

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1060 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  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? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

SAFIMOHMMAD RASULBHAI NAKUM  
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Appearance:

1. Criminal Appeal No. 1060 of 1992  
Mr.P.R.Abichandani, learned A.P.P. for Petitioner No. 1  
MR Sunil Mehta for Mr. SK BUKHARI for Respondent No. 1  
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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/10/2003

ORAL JUDGEMENT

1. The respondent above named was tried before the learned Judicial Magistrate, First Class, Vadodara in

Criminal case no. 54 of 1985 for offences punishable under Sections 7 and 16 of Prevention of Food Adulteration Act (hereinafter referred to as the Act). At the end of trial, the learned J.M.F.C. Vadodara was pleased to acquit the respondent-accused. Dissatisfied with the said judgment and order of acquittal, the State has preferred this appeal.

2. The brief facts of the present case are as under:

The complainant is Food Inspector and on 08.01.1985 at about 5.00 p.m. he went to the shop of present respondent and took sample of Nankhatai for sending it to laboratory. Thereafter, after analysis report Q-1/423/85 dated 19.01.1985 it was found that the nankhatai was adulterated. Therefore, the respondent violated the provisions of Prevention of Food Adulteration Act. Therefore the complaint was filed in the court on 02.02.1985. After recording the statements, charge was framed against the respondent. The respondent-accused claimed not guilty and claimed to be tried.

3. The learned trial court, on recording depositions of various witnesses, going through the documentary evidence produced on record and after hearing the learned advocates for the parties, held that the prosecution has failed to prove the charge against the accused and acquitted the accused. It is against this judgment and order this appeal is filed by the complainant-State.

4. Mr. Abichandani learned A.P.P. for the State has submitted that in this matter, the prosecution has failed to prove the panchanama on record. From the deposition of P.W. 1 Food Inspector it has come on record that the respondent-accused wanted to sell adulterated nankhatai and before the respondent-accused could do so, Food Inspector Mr. Prajapati has visited the shop of the present accused and recovered the adulterated sample of nankhatai on 08.01.1985. Thereafter, on the same day, said adulterated nankhatai was sent to public analyst, who vide his report no. Q-1/423/85 dated 19.01.1985 has opined that muddammal nankhatai is not as per the rules and regulations and as per provisions of the Act. Accordingly permission was sought and on getting permission of the competent authority, prosecution was launched against the present respondent-accused under Sec. 7 and 16 of the Act on 02.02.1985. Vide exh. 14 charge was framed against the accused. Vide exh. 15 accused admitted his guilt but prayed that he is a small vendor and that he has purchased sealed packet of nankhatai from other vendor. He had no intention to commit any offence and prayed for mercy. Therefore, by

judgment and order dated 18.03.1986 at exh. 17 the respondent-accused was sentenced to imprisonment till the raising of the court and fine of Rs.1,400/- i/d simple imprisonment for 30 days. Dissatisfied with the said judgment and order, the State has filed criminal appeal no. 645/86 before this court for enhancement of conviction and sentence. Thereupon, by judgment and order dated 20.11.1990, this court (Coram : K.J.Vaidya, J, as he then was) dismissed the appeal for enhancement and the judgment and order of the trial court was quashed and set aside and fine if paid, was ordered to be refunded. Further it was ordered to remand the matter to the trial court for retrial on merits. Thereupon, vide exh. 37 charge was framed against the respondent-accused for offences under Sec. 7 & 16 of the Act. He denied his guilt and claimed to be tried. Thereafter, deposition of P.W. 1 Bhagubhai Shivrulal Prajapati exh. 4 and P.W. 2 Bhagwanbhai Lallubhai Vankar exh. 42 was recorded.

5. In the submissions of Mr.Abichandani learned A.P.P. for the State, there are many lacunae in the depositions of both the witnesses who deposed on behalf of prosecution side. However, there are also plus points which would show that prosecution has proved the charge against the respondent-accused and therefore this court should set aside the acquittal order of the trial court and exemplary punishment should be awarded to the respondent-accused.

