

(1995) 02 GUJ CK 0010

In the Gujarat High Court

Case No : Criminal Appeal No's. 419 of 1990

The State of Gujarat

APPELLANT

Vs

Ratilal Maganlal Shah and Others

RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Prevention of Food Adulteration Act, 1954 — Section 14, 16, 17, 19, 19(2)

Citation : (1996) CriLJ 2683 : (1995) 2 GLR 1542

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : S.T. Mehta, app, for the Appellant; Rajash D. Dave, for Res. No. 1 and R.R. Marshal, for Res. Nos. 3, 5, 6, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The respondents are the original accused persons. The appellant is the original complainant-Food Inspector who visited the shop of accused No. 1 on 30-7-1986 and purchased groundnut oil "Utsav" brand for the purpose of analysis on the suspicion that it was being sold in contravention of the provision of Prevention of Food Adulteration Act 1954 ("Act" for short). One of the samples collected from groundnut oil tin was sent to the Public Analyst for examination and report. The report of the Public Analyst indicated that the groundnut oil was sold by the accused No. 1 from his shop in contravention of provisions of the Act as it was found to be adulterated. The charge was framed against the accused persons u/s 7(1) read with Section 16 of the Act.

2. At the end of the trial, after examining the evidence on record, the trial Court found accused not guilty. With the result, the accused came to be acquitted from the said charges against him which is being precisely under challenge in this appeal u/s 378 of the Code of Criminal Procedure ("Code" for short).

3. The acquittal judgment and order was recorded in Criminal Case No. 1513 of 1987, on 14-2-1990, by the learned J.M.F.C, Surat at Vyara acquitting all the

accused persons of the charges against them.

4. The prosecution case in short is that the complainant-Food Inspector Mr. Yadav visited the shop of the accused No. 1 who was dealing in business of grocery at Vyara. The Food Inspector purchased oil which was collected from one oil tin showing "Utsav" brand label thereon. Upon analysis, the said sample was found to be not up to the mark and sub-standard. Therefore, the complaint was lodged against all the respondents-accused persons. Accused No. 1-Trader was running shop at the relevant time and was dealing in selling of edible oil. Accused No. 2 is a partnership firm dealing with wholesale business of edible oil. Accused Nos. 3 to 6 were the partners of wholesale dealer firm accused No. 2 M/ s. Ronak Oil Traders at the relevant time. The sample of incriminating oil item was manufactured by the firm, accused No. 7 R. Kuverji & Co. at Bhavnagar and accused Nos. 8, 9, 10 and 11 were the partners of manufacturing firm as per the prosecution case at the relevant point of time. As per the complaint, there was abreach of provisions of Section 7(1) of the Act punishable u/s 16 of the Act for selling prohibited adulterated groundnut oil. On the basis of the complaint the charge was framed to which the accused persons denied and claimed to be tried. After the trial, on examination of facts and circumstances, the trial Court found accused persons not guilty and acquitted all of them from the said charges. Hence this acquittal appeal.

5. After having examined facts and circumstances emerging from the record of the case and hearing learned Assistant Public Prosecutor, this court has no hesitation in finding that the impugned order of acquittal cannot be said to be unjust, unreasonable or illegal. The view of the trial Court and the ultimate conclusion of acquittal could not be shown to be perverse or erroneous requiring interference of this Court u/s 378 of the Code.

6. It is settled proposition of law that the appellate Court exercising powers u/s 378 of the Code should not disturb acquittal order merely on the ground that other view is plausible. The powers of this Court in the acquittal appeal u/s 378 of the Code are examined in various decisions of this Court as well as of the Apex Court. Therefore, instead of going into all those decisions, the settled principle which has emerged is that although in an appeal from an order of acquittal, the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet as a rule of prudence, it should always give proper weight and consideration to such matters as (i) the view of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt; and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. It is also very well established by various decisions that where two reasonable conclusions can be drawn on the evidence on record, the High Court should as a matter of judicial caution, refrain from interfering with the

order of acquittal recorded by the Court below. In other words, if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal. The proposition on this point is well established in the decision of the Apex Court in *Solanki Chimanbhai Ukabhai Vs. State of Gujarat*, . In this decision, reliance is also placed on following two other decisions of the Supreme Court :-

(1) *Samson Hyam Kemkar Vs. State of Maharashtra*, ; and

(2) *Bhim Singh Rup Singh Vs. State of Maharashtra*, .

