

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.195 OF 1997**

The State of Maharashtra,  
Through Food Inspector,  
Parbhani.

**...APPELLANT**

**VERSUS**

3) Shankar Gaud Vithal Gaud,  
R/o-H. No.58, Ward No.7,  
Jijamata Road, Parbhani.

**...RESPONDENT**

...  
Mr. K.D. Mundhe, A.P.P. for Appellant.  
Mr. S.P. Brahme Advocate for Respondent No.3.

...

**CORAM: A.I.S. CHEEMA, J.**

**DATE OF RESERVING JUDGMENT : 22ND JULY, 2016.**

**DATE OF PRONOUNCING JUDGMENT: 11TH AUGUST, 2016.**

**JUDGMENT :**

1. This Appeal is against acquittal. In the trial Court, before the Chief Judicial Magistrate, Parbhani in R.C.C. No.489 of 1992, the accused

No.3 was present Respondent No.3 - Shankar Gaud Vithal Gaud (here after referred as "accused No.3"). He was tried alongwith the following two accused :-

- 1) M/s. Saibaba Toddy Company,  
H.No.58, Ward No.7,  
Jijamata Road, Parbhani,  
Tq. and Dist. Parbhani,
- 2) Kishanrao Bhujangrao Bhalerao,  
Age:- 27 years, Occu:-  
R/o. Dharephal, Tq. Basmath,  
Dist. Parbhani.

. The matter related to complainant filed by Food Inspector, Food and Drugs Administration, Parbhani, PW-1 Sudhakar Patil who filed complaint for contravention of Section 7 of Prevention of Food Adulteration Act, 1954 (here after referred as "the Act") along-with other provisions of the said Act. The accused No.1 is a firm of which accused No.2 was partner looking after the business. Accused No.3 was working as servant. The business was being operated from house No.58, the address of the accused No.1. Respondent No.3 along-with the other two accused came to be

prosecuted and was acquitted by the Chief Judicial Magistrate, Parbhani on 29th November, 1996. Against the acquittal, present Appeal came to be filed against the three accused. This Appeal had come up earlier before this Court and by Judgment dated 23rd January, 2009 my then learned Predecessor allowed the Appeal and the acquittal was reversed and all the three accused came to be convicted and sentence was passed. The matter was carried to the Hon'ble Supreme Court. Criminal Appeal No.1142 of 2010 preferred by the accused No.2 came to be dismissed by the Hon'ble Supreme Court and his conviction and sentence came to be maintained. Criminal Appeal No.75 of 2012 of present Respondent No.3 (Accused No.3) was allowed by the Hon'ble Supreme Court by Judgment dated 15th September, 2015 as he was unrepresented when the matter had come up before this Court and when the Appeal was decided against him. Hon'ble Supreme Court remanded the matter back to this Court for fresh disposal in accordance with law.

Thus, present matter has come up for decision of the Appeal as regards accused No.3 only.

2. The case of prosecution in short is as follows :-

(A) Complainant Food Inspector Sudhakar Patil (PW-1) was working as Food Inspector for local area of Parbhani District. The Chief Officer of Municipal Council, Parbhani was appointed as local health authority vide Government Notification dated 15th April, 1983. The accused No.1 was partnership firm of which accused No.2 was managing partner. Accused No.3 was working as servant in Respondent No.1. The business was of collecting and selling Toddy. PW-1 Sudhakar Patil along-with Panchas went to the premises of accused No.1 on 29th January, 1992 at about 3.00 p.m. Accused No.3 was present in the shop. PW-1 introduced himself and found that in the shop there were 240 bottles of Toddy kept for sale. They did not bear any label. They were not corked.

The PW-1 undertook procedure under the Act and the Prevention of Food Adulteration Rules, 1995 (hereafter referred as "Rules") to purchase sample of Toddy. After duly drawing samples and following the necessary procedure for purchase of Toddy and after duly sealing the samples, the sample was got analyzed from public analyst PW-4 Prakash Kulkarni. Necessary consent for prosecution was obtained from Joint Commissioner of Food and Drugs Administration, Aurangabad division and the complaint was filed.

