

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 588 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

HIMATSINH RAMALBHAI PATELIYA

Appearance:

MR SP DAVE, APP for Petitioner

MR JC SHETH for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 31/03/99

ORAL JUDGEMENT

1. It will sound ironical to deal with this acquittal appeal of 1991 where alleged consumption of alcohol is shown to have resulted into appearance of 0.0552% of alcohol in the blood of the accused as against prescribed standard of 0.0500% of alcohol, yet the appeal has to be dealt with and disposed of in accordance with law.

2. The prosecution case before the learned Judicial Magistrate First Class, Santrampur in Summary Case No. 296 of 1990 was that the respondent-accused while at the

firing practice at Santrampur had raised the rifle towards the sky and he was caught by the S.D.P.A., Lunavada, who found that the accused was in the state of intoxication. He was accordingly prosecuted for the alleged offence punishable u/S. 85 (1)(3) read with sec. 66(1)(b) of the Bombay Prohibition Act, 1949 (for short 'the Act'). The accused pleaded not guilty to the charge and stated in his further statement that he was taking medicine for some stomach ailment at the relevant point of time. The Panch witnesses did not support the prosecution at the time of trial. Only evidence on which reliance could be placed by the Ld. A.P.P. before this Court is that of Medical Officer Mr. Maganbhai Chunilal Bhedi, P.W. 3. He has deposed that on 22/12/1989 the accused was brought before him at about 5.30 O'clock in the evening and he found breath of the accused smelling alcohol. He, however, found the speech, the walk and the other symptom of eyes to be normal. Hence, according to his opinion, the accused was found drunk, but not in the condition of being intoxicated. His certificate was accordingly placed on record at Exh. 9. He has then deposed with regard to he having taken blood for examination. In his cross-examination he has admitted that medicine known as Tincture Jinjiya Beris would be available in the dispensary and would be administered to a patient suffering from stomach ailment. He has also admitted that if this medicine is taken in excess, it would throw out alcoholic smell in breathing of the person having taken medicine in this manner.

3. Relying upon the aforesaid medical evidence Mr. S.P. Dave, Ld. A.P.P. submitted that the Ld. Magistrate has committed error in not relying upon the procedure adopted by the medical witness in collecting the blood sample from the accused. It is true that the procedure adopted by the medical witness cannot be faulted as has been done by the Ld. Magistrate. At the same time the other part of the evidence of the medical witness as noted hereinabove also cannot be overlooked while bearing in mind the finding of alcohol in the blood to the extent of 0.0552% as per the report of F.S.L. Exh. 10. The percentage is too marginally higher than the required percentage to take out the prosecution case from the plausible defence raised by the accused. That apart, the prosecution has failed to examine or produce any of the witnesses, who might be taking training alongwith the accused at the time of practice of shooting. This is over and above the fact that the Panch witnesses have also not supported the prosecution case. Hence, upon a true and correct appreciation of the evidence in the context of the prosecution case, it

cannot be said that the prosecution succeeded in establishing beyond reasonable doubt alleged offence charged against the accused.

4. In the facts of the case, therefore, only on the strength of medical evidence as aforesaid guilt of the accused alleged against him cannot be said to have been brought home beyond reasonable doubt. Even the medical evidence as aforesaid would probablise the defence.

In the result, this acquittal appeal fails. The same is accordingly dismissed.

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PVR.