

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 602 OF 2004**

The State of Maharashtra	)	
(At the instance of Shri J. B. Deokar	)	
Age 48 years, Food Inspector,	)	
FDA (MS), Satara	)	..Appellant
		(Orig. Complainant)

Versus

Shri Ashok Kantilal Gandhi	)	
Vendor and Prop. Of M/s Gunjan	)	
Traders, Gala No.3, Municipal	)	
Shopping Centre, Guruwar Paraj,	)	
368, Shaniwar Peth, Satara,	)	
Dist – Satara	)	..Respondents
		(Orig. Accused)

Ms Anamika Malhotra APP for Appellant
Mr. Yuvraj Choksy, Amicus Curiae

**CORAM : K.R.SHRIRAM, J.
DATE : 25th FEBRUARY 2020**

ORAL JUDGMENT. :

1 This is an appeal impugning an order and judgment dated 1-10-2003 passed by the Chief Judicial Magistrate, Satara, acquitting respondent (accused) of the offence punishable under Sections 7(1) read with Section 2(1)(ia)(a) and Section 7(v) read with Rule 62 and Section 16 of the Prevention of Food Adulteration Act, 1954.

2 As none appeared for respondent, this court appointed Mr. Yuvraj Choksy as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Mr. Choksy, learned Amicus Curiae.

3 It is the prosecution's case that on 30-9-1998 at about 2.00 p.m., complainant - Jaywant B Deokar (PW-1) visited the shop of respondent (accused) at Satara and purchased Goa Guthaka for Rs.360/- in six poly packed packets each weighing 105 grams. After purchasing Goa Guthaka from accused, complainant (PW-1) issued a notice in writing in form no.VI and under Section 14-A of PFA to accused. Thereafter, complainant divided the purchased items into three equal parts and put it into three dry, clean and empty polythene bags and sealed them, labelled them with the signatures of accused and complainant and independent witnesses and sent them for analysis. On 3-10-1998, Complainant sent one sealed sample alongwith memo in Form No.VII in a sealed cover to the Public Analyst, Pune by RPAD. Upon receiving the report dated 13-10-1998 from the public analyst where it is opined that the sample sent contained magnesium carbonate and thereby, contravenes the PFA Rules 1955, complainant filed the complaint. Charge sheet was filed and accused pleaded not guilty and claimed to be tried.

4 Prosecution led evidence of 5 witnesses, namely, Jaywant Deokar, Food Inspector, as (PW-1); Shaikh Masood Ahamad, public analyst as (PW-2); Suresh Shankar Urnekar, Joint Commissioner, as (PW-3); Harihar Kallyan Rajopadhye, as (PW-4) and Mehmood Amin Momin, as (PW-5).

5 Regarding the seizure and sealing, prosecution led evidence

only of PW-1 and PW-5. PW-1 is complainant and PW-5 is the panch witness. PW-5 was declared hostile. PW-1 in his cross-examination admits that he did not prepare any inspection report that he had carried out an inspection on 30-9-1998. PW-1 also admits that he did not visit the shop of accused on any complaint or there was any complaint against accused and there were orders or directions of his superior for obtaining Goa Guthaka from the shop of accused. PW-1 also admits that he obtained sample of Goa Guthaka, which were sealed and packed, the name of manufacturer, address of manufacturer, packet number, manufacturing date etc., were printed on each packet. PW-1 also admits that when he took inspection on 30-9-1998, he was accompanied by one Mr. Bodake, Food Inspector and a sampling assistant, whose name he does not even remember. Mr. Bodake has not been examined. PW-1 also admits that though Mr. Bodake and sampling assistant were with him till the procedure was completed, Mr. Bodake did not take part in obtaining sample. PW-1 has not mentioned in the complaint that Mr. Bodake and sampling assistant were with them at the time of visit to the shop of accused on 30-9-1998. PW-1 also admits that he has not even obtained their signatures on any document relating to the case. Even the complaint is silent about the presence of Mr. Bodake and sampling assistant on 30-9-1998. Therefore, panch witness (PW-5) having turned hostile, the only person who talks about the seizure of sample from the shop of accused, is PW-1. Should this court really believe that PW-1 conducted the

inspection, collected the sample and sent it across for analysis ? In a given case, the court might believe, but in this case, I am unable to accept whatever PW-1 says against accused. This is because PW-1 is a Food Inspector and a responsible officer with 26 years experience and claims to have completed training imparted for purpose of sampling, but he does not prepare any inspection report. He also does not mention anywhere that the Food Inspector Mr. Bodake and sampling assistant were present with him at the time of visit and even in the examination-in-chief, he does not mention that these two persons were accompanying him. It only comes out in the cross-examination. PW-1 says in his examination-in-chief that he divided the sample of 6 packets poly packs of Goa Guthaka and then each part was put into three clean, dry and empty polythene bags, the mouth of polythene bags were sealed and label was affixed etc., etc. But in cross-examination, PW-1 says it was done by the sampling assistant (whose name also he does not remember) under his supervision. PW-1 also admits that it is not there in his complaint that the sampling assistant carried out all the procedure under his supervision. PW-1 also admits that he sent the sample and seal impression separately in two different packets by registered post A.D., receipts are not filed on record and receipts at Exhibit 24 and Exhibit 25 are not postal A.D. receipts.

6 PW-5 – panch witness says that panchnama was prepared and he was asked to sign on the same and accordingly he signed. PW-5 says that

no sealing or packing was made in his presence. PW-5 also denies that three equal parts of each sample were made in his presence or that the samples were taken in separate plastic bags and labels of the signatures of him, accused and of the Food Inspector were affixed on the labels. PW-5 also denies that he signed the panchnama after having followed the procedure mentioned in the panchnama. PW-5 further states in his cross-examination by the counsel for accused that two other persons were present with PW-1 when he was called and he went to the shop of accused with them. PW-5 says that PW-1 went inside the shop and others including PW-5 waited outside. PW-5 says that PW-1 delivered the purchased articles to one person out of two who were accompanying him and PW-1 started writing panchnama sitting on the chair inside the shop and the person to whom the goods were given by PW-1 while sitting on the platform opposite the shop started preparing sealing, etc., and the said act was not going on under the supervision of PW-1. PW-5 also says that PW-1 did not obtain any signatures of those persons.

7 In these circumstances, the fact that the samples which allegedly were found to be contravening to PFA Rules 1955, were seized from the shop of accused, has not been proved beyond reasonable doubt. Moreover, admittedly what was seized, in any event, were sealed packets. It is not the case of prosecution that it was accused, who was manufacturing those packets or the product inside those packets. Therefore, on this ground

also the appeal fails.

8 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

9 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, need not be interfered with.

10 Appeal dismissed.

11 The High Court Legal Services Committee, to award fees of the learned Amicus Curiae fixed at Rs.10,000/-.

(K.R.SHRIRAM,J.)