(B) The matter came up before the Chief Judicial Magistrate, Parbhani. Evidence before charge was recorded. Then the charge came to be framed at Exhibit 66. The accused pleaded not guilty. The evidence was completed. The defence of accused was of denial. For the prosecution, PW-1 Sudhakar Patil deposed. Further witnesses examined were PW-2 Panch Vithal Shinde, PW-3 Shashikant Bharne, then Chief Officer of Municipal Council,

Parbhani and PW-4 Prakash Kulkarni, Public analyst. The Chief Judicial Magistrate considered the oral and documentary evidence and for reasons recorded by him, acquitted the accused.

3. Being aggrieved, State has filed this Appeal inter-alia against the present accused No.3.

4. It has been argued by learned A.P.P. for State that the Chief Judicial Magistrate while acquitting the accused persons wrongly appreciated the evidence and accused No.3 could not have been acquitted. It is stated that accused No.3 was found selling Toddy of which samples were drawn by PW-1 and when one of the sample was got examined from the public analyst, it was found to be adulterated. The complete and correct procedure under the Act and Rules was followed. The offence was duly established against accused No.3. The trial Court resorted to wrong reasonings and grounds for acquittal of the accused. The A.P.P.

submitted that Chief Judicial Magistrate wrongly gave benefit to the accused on the basis that evidence did not disclose that the Food Inspector stirred the Toddy while collecting the samples in three bottles. It is stated that the trial Court wrongly held that the public analyst did not show the date of analysis and so benefit was required to be given to the accused. It is stated, trial Court erred in holding that it was not proved that the toddy was not adulterated and was not injurious to health. According to him the sample showed that it was adulterated and the accused was required to be convicted.

5. Against this the learned counsel for accused No.3 submitted that there was no proper sealing of the samples as per the Rules under the Act. The samples drawn were not stirred and they did not represent the bulk of the contents. There was no proof brought that the analysis of the sample drawn was got done within forty days of

seizure. The report of Analysis did not state that the sample of toddy was injurious to health.

6. At the time of arguments, the learned A.P.P. and counsel for the accused No.3 have been heard, in the alternative, regarding sentence in case this Court decides to reverse the acquittal into conviction. The learned A.P.P. submitted that the offence is serious and against public health and severe punishment should be imposed. Against this, the learned counsel for accused No.3 submitted that accused No.3 was only servant in the shop concerned and he was not the owner of the business. The counsel submitted that in view of these facts lenient view should be taken against accused No.3.

7. I have gone through the oral and documentary evidence in the matter. The evidence of PW-1 Sudhakar Patil shows that he was appointed as Food Inspector in Pune Division as per the Gazette dated 18th January, 1973 (Exhibit 19) and

came to be transferred to Parbhani Division in 1990 (vide Exhibit 20). He joined the office of Assistant Commissioner, Food and Drugs Administration, Parbhani on 16th July, 1990 and was authorized to Act as Food Inspector in Parbhani District vide Gazette Notification dated 20th November, 1984 (Exhibit 22). His evidence is that Chief Officer of Municipal Council, Parbhani was the Local Health Authority Parbhani and Joint Commissioner, Food and Drugs Administration, Aurangabad was authorized to permit the prosecution under the Act. Regarding these facts, the Accused did not raise any challenge in the cross-examination.

8. Evidence of PW-1 shows that accused No.1 was firm run by acting partner - accused No.2 and accused No.3 was servant in the firm. According to him, on 29<sup>th</sup> January 1992 he along with Panch PW-2 Vithal had gone to the shop of the accused and accused No.3 was present there. The evidence

shows as to how PW-1 introduced himself and came to know the name of the owner and partner of the firm from accused No.3. He deposed that he inspected the shop. There were 240 bottles of Tadi i.e. Toddy for selling purpose kept in 20 plates, each of 12 bottles. Each bottle was containing 650 ml. Tadi. They did not have cork or any label. PW-1 deposed that accused No.3 told him that the bottles had been filled in the morning from one can. According to PW-1, he gave notice Exhibit 23 under Section 14 of the Act to this accused No.3 and inquired from him regarding the cash memo. Accused No.3 informed that Toddy had been drawn from Toddy tree by accused No.2 and there was no price memo. The accused No.3 endorsed regarding this behind Exhibit 23, which endorsement has been proved by him at Exhibit 24. PW-1 has deposed that he took Toddy from 3 bottles in one clean, empty and dry pot and 1500 ml. Toddy was then taken in another empty, dry pot by clean, dry and empty measure for analysis from the accused No.3.