6. Against the aforesaid submissions, Advocate Mr.Sunil Mehta for Mr.Bukhari learned advocate for the respondent-accused has submitted that in this case public analyst has not been examined who can throw light by which method he has come to the conclusion that there was adulteration in the nankhatai. The panch by name Nurbhai Gulamhussain Kadia is not examined to bring on record that in his presence all the procedure was followed as per the Act and Rules. In further submissions of learned advocate for the respondent, if panch is not available to exhibit the panchanama, then through the helper of Food Inspector who has been examined as P.W. 2, the panchanama should have been exhibited and brought on record. There is a doubt regarding the presence of helper Bhagwanbhai Lallubhai Vankar p.w.2 in view of the fact that P.W. 1 Food Inspector makes a flying reference of this witness in his deposition. Further in charge exh. 1 P.W. 2 is not shown as one of the witnesses. The prosecution gave application exh. 39 to examine (1) Panch Nurbhai Gulamhussain Kadia (2) Helper B.L.Vankar and (3) Local Health Authority Shri C.N.Patel as

witnesses. The court also ordered for calling all the three persons. Vide exh. 40 it has come on record that Panch Gulamhussain Kadia has expired on 27.03.1989 at Shinor. Thereupon, on 29.04.1992 helper B.L.Vankar was examined as P.W. 2 at exh. 42. If we peruse his deposition, in the submissions of learned advocate for the respondent-accused, his deposition is altogether contrary to the deposition of P.W. 1 Food Inspector. Though it has come on record that the adulterated nankhatai was not manufactured by the present respondent-accused, the Food Inspector has not visited the place of the manufacturer. It has also come on record that the three packets of nankhatai were of different types and different colours. Therefore, it was the duty of the prosecution to bring on record by which method the prosecution has arrived at the conclusion that the nankhatai was adulterated. For all these happenings, benefit of doubt should go to the accused and prayed for dismissal of the appeal.

7. I have perused the papers of the trial court and heard the arguments of the learned advocates of the parties. I am of the opinion that there are ways and means to give exhibit to panchanama in absence of panch who died. In absence of panchanama exhibited, mere deposition of P.W. 1 & 2 could not help this court to come to the conclusion that the trial court has erred in acquitting the present respondent-accused. P.W. 2 helper B.L.Vankar has not supported P.W. 1 Food Inspector. At this juncture, it is worthwhile to note the deposition of P.W. 2. He says at exh. 42 that he has to accompany the Food Inspector as helper. He went with Mr.Prajapati, Food Inspector to Sadhli village, where the witness and complainant went to Nurani Provision Store which is near bus stand. At that time, Mr.Prajapati stated that he is coming from Vadodara and has come to take sample of nankhatai. Thereafter he applied seal over the samples. Seal was applied in presence of witness and panchas prepared panchanama in presence of witness and they signed on it. In cross-examination, he stated that he is giving deposition stereo type. He himself admitted that he has not taken any part in the procedure though he accompanied the Food Inspector. He also admitted that he cannot say how Food Inspector carried out the procedure. He also admitted that daily separate samples are taken. The witness is aware that in this case sample of nankhatai was taken. The witness cannot say whether nankhatai was having same colour or different colours. Along with the Food Inspector, there were two more persons and also the shopkeeper. The signatures of the accused were obtained

on samples, receipt, label etc. The witness cannot say who was the panch at that time.

8. From the aforesaid deposition, it is crystal clear that there were two persons over and above the Food Inspector, the helper and accused whereas from the deposition of P.W. 1 Food Inspector, he refers that there was only one panch, helper and accused. The food inspector does not refer any fourth person at the time of taking sample.

9. If we peruse the public analyst report in respect of adulterated nankhatai, it is crystal clear that in the said report there is no mention of any method by which the samples were found to be adulterated. In the said report produced on record at exh. 29 dated 19.01.1985 against column no. 2 it is mentioned as under :

"Artificial colouring matter : Non permitted Rhodamine -  
B and yellow Basic coal  
tar colour present"

There is also mention of Rule 28 over the aforesaid writing. Rule 28 of the Prevention of Food Adulteration Rules, 1955 is regarding Synthetic, food colours which may be used for selling any food. It has come on record that there are different colours of samples of nankhatai obtained by the Food Inspector. Just below the aforesaid mention, there is mention of the public analyst that samples of nankhatai does not conform to the standards and provisions laid down under Prevention of Food Adulteration Rules, 1955. Which standards and provisions the sample does not conform is not mentioned in the report exh. 29.

10. In view of the aforesaid circumstances, I am of the opinion that though Assistant Director, Local Health Authority Mr.C.N.Patel was called as witness, he has failed to remain present to give deposition in the court. The over all view of the depositions on record suggest that the prosecution has failed to prove the case advanced by it. Therefore, benefit of doubt should go to the present respondent-accused. Therefore, this appeal is required to be dismissed and is accordingly dismissed.

( SHARAD D DAVE, J )

srilatha

