
(1988) 01 BOM CK 0035
In the Bombay High Court
Case No : Criminal A. No 871 of 1980

State of Maharashtra

APPELLANT

Vs

Shete Savale and Co. and Others

RESPONDENT

Date of Decision : 27-01-1988

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 14, 16, 9A
Prevention of Food Adulteration Rules, 1955 — Rule 14, 16

Citation : (1988) 2 BomCR 580

Hon'ble Judges : V.P. Salve, J; Sharad Manohar, J

Bench : Division Bench

Advocate : M.A. Rao, P.P, for the Appellant; P.S. Patankar, for the Respondent

Judgement

V.P. Salve, J.—The acquittal of respondent Nos. 1 and 2 in this appeal will have to be quashed for the reasons that the trial Court has misinterpreting the ratio of the Supreme Court judgment reported in Municipal Corporation of Delhi Vs. Kacheroo Mal, and relying on the sub-para of plecitum "B" acquitted the accused. In fact the most relevant paragraph in the reported case of the Supreme Court (ibid) is paragraph 13, which lays down :---

" That under the Rules a minimum proportion of insect-infestation or insect-damage is provided to deem the article unfit human consumption shows that the mere fact that any part of an article was insect-infested may not be conclusive proof of its being "adulterated" under sub-clause (f). All the adjectives, used in the sub-clause are a presumptive and not an absolute test for quality of the article being unfit for human consumption.

"In the case of an article in respect of which the Rules do not prescribe any minimum standard of purity or any minimum proportion of insect-infestation that would exclude it from the definition of "adulterated article, it will be a mixed question of law and fact whether the insect-infestation is of such a nature, degree and extent as renders the article unfit for human consumption. The opinion of the Public Analysts who examines and analyses the sample as to the

fitness or otherwise of the sample for human consumption, would constitute legal evidence. A Public Analyst is supposed to be specially skilled in the science of dietetics. And as expert in the science, he is competent to spine testify about this fact."

2. This is a case in which the Food Inspector purchased groundnut oil and Ral Tandul from accused No. 2, who is arrayed as respondent No. 2 before us. The groundnut oil was found not adulterated. However, on analysis of the Ral Tandul, it was found to be unfit for human consumption as it was infested with germs. The seizure was in the presence of panchas (P.Ws. 2 and 3), who as usual, turned hostile did not support the prosecution. However, there is no dispute that the samples were purchased and seized by Food Inspector (P.W.1) from accused No. 2.

3. Mr. Patankar, learned Counsel for respondents Nos. 2 to 4 contended that the trial or the prosecution should be vitiated because Rules 14 and 16 of the Prevention of Food Adulteration Rules, 1955 (hereinafter called " the Rules") were not followed. It was his contention that it must be stated positively by the Food Inspector that he took successive steps as directed in the Rules, particularly rule 16, while sealing and also while dispatching the seized samples. It was, according to him, a lacuna in the prosecution case and rule 16 being a mandatory rule, any lacuna left by the prosecution in its case must result in benefit being given to the accused.

4. Assuming for the sake of argument that rule 16 is mandatory, in the cross examination of P.W.1, we find that he has made a categorical statement that he has followed rule 16. According to Mr. Patankar, this statement on oath is not sufficient. P.W. No. 1 should have given the details of the steps taken by him, showing that rule 16 was strictly followed. He cited an unreported judgment, viz., Cri. App. No. 531/75 dt. 24-9-1976, in support of his contention. In that case, the Court held that on reading all the evidence of the Food Inspectors, it was made clear that he had not used the gum as is required under Rule 16 to fix the envelopes. This is not a similar case. No questions were put to the Food Inspectors (P.W. 1) here in this case, whether he used gum or not to fix the envelopes, in which the samples were taken. If he had denied that he had used gum, then, perhaps, the said case could have been used by Mr. Patankar to show to us that Rule 16 has not been followed. In the absence of any such specific questions being put to the witness, we cannot held that Rule 16 is not followed. On the other hand, we find that when P.W. 1 says that he had followed Rule 16 no specific questions were put to him and reading this categorical statement on oath in the background of illustration of section 114 of the Evidence Act, we held that he must have performed all the official acts, which he is required to be properly has Food Inspector.

5. Mr. Patankar's next contention was that his right to send the sample to the Central Food Laboratory has been lost because of the delay on the part of the prosecution to supply him the copy of the report of the Public Analyst. The

sample was taken on 18-7-1978. It was sent to Public Analysts on 19-7-1978 and the report of the Public Analysts dated 16-8-1978 was sent to respondent No. 1 the firm, which accused Nos. 2, 3 and 4 are admittedly partners, on 16-12-1978. The complaint was filed on 14-12-1978 and application to send the sample was made on 11-1-1979 which was, after hearing allowed by the predecessor of the present trial judge and the sample was ultimately sent to the Central Food Laboratory on 7-8-1979. This according to Mr. Patankar, deprived the accused persons of their right send the second sample to the Central Food Laboratory and obtain its opinion second time. It is his further argument that because of this delay, it is possible that the sample may have degenerated and may have been infested with germs and, therefore, the report of the Central Food Laboratory stated that it did not conform to the standard laid down for the food grains and was infested with insects. This report of the Central Food Laboratory was not accepted by the trial Court, as the application was made after 14 days of the mandatory period of 10 days u/s 16 of the Prevention of Food Adulteration Act. According to us, this report, even otherwise, would lose value on the argument of Mr. Patankar, if it is his case that because of the delay the insect would infest the sample and if this be so, the report of the Public Analyst itself was served on him after four months and within four months also, the sample could be infected. Therefore, that sample, according to us, would not yield proper results. However, this does not negative the report of the Public Analyst to whom the sample was sent immediately after its seizure, that is, the very next day. If the accused persons were aggrieved by the Public Analysts report they could have shown that the Public Analysts report could not be relied upon, by calling him as a witness cross examining him, which was not done. The law as it is makes the Public Analyst report admissible without the prosecution examining him, in the Municipal Corporation's case (*supra*), in paragraph 13, the Supreme Court has clearly stated that the opinion of the Public Analyst, who examines and analyses the sample, as to the fitness or otherwise of the sample for human consumption, would constitute legal evidence. The Public Analyst is supposed to be specially skilled in the science of dietetics and as an expert in the science, he is competent to opine and testify about this fact. Therefore, we have no hesitation in holding that the Public Analyst's opinion to whom the sample was sent almost immediately. i.e., on the very next day of its seizure, clearly shows that it was found infested with germs and, therefore, unfit for human consumption. We have no reason to disbelieve the opinion of the Public Analyst.