Rupees Ten were paid as market price of Toddy. Receipt Exhibit 25 was issued by accused No.3. The evidence shows that this Food Inspector prepared notice Exhibit 26 in Form VI under Rule 12 of the Rules and it was given to accused No.3. He separated 1500 ml. Toddy in dry and clean bottles containing 500 ml. each. PW-1 deposed that he mixed copper sulphate 5 gm. for preservation in each bottle. He then corked the three bottles and sealed them with the seal of his designation. He fixed labels upon the samples with the signature of Panch and himself. Each of the sample was wrapped in paper and the same was pasted with gum and kept in the wrap. Slip containing the signature of L.H.O., code No.ABD/110/MCP Serial No.850/19-92 was pasted around the wrapped bottle. The evidence discloses that each of the bottle was tied horizontally and vertically by the thread. Each of the bottle was pasted with sealing wax and their ends were sealed with the seal of designation of PW-1 at four places out of which

one was on the upper side and one was below and the others were on the knot and body of the said wrap. The signatures of the Panch as well as accused No.3 were taken on the paper slip and the wrapper in the pasted position. Their signatures were also taken on four papers having the specimen impression of the seal. One of the slip has been proved at Exhibit 27. PW-1 deposed that he took possession of all three bottles which had been sealed. The evidence shows that the other 237 and  $\frac{1}{2}$  bottles were each wrapped by the paper on its mouth and were sealed and seized and notice in Form No.IV came to be issued to accused No.3 as per Exhibit 28 and possession of those bottles was given to accused No.3 and his endorsement Exhibit 29 was obtained. From accused No.3 surety bond for safe custody of those bottles was taken vide Exhibit 30. PW-1 then drew Panchnama Exhibit 31 and copy of it was given to accused No.3 and his acknowledgement was obtained.

9. The evidence of PW-1 Sudhakar Patil is corroborated by the evidence of PW-2 Vithal Shinde regarding such incident and preparation of the Panchnama Exhibit 31.

10. Evidence of PW-1 further shows that he returned to his office with the sample bottles and the documents. He prepared 7 copies of Form VII on 30<sup>th</sup> January 1992. One bottle and Form No.VII were sealed in one packet and sent for analysis with covering letter to the Public Analyst at Aurangabad vide Exhibit 32. He proved the receipt at Exhibit 33. His evidence is that copy of Form No.VII and paper having specimen impression of seal used upon the sample and outer cover were separately also sent with covering letter to Public Analyst vide Exhibit 34, of which receipt is at Exhibit 35. Exhibit 35 shows that the same was received in sealed condition. The evidence is that two sample bottles and two copies of Form No.VII were sealed in one packet and sent to Chief

Officer (PW-3), Parbhani with a messenger Kulkarni along with covering letter Exhibit 36. Receipt is proved at Exhibit 37. Two copies of specimen seals were also sent vide letter Exhibit 38, receipt of which is at Exhibit 39. Steps were taken for destruction of rest of Toddy. The Chief Officer received the analysis report of Toddy and the report was sent to Assistant Commissioner, which was later on received by this PW-1 and the same is at Exhibit 45. The evidence of PW-1 is that the analysis report Exhibit 45 proved that the Toddy contained total acid in excess and the volatile acid was also in excess and the alcohol contents were less than the permissible limit. The report also showed that Toddy was showing presence of chloral hydrate and that it did not confirm to the standards of Toddy as per Item A.29.01 of Appendix B of Prevention of Food Adulteration Rules 1955. Thus the evidence of PW-1 is that the Toddy was thus in adulterated form.

11. Evidence of PW-1 further is that he sent letter to the Chief Officer and came to know that license had been issued to the firm only on 18<sup>th</sup> March 1992 which is subsequent to the date of incident. He collected information regarding the partnership firm. All the concerned documents were produced before the Assistant Commissioner and consent of the Commissioner was obtained vide Exhibit 59. The evidence of PW-1 is that after receiving the necessary permission, the complaint came to be filed.

