

MHLA070002912024



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**IN THE COURT OF ADDITIONAL
SESSIONS JUDGE, AT UDGIR**

(Presided over by Yatin B. Game)

(Date of Judgment 24.10.2024)

Sessions Case No.34/2024
Exh. No.32

Prosecution	:	State of Maharashtra, Through Police Station, Jalkot, Tal. Jalkot, Dist. Latur. Crime No.57/2022
Represented By	:	Shri. S.M. Girwalkar. (APP)
Accused	:	Madhv S/o Dattatray Gond Age: 36 Yrs, Occ. Business R/o. Kekatsindagi, Tq. Jalkot Dist. Latur.
Represented by	:	Shri. Z. K. Jahagirdar

Sessions Case No.34/2024

Part - B

(Para 44 (ii) of Chapter VI of Criminal Manual)

Date of Offence	:	05.04.2022
Date of FIR	:	07.04.2022
Date of Charge-sheet	:	17.08.2022
Date of Framing of Charges	:	24.06.2024
Date of commencement of evidence	:	22.07.2024
Date on which judgment is reserved	:	24.10.2024
Date of the Judgment	:	24.10.2024
Date of Sentencing Order, if any	:	--

Accused Details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offenses charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Sec.428 Cr.P.C.
	Madhav Dattatray Gond	27.04.2022	12.05.2022	328, 188, 272, 273 of the IPC and 59(1) of the Food Safety & Standards Act	Acquitted	Nil	MCR 27-4-2022 to 12-5-2022

J U D G M E N T

(Delivered on 24th day of October, 2024)

The accused is facing trial committing offence under Sections 328, 188, 272, 273 of the Indian Penal Code and U/Sec.59(i) of the Food Safety and Standards Act (For Short the FSS Act).

2) The prosecution's case, in brief, is that:

On 07-04-2022 Vitthal Satwaji Londhe, Food Safety Officer lodged report with Jalkot police station alleging that the Maharashtra Government has banned manufacturing, distribution, storage, transportation of Gutkha Pan Masala, scented nut, tobacco vide Government notification No.524/7 dated 15th July, 2022 since it is unsafe for human consumption.

3) It is also alleged that on 06.04.2022 police inspector of Police Station, Jalkot informed vide letter that on 5-4-2022 at about 22.40 hrs., accused was found in possession Nazar 9000

(07 bags) worth Rs. 50,000/- (for short 'contraband articles') in his house situated at Kekatsindagi Tq.Jalkot. Accordingly, on 7-4-2022 at about 16.30 hrs. he alongwith his squad visited police station Jalkot and inspected contraband articles in presence of Police Inspector of Jalkot police station and found Nazar 9000 (07 bags) worth Rs. 350,000/-. Thereafter, collected sample from contraband articles, labeled and sealed it and lodged report.

4) On the basis of this report, Crime No.57/2022 was registered under Section 328, 188, 272, 273 of the Indian Penal Code and U/Sec.59(i) of the Food Safety and Standards Act. Head Constable Shri Shalke conducted investigation, wherein he recorded statements of witnesses, sent the samples to Food Testing Laboratory Aurangabad, seized car, collected its documents. After arresting accused and on completion of investigation charge-sheet came to be filed in the court of Judicial Magistrate Udgir.

5) The learned Judicial Magistrate F.C., Udgir committed the case to the Court of Sessions vide order dated 10.05.2024 since the offence punishable under Section 328 of the IPC is triable by the Court of Sessions.

6) Charge (Exh.23) against the accused for the offence punishable under Sections 328, 188, 272, 273 of the Indian Penal Code and U/Sec.59(i) of the Food Safety and Standards Act. It was read over and explained to him in vernacular to which he pleaded not guilty and claimed to be tried. After

closure of evidence his statement came to be recorded under Section 313(1)(b) of Cr.P.C. at Exh.31. His defence is that of total denial and false implication. He has not adduced any defence witness.

7) The following point arose for determination before me and I have recorded my answers thereto for the reason stated thereunder :-

<u>Sr.No.</u>	<u>POINTS</u>	<u>ANSWERS</u>
1)	Does the prosecution prove that on 05.04.2022 at about 22.40 hrs., in the house of accused at Kekatsindagi Tq. Jalkot accused administered certain poison or stupefying thing i.e. Nazar 9000 (07 bags) worth Rs. 3,50,000/- or caused the same to be taken by others, with intent to cause hurt to them or knowing it to be likely to cause hurt to others or with the intention to commit or facilitate the commission of the offence causing hurt by means of poison ?	In the negative.
2)	Does the prosecution further prove that on above date, time and place accused disobeyed order duly promulgated by public servant and direction which caused or tended to cause danger to human life, health or safety or tended to cause riot or affray ?	In the negative.