6. The trial Court has held the Public Analyst's report was not served on each partner of the firm accused No. 1 and, therefore, it is a technical infirmity in the prosecution and gave the benefit to the accused, vide section 9-A. According to us, it is a frivolous ground. The law recognizes that every partner of a firm acts as an agent of the firm and every notice to the firm itself is a notice to the firm itself is a notice to all the partners. This point in fact, was not agitated before us, but since it has found place in the judgment of trial Court, we have made a reference to it in our judgment.

7. The accused have taken alternative defences. One defence is about the warranty. Relying on section 14, Mr. Patankar submit that his client's firm would be protected and they cannot be convicted for any violation of the Prevention of Food Adulteration Act or rules framed thereunder. There is one fallacy in the argument of Mr. Patankar. The fallacy is that warranty would apply if the article purchased from some other Seller or distributor resold in the same condition and size as it is purchased. However, admittedly, in the case, the gunny bag containing this Ral Tandul was open. It contained only 40 kgs. of Ral Tandul. One defence witness was examined to state that he had purchased 50 Kg. of Ral Tandul. Supposing that 50 kgs out of 100 kgs of the gunny bag are purchased by this witness, then 10 kgs were sold to some other customer and 40 kgs., were remaining in the gunny bag. The warranty would not therefore, protect the firm of the accused persons, nor the accused persons, as the warranty was guaranteeing the genuineness whole-somness of the food articles contained in the packed gunny bag. After its opening the warranty was not effective and the accused persons are entirely responsible for its deterioration, if any.

8. The other defence of the accused persons was that the gunny bag containing this Ral Tandul was kept in a godown and there was a board fixed that articles from the godown would be sold only after they are cleaned. This defence first destroys of defence of warranty, because it would mean that that they aware that the article inside the godown needed cleaning. Presuming that the gunny bag containing Ral Tandul was in the godown, this would mean that they were not cleaned and not for sale and, therefore the accused themselves did not feel protected under the warranty. Secondly there is no evidence to show that when the Food Inspectors purchased the samples, any indication was given that the samples of Ral Tandul had to be cleaned first before the sample could be purchase by him. In fact there is no evidence to show that Ral Tandul was ever in the godown and that it needed cleaning. If the evidence of Food Inspectors is to be believed, and we see no reason to this disbelieve it, then the gunny bag containing this Ral Tandul was in the shop itself and the Food Inspectors purchased the sample of Ral Tandul from this gunny bag, which was in the shop. Therefore, this defence of the accused is also without any basis.

9. We are, therefore, satisfied that the prosecution have proved its case that so far as accused No. 2 is concerned, he were responsible for selling adulterated food, namely infected Ral Tandul , which was purchased by the Food Inspector (P.W. 1), and which, on analysis was found by the Public Analyst, as infected.

10. In result, we find that the appeal must succeed and, we, therefore, allow the appeal partly. Acquittal of respondents No. 2 accused No. 2 is set aside. Acquittal of respondents No. 1 original accused No. 1, (the firm) is also set aside. So far as accused Nos. 3 and 4 (respondents Nos. 3 and 4) are concerned, there is no evidence that they are responsible for Actual sale of the adulterated food. Therefore, there acquittal is maintained. Respondents accused Nos. 1 and 2 are convicted for the offence punishable u/s 16(1)(a)(i) of the Prevention of Food

Adulteration Acts. So far as sentence the is concerned, we must hear both the accused u/s 235(2) of the Code of Criminal Procedure. The bail bonds of accused are cancelled. They are directed to be arrested by the Daphalapur Police Station in Jat Taluka of Sangli District and produced before us for being heard on the question of sentence, on 10th February, 1988.

11. At this stage, Mr. Patankar states that there is no need to hear the accused persons personally on the question of sentence, since, he as Advocate of the Respondents, has authority to make statement, and prayed for leniency in the matter, on the ground that a period 10 years has elapsed since the commission of the offence, the protracted trial and appeal. He also submits if the minimum punishment is to be awarded then it may not be necessary to hear the accused personally.

12. Under the circumstances we think that minimum sentence, as prescribed, could be levied against accused No. 2 have and we, therefore sentenced him to suffer R.I. for six months and to pay a fine of Rs. 1,000/- in default to suffer further R.I for three months. Accused No. 1, being firm a juridical person. Though we have convicted the accused No. 1, we can merely impose fine on the firm. We order that accused No. 1 firm shall pay Rs. 1,000 / - as fine.