
(2012) 07 BOM CK 0140
In the Bombay High Court
Case No : Criminal Appeal No. 287 of 2000

The State of Maharashtra

APPELLANT

Vs

Shri. Suryabhan Ukarda Rokade

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 16(1)(ii), 2(ia), 2(ia)(a), 7(i)

Citation : (2013) BomCR(Cri) 109 : (2012) 114 BOMLR 2733 : (2012) CriLJ 3607 : (2013) 2 Crimes 83

Hon'ble Judges : A. P. Bhangale, J

Bench : Single Bench

Advocate : R.A. Deshpande, APP for the State/Appellant, for the Appellant;
Amol Mardikar, Advocate for the Respondent No. 1 (Appointed), for the Respondent

Final Decision : Dismissed

Judgement

A. P. Bhangale, J.—This appeal is directed against the Judgment and order dated 27/07/2000, passed by Judicial Magistrate First class, Balapur, District Akola in Regular Criminal Case No. 34 of 1999 whereby the the respondent/accused was acquitted of the offence punishable u/s 7(1) read with Section 2(ia)(a) punishable u/s 16(1)(ii) and u/s 7(i) read with Section 2(ia) punishable u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. Facts briefly stated are : -

Shri G. D Kamble, Food Inspector visited the firm M/s Ukhorda Ramchandra Kirana Shop on 26/10/1989 at about 10.20 a.m. at Balapur along with a Pancha Abdul Rauf. The Respondent accused was present in the shop doing the business. Shri Kamble after disclosing his identity inspected the shop and found the accused selling palm oil from a loose and unlabeled barrel of about 180 kg capacity, containing about 90 kg palm oil in it. Shri Kamble took sample from the said oil barrel for test and analysis. Shri Kamble had demanded 450 gram of oil for sample purpose. Accordingly the accused sold Palm oil to Shri Kamble for Rs 9.90

in presence of Pancha and issued the receipt. Shri Kamble followed the procedure for taking sample as laid down under the Act and Rules made thereunder. The Public Analyst reported that the Sample of Palm oil did not confirm to the standards as per P. F. A. Rules 1955. Thereafter sanction was obtained to prosecute the accused in the court of the Judicial Magistrate First Class, Balapur, District Akola and the accused were charged, tried and acquitted as above. During pendency of the proceedings the accused No. 2 - Ukarda Ramchandra Rokade died and his name stood deleted vide order of this Court dated 24/07/2001 as Appeal abated against him. Thus appeal proceeded against the sole accused Shri Suryabhan Ukarda Rokade.

2. Learned A.P.P. submitted that the Trial Court erred not to accept the evidence of the Food Inspector on the ground that it was not corroborated. According to learned A.P.P there was evidence about the taking of samples of Palm Oil from the adulterated stock in the shop of the accused. The Public Analyst had also reported that the sample sent to him was of the substandard quality indicating involvement of the accused in selling the adulterated Palm Oil in retail. It is submitted that the accused were given benefit of doubt wrongly on the premise that the palm oil was purchased from one M/s Bharat oil Industries, Nagpur. It is submitted that the same firm could have been indicted co-accused. It is submitted that the difference between the report of the Public Analyst and the report by the Director of the Central Food Laboratory Gajiyabad was given undue importance as the later report ought to have been accepted. Thus according to learned A.P.P. the trial Court erred to appreciate the evidence.

3. On the other hand learned Advocate for the accused submitted that the trial Court delivered well reasoned appropriate judgment while appreciating the evidence in the light of facts and circumstances.

4. It appears that four witnesses were examined in support of the case of the prosecution consisting of the complainant Vilas Patne, Govind Kamble, Ramdas Bhangre and Abdul Rauf. Evidence of Govind revealed that sample of the Palm oil was obtained from the Barrel in the grocery shop of the accused under the Memorandum Panchanama (Ex-54). One sample was sent to the office of the Public Analyst, Pune and other two were handed over to Local Health Authority, Akola. Bharat Oil Industries, Akola was also issued a letter (Ex-63) from whom the accused had reportedly bought the palm oil. Consent to prosecute the accused was sought after the Public analyst reported that the sample of the Palm oil did not confirm to the standard. PW-3 deposed about the consent obtained from the Joint Commissioner, Food and Drugs, Nagpur. The accused had also got the sample examined from Central Food Laboratory, Gajiyabad and reportedly the Palm oil did not confirm to the standard according to Rules. The evidence led revealed that the the accused had not passed any receipt for the sale of sample. PW-4 Ab Rauf's evidence indicated that the Food Inspector took out some oil from the Barrel for the samples in three separate bottles but the Panch witness stated that he does not know the contents of the Panchnama (Ex-54). Panch

witness was disowned by the Prosecution. Panch witness clearly deposed that he does not know as to whether the sample was meant for sale or not. He also denied knowledge as to whether the samples were meant for sale or not. In the course of his evidence he also denied that the samples were taken from the Barrel in which the Palm oil was kept. He gave vital admission that when he went to the shop the samples were already sealed. He had signed Panchnama Ex-54 at the instance of the Food Inspector who informed him that the samples were of the Palm Oil. PW-4 did not support the prosecution case. Sample is required to be taken in the presence of the Panchas. Serious infirmity occurred in the prosecution case as a result of the hostile evidence of Pancha witness regarding obtaining the Sample of the Palm Oil. The actual genuine transaction of the sale of samples and formalities accompanied thereto was not established by evidence beyond reasonable doubts, for want of independent evidence. Pancha witness though stated that one sample was given to the shopkeeper there was no word of corroboration about it from the Food Inspector. It is the duty of the Prosecution to prove that the sample of food was taken for the analysis in a clean, empty and dry bottles and closed sufficiently tight to prevent leakage, evaporation, entry of moisture, the bottle or the container of the sample must be proved to have been carefully sealed. The trial Court also noted the apparent discrepancies in respect of color, values stated differently in the Reports Ex-42 and Ex-89, which created doubts about the origin of samples from the same source. The accused were not manufacturers of the Palm oil. As retailer it was bought by them from M/s Bharat Oil Industries, Akola. The prosecution did not bother to indict M/s Bharat Oil Industries as co-accused in the case. We do not find trustworthy evidence beyond reasonable doubt to hold accused guilty and in the absence of corroboration to the evidence of the Food Inspector and discrepancies in the reports Ex-42 and Ex-89, the prosecution had miserably failed to establish it's case beyond reasonable doubts. Even otherwise High Court does not ordinarily set aside the Judgment of acquittal when two views are possible unless the impugned Judgment and order is perverse or clearly unreasonable. The trial Court in the present case appears to have considered the relevant material to reach a conclusion of the acquittal and there are no any compelling or substantial grounds for to upset the impugned Judgment and order. That being so, the Appeal has no merit and must fail. Hence, it is dismissed with no order as to costs. Shri. Amol Mardikar was appointed as Amicus Curiae. His fee is quantified at Rs. 2000/-, payable by High Court Legal Services Sub-Committee at Nagpur.