3)	Does the prosecution further prove that on above date, time and place accused adulterated an article of food and drink i.e. Nazar 9000 (07 bags) as to make it noxious as food or drink, or knowing it to be likely that the same will be sold as food or drink ?	:	In the negative.
4)	Does the prosecution further prove that on above date, time and place accused sold or offered for sale or exposed for sale as food or drink as article i.e. Nazar 9000 (07 bags) which had become noxious as food or drink ?	:	In the negative.
5)	Does the prosecution further prove that on above date, time and place accused found in possession of Nazar 9000 (07 bags) for sale for human consumption which is unsafe and which was prohibited by the Govt. Resolution No.524/1978 dated 15.07.2022 ?	:	In the negative.
6)	What order ?As per final order		

REASONS**List of witnesses:****A) Prosecution:-**

Rank	Name of witness	Nature of Evidence
PW1	Rahul Vyankatrao Wadare	Police employee who was present while visiting house of accused
PW2	Madhav Dadarao Delve	Spot panch

PW3	Shivraj Ishwarrao More	Seizure panch
PW4	Balaji Sonba Sindikar	Seizure panch
PW5	Vithal Satwaji Londhe	The informant
PW6	Kishan Sitaram Shelke	Investigating officer

B) Defence Witnesses, if any:-

Rank	Nature	Nature of Evidence
	Nil	

C) Court Witnesses, if any:-

Rank	Nature	Nature of Evidence
	Nil	

List of Exhibits:-

A) Prosecution:-

Sr.No.	Description	Exhibit Number
1.	Inspection report	17
2.	Memorandum panchnama	18
3.	Information report	19
4.	FIR	20
5.	Laboratory Testing report	22

B) Defence:-

Sr.No.	Exhibit Number	Description
1	Nil	

C) Court:-

Sr.No	Exhibit Number	Description
1	Nil	

D) Material Objects:-

Sr.No.	Material Object Number	Description
	Nil	Nil

AS TO POINTS NO 2 AND 5:-

8) Both the points being interlinked, they are being discussed together for the sake of convenient discussion.

9) As per case of prosecution, on 5-4-2022 Police of Jalkot police station found Nazar 9000 (07 bags) worth Rs. 3,50,000/- in the house of accused. Then Jalkot police on 6-4-2022 intimated Food Safety Officer, i.e. Vitthal Londhe (PW-5), who visited Jalkot police station, carried out inspection report, prepared memorandum panchanama, took sample of seized articles for chemical analysis on 7-4-2022. During his evidence inspection report, memorandum panchanama are proved at Exh. 17 and 18 respectively.

10) In regard with seizure of contraband articles, prosecution has relied on the testimony of Rahul (PW-1), who deposed that on 5-4-2022 he alongwith Home-guard Kamble, Sayyad, Shaikh and Biradar went to the dilapidated house informed by PO Kadam of Jalkot PS. However, he has neither whispered the dilapidated house belongs to accused nor he deposed that on the date of incident he visited to the house of accused and found accused was in possession of

contraband articles.

11) Though, seizure panchnama is proved through the evidence of Investigating Officer Kishan (PW-6), who deposed that he has prepared seizure panchnama (Exh.26) which was deposited in the police station in presence of panchas. However, Shivaji (PW-3) and Balaji (PW-4) who happens to be seizure panch have not supported the prosecution case nor they deposed that contraband articles were found in the house of accused and seized in their presence. Thus, material witnesses on seizure panchnama are not supported the prosecution case. Further more, Vitthal (PW-5) has not through light on the aspect of seizure of muddemal from the house of accused, he just inspected the muddemal allegedly brought from the house of accused. In such circumstance, his evidence also does not inspire confidence on the aspect that accused was found contraband articles in his house and same were seized. From the foregoing discussion it is improbable to hold that prosecution has proved that on above date, time and place accused disobeyed order duly promulgated by public servant and direction which caused or tended to cause danger to human life, health or safety or tended to cause riot or affray and that found in possession of Nazar 9000 (07 bags) for sale for human consumption which is unsafe and which was prohibited by the Govt. Resolution No.524/1978 dated 15.07.2022. Hence, I answer points No. 2 and 5 in the negative.

AS TO POINT NOS.1, 3 AND 4 :

12) All these points being interlinked they are being discussed together for the sake of convenient discussion.

13) According to the prosecution, the accused administered

poisonous or stupefying thing i.e. contraband articles and the same can be taken by others with intent to cause hurt to them.

