask him in his cross-examination anything about it. I have already referred to above, as to how the statement of the accused under Section 342 of the Criminal Procedure Code has been recorded in this case. If the accused has not specifically stated that the bottles were not clean and dry when they were filled in with the milk supplied by the accused, it cannot be said to be a ground, which debars him from arguing, on the facts and the circumstances of the case, that unless the compliance with the provisions of Rule 14 is strictly proved, the benefit of doubt which must arise in the present case as a result of the evidence of Gopinath (D.W.1) should be given to him.

22. Further a grave doubt arises with regard to the contents of the two samples which were analysed in this case because of the striking discrepancy between the analysis by the Public Analyst and the one by the Director of Central Food Laboratory, with regard to the water contents of the two bottles. So far as milk fat is concerned, the difference is only of 0.1 per cent, in the report of the Public Analyst and the one given by the Director of Central Food Laboratory. With regard to the milk solids other than milk fat the difference is 0.3 per cent. These differences can be considered to be negligible. But it is difficult to understand how there could be one bottle with 21 per cent of water and the other with 17 per cent. The main question in

this case is whether the accused can be convicted merely relying on the evidence of the Food Inspector and the report of the Director of Central Food

Laboratory for holding that the accused sold adulterated milk. In view of the fact that the Food Inspector did not lead any evidence with regard to the

following of the procedure under Rule 14 and did not try to explain how this difference in the two reports was caused, it will be difficult to convict the

accused relying on the evidence of the Food Inspector alone.

23. Further, a doubt is created in accepting his evidence because of the statement of the defence witness, Gopinath, who stated that he did not see the

empty bottles. As I have stated above, the offences under Section 16 of the Prevention of Food Adulteration Act are grave ones and before an

accused person can be convicted the Court must be satisfied beyond any reasonable doubt that the accused sold the adulterated article of food. In the

present case a grave doubt arises with regard to the way in which the samples were taken by the Food Inspector and if it is not satisfactorily

established that the sample that was taken was in a clean and dry bottle, it would be reasonable to doubt whether the sample that was sent to the

Director of Central Food Laboratory was the article of food which the accused sold or the article, which was mixed with some water which was

already there in the container used. This is not to suggest that the water in the bottle might have been deliberately put in, but it is quite possible that

while cleaning those bottles some water remained in them and Rule 14 which required that the bottles should be clean and dry was not complied with.

Therefore, in the absence of any reliable evidence on this point led by the prosecution, the prosecution case must fail.

4. Ms. Havewala submits that Rule 14 of PFA Rules 1955 prescribes the manner of sending samples for analysis. Ms. Havewala submitted that

samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers and in this case, as per the

evidence, there is a breach of Rule 14.

5. In State of Maharashtra V/s. Vilas Madhavrao Tundulwar 2018 ALL MR (Cri) 2100 the Court has held that the provisions under Rule 14 of PFA

Rules 1955 are mandatory and the non compliance of the said rule will vitiate the prosecution. Paragraphs 10 to 12 of the said judgment read as under

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10. On the ground of breach of Rule 14 of the Rules, 1955, Mr. V.A. Laghate the learned Counsel for the respondent, invited my attention to the Rule

14 of the Rules, 1955, which reads as under :

14. Manner of sending samples for analysis " Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed."

11. In this regard, according to the complainant the sample bottles in which the sample was taken were not cleaned on the spot before the panchas

and the accused. It is to be noted that the panchanama does not speak of the fact that the bottle was cleaned. Moreover, after filling the oil in the

bottle and cleaning it by lid, the mouth of the bottle was not sealed. The panchanama (Exhibit-40) indicates that the sample of groundnut oil which was

purchased was divided into three equal parts and poured in a clean, empty and dry bottle and lid was affixed to it tightly thereafter the label was

pasted by means of gum. Significantly, the panchanama is silent on the aspect of sealing. According to the complainant after purchasing the groundnut

oil, the samples were divided in three equal parts and they were put in three cleaned, dry and empty bottles. Thereafter, the cork of each bottle was

sealed and each bottle was labelled. The ends of the wrapper were folded and pasted. However, the bare testimony of the complainant on this aspect

cannot be relied upon and it is missing in panchanama (Exhibit-40).

12. This Court in case of Bhojimal Dhanumal Kundal and another V/s. Shirpur Warwade Municipal Council, Shirpur and another, reported in 1986

Cri.L.J. 931 held that, the provisions under Rule 14 of Rules, 1955 are mandatory and the non compliance of the said Rule will vitiate the prosecution.

6. The Apex Court in Chandrappa & Ors. V/s. State of Karnataka (2007) 4 SCC 41 in paragraph 42 has laid down the general principles regarding

powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under:

42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an

appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the

evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence

before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted

conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such

phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to

curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the

presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be

innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his

innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) 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.â??

7. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused

under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent

court of law. Secondly, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the

Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

8. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in

my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

9. Appeal dismissed.