12. If the cross-examination of PW-1 is perused, he was asked and he disclosed that Toddy can be preserved for 8 to 10 hours without preservative but when preservative is added, it can be preserved for many years. He accepted that there are different parameters for fresh Toddy and stale Toddy. His cross-examination shows that he had used vertical cylinder to measure the Toddy. It is revealed that the measure was his own and

even the pots used were brought by him personally and they were not supplied by the department. I do not think that makes any difference. PW-1 was further asked in cross-examination and once he mentioned that he did not stir the Toddy before filling the bottles but then he himself volunteered that it was stirred. Although the learned counsel for the accused has tried to argue that there was no stirring of the Toddy, I find no reason to disbelieve this PW-1 who corrected himself to depose that he did stir Toddy before filling the same in bottles. Apart from this, the cross-examination does not show that the witness was in any way shattered regarding the procedure he followed for drawing of the samples. The evidence supported by Panchnama Exhibit 31 remains that PW-1 took Toddy from three bottles in one clean, empty and dry pot and put them together before he drew samples for analysis. In this process naturally the Toddy got stirred. Even otherwise the evidence is that the accused No.3

had informed this PW-1 that the accused No.2 had drawn the Toddy from Toddy tree and the evidence is that the bottles had been filled in from a can and had been kept in the morning. The bottles themselves were kept ready for sale and thus they represented the contents which were put up for sale.

13. The further cross-examination of PW-1 shows that he fastened the spot where the thread was sealed by wax. His evidence is that article concerned was injurious to health. He admitted that the report of the public analyst did not record as such that the sample was injurious to health. But then when the evidence shows that the sample did not meet the criterions as laid down in the Act and Rules, it has to be held to be adulterated. The witness was asked further details regarding sending of documents to the Joint Commissioner for sanction. There is general suggestion that he did not follow mandatory

provisions of the Rules. Going through the cross-examination, it cannot be said that the witness has been shattered at all.

14. State examined PW-3 Shashikant Bharne who was Chief Officer, Municipal Council, Parbhani at the concerned time. His evidence shows that PW-1 Sudhakar Patil had, on 30th January 1992 sent him packets containing two samples and letter of instructions separately. According to him, he had issued receipt. His evidence is that he also received filled up Form VII and specimen seal and issued receipts on that count. He has proved the letter Exhibit 38 and the receipts. His evidence shows that on 10th March 1992 he received four copies of the report of public analyst. He sent one copy to the Assistant Commissioner, Food and Drugs. According to him, on 21st May 1993 he sent information which was called by Assistant Commissioner vide Exhibit 47 and was informed on 17th October 1993 about lodging of the case

against the accused. He deposed that he issued notice to the accused under Section 13(2) of the Prevention of Food Adulteration Act. Copies of the said notices are proved at Exhibit 89 to 91 and the acknowledgements at Exhibit 92 to 94. Only two suggestions were given to this witness and both are denied. The witness cannot be said to be shattered regarding his evidence in any manner.

15. Then there is evidence of PW-4 Prakash Kulkarni, the public analyst. His evidence is that he received the sample in this matter on 1st February 1992. The sample was analyzed by his assistant under his supervision. The evidence is that the sample did not confirm to the standard and he prepared report in Form No.III on 6th March 1992 and sent four copies to Local Health Authority by registered post. His evidence read with Exhibit 45 is that the sample contained Chloral Hydrate. According to this PW-4 Chloral Hydrate is injurious to health. PW-4 proved

Exhibit 45 and his signature on it. His cross-examination shows that the result could be different in case of fresh Toddy and in case of stored Toddy. However the witness volunteered and evidence showed that preservatives had been added to the samples and the result would not get affected. He was asked in the cross-examination the date on which the sample was analyzed. He could not state so. The cross-examination shows that after preservative is added, the sample could be saved for one year approximately. On being asked, he has given name of his assistant as Mrs. Pathak who analyzed the sample under his supervision. The suggestion that it was not done under his supervision, was denied.

