

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 507 OF 2008**

The State of Maharashtra
Through Shri. B.J. Magdum,
Food Inspector, Food & Drug Administration
(M.S.) Central Administrative Bldg.,
IInd Floor, "A" Wing, Solapur.

....Appellant
(Orig. Complainant)

V/s.

1. Subhash Chanbasappa Dharane,
Age : 44 years, Vendor and Proprietor
Basavraj Subhash Dharane Kirana
Shop, Old Adat Bazar, Akkalkot,
Dist. Solapur.

2. Narayan Ramanna Kola,
Age : 63 years, P/Incharge and
License of M/s. Narayan Ramanna Kola
Kirana Merchant, 280/81,
East Mangalwar Peth, Solapur.

3. Surendrakumar Basveshwardayal Goeal,
Age : 28 years, Partner of
M/s. Goeal Enterprises, Shop No.3 (A),
Champion House, 1240 Bhavani Peth,
Pune.

4. Sanjaykumar Basveshwardayal Goeal,
Age : 24 years, Partner of
M/s. Goeal Enterprises, Shop No.3 (A),
Champion House, 1240 Bhavani Peth,
Pune.

5. M/s. Goeal Enterprises,
Shop No.3 (A), Champion House,
Bhavani Peth, Pune.

....Respondent
(Orig. Accused Nos.1 to 5)

Ms. Anamika Malhotra, APP for State.
None for Respondents.

CORAM : K.R.SHRIRAM, J.
DATED : 6th JANUARY, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 3rd March, 2005 passed by the Judicial Magistrate, First Class, Akkalkot, Dist. Solapur acquitting respondents (hereinafter referred as accused) of offence punishable under Section 7 (i) r/w Section 2 (ia) (a), 2 (ia) (c), 2 (ia) (j) 2 (ia) (m) r/w Section 7 (v) Rule 44 (h) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 and rules thereunder.

2. Accused No.2 has died and as recorded in the order dated 11/09/2008, the appeal has abated against Accused No.2.

3. It is the case of prosecution that complainant (PW. 1) was a Food Inspector and he went to the shop of Accused No.1 who was proprietor of a grocery shop. Accused No.1 used to stock and sell food articles including Gulab Brand Turmeric Powder. Accused No.2 was wholesaler who had supplied the food articles to Accused No.1 in sealed, packed and labeled bags. Accused Nos.3 and 4 are partners of one M/s. Goeal Enterprises, i.e., Accused No.5 who supplied to Accused No.2.

4. It is prosecution's case that Accused No.5 supplied turmeric powder to Accused No.2 and Accused No.2 sold it to Accused No.1 who was the retailer. On 17/11/1992 complainant alongwith panch witness PW. 2 – Bhimashankar Rachappa Zalke, who turned hostile, went to the office of

Accused No.1 and after inspection demanded 600 gms. of turmeric powder from the 10 kg. packed machine stitched bag. Accused sold same to complainant P.W. 1 and the amount was paid and receipt obtained. The purchased food article turmeric powder was divided into three parts, poured into empty, clean and dried bottles and sent for examination. The concerned authority gave a report saying that turmeric powder contains extraneous coal tar oil soluble colour red, yellow and orange and foreign starch and hence do not confirm to the standards of turmeric powder as prescribed under the rules. The complaint was lodged and charges were framed after investigation. Accused pleaded not guilty and claimed to be tried.

5. Prosecution led evidence of three witnesses namely Bapu Jotiram Makdum, Complainant as P.W. 1 ; Bhimashankar Rachappa Zalke, Panch as P.W.2 who turned hostile ; and one Balasaheb Manmath Kole as P.W. 3 who was the transporter to prove that 10 kg bag of turmeric powder from which sample was taken in the shop of Accused No.1 was actually delivered to Accused No.2 by the firm Accused No.5 because the memo of purchase was missing to prove that Accused No.2 as wholesaler had purchased turmeric powder from Accused No.5.

6. At the outset, I have to note that P.W. 1, in his examination-in-chief, says that before filling the turmeric powder in glass bottles, he verified bottles from panch witness and accused about its cleanliness, dryness and

emptiness. The panch witness has turned hostile. Therefore, since P.W. 1 does not say that he personally also checked bottles for its cleanliness, dryness and emptiness and the panch witness having turned hostile, prosecution has failed to prove that the samples were collected in clean, dry and empty glass bottles. On this ground alone, the appeal has to fail.

7. Moreover, Public Analyst is also not examined whereby the accused could have had a chance to cross-examine him.

8. Admittedly, Accused No.1 had purchased the food articles from Accused No.2 and therefore Accused No.1 cannot be held guilty. Accused No.2 has died. Only Accused Nos.3, 4 and 5 remain. It is prosecution's case that Accused No.5 is M/s. Goeal Enterprises who supplied food articles to Accused No.2. But the records indicate that Accused No.2 received food articles from M/s. Goyal and Company which is different from M/s. Goeal Enterprises. P.W. 3 states that goods were loaded by M/s. Goyal and Company. P.W. 1 therefore has failed to show the connection between Accused No.3 and Accused No.4 with M/s. Goyal and Company.

9. Therefore, one cannot conclude that Accused No.5 had supplied the food articles viz., turmeric powder to Accused No.2 who in turn sold to Accused No.1.

10. I have considered the evidence and after hearing the learned APP Ms. Malhotra for appellant, I do not find any reason to interfere in the

impugned judgment.

11. The Apex Court in *Ghurey Lal Vs. State of U.P.*¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of

1. (2008) 10 SCC 450

law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

12. The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***² in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

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

(1) An appellate Court has full power to review, reappraise 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 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 emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence

2. (2007) 4 SCC 415

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 the accused. Firstly, the presumption of innocence 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 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.”

13. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused 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, accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

14. 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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

15. Appeal dismissed.

(K.R. SHRIRAM, J.)