14) It has come on the evidence of informant Vitthal (PW-1) that on 6-4-2022 he was working as Food Safety Officer. At that time, Police Inspector of Jalkot police station informed that on 5-4-2022 contraband articles were found in the house of accused and requested to take further action. Accordingly, on the basis of said letter he alongwith panchas had been to Jalkot police station and inspected the contraband articles brought from the house of accused by preparing inspection report (Exh.17). He also prepared memorandum panchanama (Exh.18). Thereafter, he lodged report (Exh.19)

15) Testimony of investigating officer Kishan (PW-6) thrown light on the aspect investigation of crime. He deposed that after receiving crime for investigation, he seized muddemal kept in the police by seizure panchanma (Exh.26). He then visited spot of incident prepared spot panchanama (Exh.27) in presence of two panchas. After completion of investigation he filed charge-sheet in the court. Learned counsel for the accused cross examined these two witnesses, but nothing has come on record.

16) It is worthwhile to note here that, while discussing point No.1, it is hold that prosecution has failed to prove that accused was found possessing contraband articles in his house and were seized from his custody. Further more, from the oral evidence of prosecution witnesses nothing has come on record that the accused was found actually administering poisonous substance in the contraband articles or that he was causing any other person to consume or take those

contraband articles. On the contrary, those articles were found in sealed condition.

17) It is also nowhere case of the prosecution that the accused is manufacturer of contraband articles to presume administration of poisonous substance therein. Under such circumstances, it cannot be said that the accused was found administering poisonous substance in the contraband articles or was causing any other person to consume those articles.

18) Besides this, the muddemal property is not deposited in the court nor it is shown to any of the witness and, therefore, there is no identification of muddemal property. Thus the prosecution has miserably failed to prove seizure of contraband articles from the accused and, therefore, no nexus is established between the accused and contraband articles. Thus, basic ingredients of the offence punishable U/sec.328, 272 and 273 of the IPC are completely missing from the prosecution case.

19) The prosecution has failed to prove possession of accused over the contraband articles. Even it has failed to prove that the accused was found actually administering poisonous substance or was found selling those articles to any other customer for consumption or at least he was found causing any other person to take those articles. In absence of such cogent, corroborative and concrete evidence and the laboratory testing report is not proved.

20) The cumulative effect of the above discussion is therefore that the evidence adduced by the prosecution is not cogent, consistent, corroborative, establishing chain of circumstances leading towards the guilt of accused beyond all reasonable doubt. On the contrary, it

creates a serious doubt in the mind of court regarding happening of incident. Consequently, point Nos.1, 3 and 4 are answered in negative.

AS TO POINT No.6 :

21) In view of negative answers on point Nos.1 to 5 accused is entitled to acquittal by extending benefit of doubt in his favour. So far as, disposal of muddemal property i.e.Nazar 9000 (07 bags) worth Rs. 3,50,000/- deserves to be forwarded to Food and Safety Department, Latur for disposal according to law, after appeal period is over. Therefore answer of point No.6 is covered by the following order.

-:: O R D E R ::-

- 1) Accused Madhav Dattatray Gond R/o Kekatsindagi Tq. Jalkot, Dist. Latur is hereby acquitted vide Section 235(1) of the Criminal Procedure Code, of having committed offence punishable under Sections 328, 188, 272, 273 of the Indian Penal Code.
- 2) Accused Madhav Dattatray Gond R/o Kekatsindagi Tq. Jalkot, Dist. Latur is hereby acquitted vide Section 235(1) of the Criminal Procedure Code, of having committed offence punishable under Section 59(i) of the Food Safety and Standards Act.
- 3) His bail bond stands cancelled. His surety stands discharged.

- 4) Muddemal property i.e. Nazar 9000 (07 bags) worth Rs. 3,50,000/- be forwarded to Food and Safety Department, Latur for disposal according to law, after appeal period is over.
- 5) Accused is directed to furnish a fresh PR bond of Rs.15,000/- with one surety in the like amount as per section 437-A of the Cr.P.C. to the effect that he would appear before the Hon'ble Appellate Court as and when directed within period of six months.
- 6) A copy of this judgment be sent to District Magistrate as per the directions of the Hon'ble Bombay High Court in the case of **Ranjana Shantilal Suryawanshi Versus Jaiprakash Tulsiram** Gupta Cri. Appeal No. 380 of 2019 in Cri. Appeal (ST.) No. 390 of 2019.

(Dictated and pronounced in open Court).

Date :- 24.10.2024.

(Yatin B. Game)
Additional Sessions Judge, Udgir,
District Latur.