

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.821 OF 2002

The State of Maharashtra)....Appellant

V/s.

Vithal Mahabal Shetty & Anr.)....Respondents

Ms.JyotiLohokare APP for the Appellant-State.

Mr.Satyavrat Joshi a/w Mr.Nitesh J.Mohite for respondent no.2.

CORAM : K.R.SHRIRAM,J

DATE : 6.5.2019

P.C.:-

1. This is an appeal filed by the State of Maharashtra against an order of acquittal dated 16.1.2002 whereby respondents were accused of offence punishable under section 16 of Prevention of Food Adulteration Act 1954 (PFA Act).

2. The accused stand trial for the offences punishable under Section 7(i) r/w section 2(ia) (a), 2(ia) (j) and section 7(v) r/w rule 29 of PFA Rules 1955 and under section 16 of PFA Act.

3. The prosecution case is that the complainant is a Food Inspector. Accused no.1 who was the Manager and accused no.2 was

the Proprietor of a restaurant by name Girija Restaurant and Bar situated at 1/1, Navi Peth, Pune-400 030. On 22.9.2000 the complainant visited the said restaurant at about 7.00 P.M. along with panch witness Bhikaji Raul. The complainant after introducing himself to accused no.1 took sample of chicken masala (prepared food), distributed them into 3 parts and put them in to 3 clean dry and empty wide mouth bottles. The complainant added 16 drops of formalin in each bottle as preservative, tightly closed mouth of said bottles by lids and sealed it by sealing wax. Sample label having sign of complainant, panch witness and accused no.1 was also pasted on the bottles. These bottles were thereafter wrapped separately in brown paper. Panchanama was also drawn on spot and it was signed by complainant, accused no.1 and panch witness. It seems on 25.9.2000 the complainant forwarded one sealed part of the sample and copy of form-vii in a sealed packet with covering letter to Public Analyst, Pune, for analysis and report. The remaining 2 parts were also sent to Local Health Authority, Pune. On 15.11.2000 the complainant received a letter from Local Health Authority stating that the sample contained synthetic colour, viz., Tartrazine sunset yellow FCF and carmosine. It is also stated that the complainant after making necessary inquiry, obtained consent to prosecute the accused and the present complaint was lodged against

the accused. Summons were issued and the accused appeared and were released upon executing personal release bonds and on depositing cash security pending trial.

4. The prosecution examined the complainant as well as the panch witness. They also produced certain documents in support of the allegations mentioned in the complaint. Admittedly the author of the letter from Local Health Authority was not examined. Public Analyst was also not examined. It also appears that the complainant had not washed and cleaned the plates/bottles on the spot in which food samples were taken. From the evidence it also appears that the complainant has not adduced any reliable evidence showing that plates and bottles were clean, dry and empty. The trial court has observed that the complainant improved his story at the time of hearing as an after thought that in all 7 plates were used, taken by accused no.1 and that fact is not mentioned in the panchanama. The trial court has also come to a conclusion that the complainant has not followed all procedures laid down under PFA Rules 1955. The trial court noted that the complainant in his examination-in-chief has affirmed that 16 drops of formalin were added in each bottle as preservative but the report of Public Analyst (Exh.59) nowhere shows that the said formalin had been detected by Public Analyst while doing

analysis. There has also been a delay of almost 9 months from the time the sample was collected and the complaint was presented in Court.

5. Taking into consideration all the evidence that was before the Court, the court came to a conclusion that the prosecution/complainant has failed to prove the charges levelled against the accused and thereby acquitted the accused.

6. The Apex Court in ¹***Chandrappa & Ors. Vs. State of Karnataka*** has, after considering many judgments, laid down the general principles regarding powers of the appellate court while dealing with the appeal against the order of acquittal. Paragraph-42 of the said judgment reads as under :-

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge :

(1) An appellate court has full power to review, reappreciate 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

¹ (2007) 4 Supreme Court Cases 415

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 emphasise 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 accused. Firstly , the presumption of innocence is 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 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.”

7. Applying the above principles to the case in hand, I am of the considered view that the learned Counsel for respondents is right in submitting that this Court ought not to disturb the order of acquittal recorded by the trial Court. For acquitting the accused and then extending the benefit of doubt, the trial Court observed that the prosecution has failed to examine certain persons who could have

unfolded genesis of the prosecution case. The trial court has come to a conclusion that when the complaint states 16 drops of formalin was added in each bottle as preservative, report of the Public Analyst does not indicate any detection of formalin while doing analysis. Neither the Analyst nor the Local Health Authority on whose report reliance was placed by the prosecution were examined. The trial Court also has come to a conclusion that the complainant was trying to improve his case at the time of hearing as after thought and there was no evidence to show that the plates in which samples were taken and the bottles in which samples were put were clean, dry and empty.

8. The panch witness also had turned hostile. It will be useful to reproduce the evidence of panch witness (PW-2) which is as under :-

“P.W. 2 for complainant

<i>Name : Bhikaji Sumant Ravale</i>	<i>Age : 22 years</i>
<i>Occ. Service</i>	<i>R/o : Pune</i>

Examination-in-chief by A.P.P.

1. Panchanama dt. 22.9.2000, now shown to me bears my signature (Exh.16). The complainant called me while I was passing by the road and obtained my signature on panchanama which was already prepared. I do not know about contents of panchanama. Documents Exh.14, 15, 17 & 18 now shown to me bear my signature.

*The witness turned hostile. Permission to cross-Examine the witness is granted to the Ld.A.P.P.
Cross exam. by A.P.P.*

2. The portion marked (A) & (B) of said panchanama Exh.16 now readover to me is not happened before me. It is not true to say that panchanama was written in my present. The accused runs hotel. I also do service in hotel. I did service for 8 months in the hotel of accused. It is not true to say that I am deposing falsely to save the accused.

Cross-exam. by Adv. Sharma for accused.

3. Decline. No re.”

9. In the circumstances, the appeal deserves to be dismissed and is accordingly dismissed.

The bail and bond stand cancelled.

(K.R.SHRIRAM,J)