

(1988) 01 RAJ CK 0018

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 338 of 1980

Fateh Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 27-01-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1988) WLN 160

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Milap Chandra, J.—This revision petition has been filed u/s 397, Cr.PC 1973 against the order of the learned Additional Sessions Judge, Bhilwara dated October 9, 1980 by which he confirmed the conviction of the accused-appellant u/s 7 read with Section 3 of the Essential Commodities Act (here in after referred to as "the Act") for contravening Clause 3 of the Rajasthan Guest Control Order, 1972 (here in after referred to as "the Order") and sentence of three months rigorous imprisonment with a fine of Rs. 5000/-. The facts of the case giving rise to this revision may be summarised thus.

2. On 5-8-1974, A.S.I. Girdhari Lal PW 8 came to Maheshwarion-ka-Nohara, situated in Ward No. 6 on Bhilwara. He found there that the accused Fateh Lal was arranging a Mrityu Bhoj on the eve of the death of his fathar. Prepared articles and food stuff for about 200 persons were found there. On his report Ex. P/11, a case u/s 7 Rule with Section 3 of the Act was registered and investigation was commenced. He seized the food articles and food stuff and auctioned them for Rs. 530/-. Other articles and utensils were also seized and given in Supardgi. After he completing investigation, a challan was filed against the accused-petitioner, Mohan Lal and Chauthmal in the Court of the Chief Judicial Magistrate, Bhilwara. The learned Chief Judicial Magistrate framed a charge u/s 7 read with

Section 3 of the Act and Clause 3 of the Order against all the accused-persons. The prosecution examined eight witnesses and produced and proved 13 documents. All the three accused-persons denied the prosecution story. After hearing the parties, the learned Chief Judicial Magistrate acquitted the co-accused Mohan Lal and Chauthmal and convicted the accused Fateh Lal as said above. His appeal was also dismissed by the learned Additional Sessions Judge, Bhilwara by his judgment which has been challenged in the revision.

3. It has been contended by the learned Counsel for the accused-petitioner that "Mrityu Bhoj" to the extent of 100 persons was permitted under the Rajasthan Guest Control Order, 1972 and also under the Raj. Prevention of "Mrityu Bhoj" Act, 1960 and there is no evidence on record that "Mrityu Bhoj" was arranged for more than 100 persons and on this ground alone, the revision petition deserves to be allowed. He also contended that the food articles were got prepared for sending to the temples and giving to the daughters and sisters of the deceased Kalyan Mal and such distribution to the temples and other co-relatives did not attract the provisions of clause 3 of the Guest Control Order. He lastly contended that in any view of the matter, it cannot be said that the food articles and stuff found by the ASI Girdhari Lal PW 8 were sufficient for feedings of more than 100 persons.

4. The learned Public Prosecutor tried her best to support the judgment under revision. The learned Chief Judicial Magistrate, Bhilwara framed charge against the accused to the effect that on August 5, 1974, he arranged a "Bhoj" on the 12th day of the death of his father for 200 persons and got prepared for them "Laddu", "Barfi" and other food articles and there by he has committed an offence punishable u/s 7 read with Section 3 of the Act and the Rajasthan Guest Control Order. Admittedly, "Mrityu Bhoj" for less than 100 persons was and is permissible under the Rajasthan Guest Control Order and Rajasthan Prevention of Mrityu Bhoj Act. To sustain a conviction for the breach of Clause 3 of the Order, it is necessary to prove that the "Mrityu Bhoj" was arranged for more than 100 persons. Admittedly, no person was found eating when the police raided Mabeshwarion-ka-Nohara. The site plan Ex. 1 mentions that besides the two Halwaies, 5-7 children, Mohan Lal, Meetha Lal, Kanhaiya Lal, Radha Kishan and Basanti Lal were found there. The seizure memo Ex. P 2 shows that the following food articles and stuff were found there and seized by the police: (1) 64 Kgs. of "Laddu"; (2) 25 Kgs. of "Barfi"; (3) 20 Kgs. of wheat and floor; (4) 4 Kgs. of Wet," wheat floor; (5) 4 Kgs. of boiled potatoes; and (6) 4 Kgs. of used Ghee. On the basis of there food articles and stuff, the learned lower courts held that the accused Fateh Lal arranged "Mrityu Bhoj" for 200 persons and accordingly convicted and sentenced him as said above. Not a single prosecution witness including ASI, Girdharilal PW8 has said that these food stuff and articles were sufficient for "Mrityu Bhoj" of 200 persons. Conviction can be based only on the legal evidence and not on the surmises. But the version that in the circumstances of a case it was difficult for the prosecution to get independent and direct evidence, cannot be a ground to dispense with such evidence. Conviction of the

accused cannot be sustained on the basis of conjectures, suspending even a strong probability of guilt.

5. Sunderlal PW 2 has deposed that the food articles and stuff were for 60-70 persons. Meethalal PW3 has deposed that the articles were prepared for giving feast to the families and sending them to the temples. Mohanlal PW 4 has deposed that "Laddus" and "Barfis" were prepared for giving to the sisters and daughters of the deceased. Chanmal PW 5 has deposed that the "Mrityu Bhoj" was arranged for giving feast to the daughters and sisters of the deceased. Meethalal PW3 has disclosed in his cross-examination that no invitation of the feast was given to any member of the community. Mohanlal PW 4 has deposed that "Mrityu Bhoj" is prohibited in his community Kanhaiyalal PW 7 has stated that he had no invitation for the feast.

6. In view of these facts and circumstances, it is very difficult to hold that the feast was being arranged for more than 100 persons. The revision petition deserves to be allowed.

7. In the result, the revision petition is allowed. The accused-petitioner is acquitted of the offence punishable u/s 7 read with Section 3 of the Act and Clause (3) of the Rajasthan Guest Control Order, 1972.