7. Apart from that, in the light of the facts and circumstances of the present case, the wholesale dealer from whom incriminating oil sample was collected had produced the bill for purchase of oil tin under "Utsav" brand label. It was collected by the Food Inspector at the time of purchase of discriminating oil sample from sealed tin. It is a xerox copy of the said bill containing warranty issued in the name of original accused No. 1 by firm Ronak Oil Traders. Original bill was produced in the trial Court at Ex. 74 showing the warranty. Accused No. 1 had also indicated, the same to the Food Inspector when he collected incriminating sample of groundnut oil about this aspect.

8. Section 19 of the Act provides defences which may or may not be allowed in prosecution under this Act. It is more relevant and important for the purpose of deciding this appeal. Therefore, it will be necessary to refer the provision of Section 19 of the Act. Section 19 reads as under:-

(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the-food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proved -

(a) That he purchased the article of food -

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3) Any person by whom a warranty as is referred to is alleged to have been given shall be entitled to appear at the hearing and give evidence.

9. It could well be seen from the aforesaid provisions that a written warranty u/s 19(2)(a) which will provide, a defence where a vendor purchased sample of food

from the manufacturer, distributor, or dealer with a written warranty in prescribed form. Form No. VI-A as per Rule 12-A prescribes form of warranty under Appendix-A to the Act. Section 14 of the Act provides that no manufacturer or distributor or, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. It is not disputed that accused No. 1 was a retailer and he has purchased oil tin from the wholesaler accused No. 2 and the fact that the said oil tins were manufactured by the manufacturing firm accused No. 7.

10. As per the report of the Public Analyst of the Central Food Laboratory, incriminating oil sample was found to be adulterated, ordinarily, therefore, accused No. 1 who had sold adulterated oil sample is liable for the contravention of the provisions of the Act. It is not the defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale. However in view of Section 19(2) of the Act, the accused is entitled to prove that he is not liable to have committed an offence pertaining to the sale of any adulterated or misbranded article of food like that of incriminating edible groundnut oil, if he proves that necessary ingredients of this section are satisfied. In view of the provision of Section 19(2) of the Act, accused cannot be prosecuted for offence pertaining to such a sale of incriminating or adulterated food article, if he proves - (1) that he purchased the article of food, (a) in a case where a licence is prescribed for the sale thereof from a duly licenced manufacturer, distributor or dealer; (b) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form and that the said article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. It is very clear from the evidence on record that aforesaid material ingredients entitling protection of Section 19(2) of the Act were existing and therefore, accused No. 1 is rightly held not guilty relying on the provision of Section 19(2) of the Act and acquitting the accused from the charge against him.

11. In so far as whole-saler's defence is concerned, it may be noted that the prosecution has not been able to show that accused Nos. 3, 4, 5 and 6 were the partners of original accused No. 2-Firm - a wholesaler or dealer. The prosecution has also not been able to prove that accused Nos. 8 to 11 were the partners of manufacturing firm-original accused No. 7.

12. It may also be mentioned that the prosecution witness No. 1-Food Inspector Mr. P. V. Jadav who is examined at Ex. 16, has clearly admitted in his evidence that nomination of responsible person of the firm or a company was not obtained. Such a nomination is prescribed as per Form No. VIII in Appendix-A to the Act. There is no evidence on record as to who were the nominees as required under the Act in so far as the offence committed by the company is concerned.

Section 17 of the Act deals, with the offence by the company. Section 17 of the Act reads as under :-

Offences by companies:- (1)Where an offence under this Act has been committed by a company -

(a)(i) the person, if any, who has been nominated under Sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred as to the person responsible), or

(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, and

(b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employee mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

It is very clear from the aforesaid provisions that for the purpose of Section 17 of the Act, the word "company" means any body corporate and includes a firm or other association of individuals. Likewise, "director" in relation to a firm, means a partner in the firm. The complainant has admitted in his evidence that he had not collected information about nomination in prescribed form. It is also admitted by him that he has not collected any evidence much less documentary to show that original accused Nos. 3,4,5 and 6 and 8,9, 10 and 11 were the partners of respective firms at the relevant time. There is no dispute about the fact that there is no allegation in the complaint that the alleged partners were as such in charge of the management of the firms. In absence of such clear evidence as required to hold the companies and Directors guilty, acquittal recorded by the trial Court could not be said to be unjust, illegal and perverse.

13. Having regard to the facts and circumstances of the case, acquittal order recorded by the trial Court is required to be affirmed, while dismissing the appeal against an acquittal order. In the result, the appeal is required to be dismissed. Accordingly it is dismissed.