16. Thus, if the evidence of PW-4 is perused, it can be seen that after receiving the sample on 1st February 1992, the same was got analyzed and by 6th March 1992 the report had been prepared and sent. It is clear that in less than forty days as

required by Rule 7(3) of the Rules of 1955, the sample had been already analyzed and even report had been prepared and sent. In fact in less than 40 days from date of incident the report was already available after analysis. It is clear from reading of Rule 7(2) of the Rules of 1955 that no fault can be found with this witness if his assistant analyzed the sample and he supervised the analysis. Thus the arguments for accused on this count have no substance.

17. The evidence of PW-1 Sudhakar Patil proved the consent order issued by Joint Commissioner, Aurangabad Division, Food and Drugs under Section 20 of the Act giving consent in public interest to prosecute the accused persons including present accused No.3. Perusal of the document Exhibit 59 shows application of mind by the Joint Commissioner. Under Section 20 of the Act the requirement is of granting of consent. It is not a matter of sanction to prosecute.

18. I have gone through the Judgment of the Chief Judicial Magistrate and heard learned counsel for Respondent No.3 - accused No.3. The trial Court recorded the reason and it is argued that consenting authority who issued Exhibit 59 should have been examined. I do not think that merely because the consenting authority was not examined the accused can get any benefit. The consent shows application of mind by the consenting authority. PW-1 proved the consent which was received in official course. In the cross-examination of PW-1 he was not put any question regarding this consent order which he had received, so as to question the correctness of the same.

19. The other reason recorded by the trial Court that date on which the sample was received was not brought on record by the prosecution, has no substance. I have already discussed that within less than forty days of receipt of sample (or even

the incident), the same was not only analyzed but report sent. Thus, it cannot be said that Rule 7(3) of the Rules of 1955 was not complied.

20. The other reasoning recorded by the trial Court that the report of the public analyst did not mention that the Toddy was injurious to health, also cannot be maintained. It is quite apparent that Toddy did not comply with the standards prescribed under the Rules of 1955. Apart from this, there is specific evidence of PW-4 the public analyst mentioning that Chloride Hydrate was present in the sample, which was injurious to health.

. Reasons recorded by trial Court to acquit accused cannot be maintained.

21. For above reasons, I do not find that the Judgment of acquittal as recorded by the trial Court can be maintained against the Respondent No.3 - accused No.3 The State proved its case

beyond reasonable doubts.

22. For above reasons, I find that offence punishable under Section 7(i) read with Section 2 (ia), (a) read with Section 16 (1)(a)(ii) and offence under Section 7 (i) read with Section 2 (ia)(m) read with Section 16 (1)(a)(i) of the Prevention of Food Adulteration Act, 1954 is proved against the Respondent No.3 - accused No.3.

23. I have already heard learned counsel for the accused and learned A.P.P. in the alternative as to what should be the punishment in case the acquittal is converted into conviction. Considering the submissions and the quantum of sentence as imposed against accused No.2 and considering the fact that present accused No.3 was only servant, it would be appropriate to impose lesser sentence of imprisonment on him. I am aware that much time has passed since the incident took place. However, sentence of imprisonment is necessary looking to the gravity of the offence

and the fact that adulteration in food articles puts the health of public at risk and also considering the fact that Toddy is a drink mostly consumed by citizens not coming from affluent background. It is mostly consumed by poor people. It would be appropriate that sentence of imprisonment should remain and the accused cannot be allowed to walk away by merely paying the fine. Hence I pass following order:

**O R D E R**

(I) Criminal Appeal is allowed.

(II) The Respondent No.3 - accused No.3 - Shankar Gaud Vithal Gaud is hereby convicted for offences punishable under Section 7(i) read with Section 2 (ia), (a) read with Section 16 (1)(a)(ii) and offence under Section 7 (i) read with Section 2 (ia)(m) read with Section 16 (1) (a)(i) of the Prevention of Food

Adulteration Act, 1954 and sentenced to suffer rigorous imprisonment for Six (6) months and to pay fine of Rs.1000/- (Rupees One Thousand). In default of fine, he shall suffer further rigorous imprisonment for Three (3) months.

(III) The Respondent No.3 - accused No.3 shall surrender to his Bail Bonds.

(IV) The period undergone as under-trial, shall be set off under Section 428 of the Code of Criminal Procedure, 1973.

(V) The trial Court shall ensure execution of sentence.

**[A.I.S. CHEEMA, J.]**