

(1998) 10 AP CK 0008

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 594 of 1996

Vasamsetty Satyanarayana

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 30-10-1998

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10(7), 16(1), 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 15, 22

Citation : (1998) 2 ALD(Cri) 895 : (1999) 2 ALT 29 : (1999) 2 ALT(Cri) 79 :
(1998) 3 APLJ 408

Hon'ble Judges : K.B. Siddappa, J

Bench : Single Bench

Advocate : D. Kodandarami Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.B. Siddappa, J.—This revision is directed against the judgment and sentence passed in Crl. A. No. 72/94 on the file of the III Addl. Sessions Judge, Kakinada. The petitioner was charged and found guilty for the offence u/s 16(1) read with Sections 7 and 2(ia)(m) of the Prevention of Food Adulteration Act and he was sentenced to undergo S.I. for six months and to pay a fine of Rs. 1,000/-; in default to suffer S.I. for one month.

2. Both the Courts below have concurrently held that the petitioner is guilty of the said offence.

3. The learned Counsel appearing for the petitioner submitted that Section 10(7) of the Prevention of Food Adulteration Act (in short "the Act") requires that where the Food Inspector takes any action under clause (a) of Sub-section (1), Sub-section (2), Sub-section (4) or Sub-section (6), he shall call one or more persons to be present at the time when such action is taken and take his or their signatures. In this case the Food Inspector took the assistance of P.W.2 and another to act as mediators. P.W.2 though stated in favour of the prosecution in

the chief-examination went back and gave contradictory-answers in the cross-examination. But the prosecution did not declare this witness as hostile. Therefore, the evidence given by P.W.2 is of doubtful nature and is not worthy of any credence. It is submitted that when P. W.2's evidence became shaky, the prosecution did not take care to examine another mediator and therefore, the entire prosecution merely depends upon P.W.1 who is the Food Inspector and who is interested in the success of the case of the prosecution and the uncorroborated evidence of P.W.1 therefore cannot be taken on its face value. In support of his contention he relied on the decision in *Chainsukh Tiwari v. Kamal Kishore*, 1995 AI PFA J 335 . In this case it was held that it is not proper to accept the uncorroborated testimony of the complainant. He also relied upon the judgment of this Court in *R. Balakrishna v. State of A.P* 1996 (2) PFA 59 in support of the same contention.

4. I agree with the submission made by the learned Counsel. As stated above, the evidence of P.W.1 is not corroborated and P.W.2 was not declared hostile. In such a case the prosecution ought to have taken steps to examine another mediator. As this step was not taken, following the ratio of the above judgment I am of the opinion that the uncorroborated testimony of P.W.1 -Food Inspector, cannot be taken on its face value.

5. The learned Counsel further submitted that P.W.1 did not say in so many words that he stirred the milk when he took the samples. He only stated that he made the milk homogeneous and took two samples. The requirement of law is that he should state in positive terms that he stirred the milk clockwise and anti clockwise with cleanrod. In the absence of such vital statement taking of samples renders of no use. In support of his contention he relied upon the judgment in *Sat Pal v. State of Haryana IV* (1996) CCR 437 and also relied on the decision in *The State of Punjab v. Paramjit Singh* 1996 (2) PFA 310 In those cases the learned Judges categorically held that the food item particularly milk when taken in large quantity should be made homogeneous and there should be positive evidence that the Food Inspector stirred the milk clockwise and anti-clockwise with a clean rod making it homogeneous. In the case on hand, the said evidence is not forthcoming. Therefore, the claim of the prosecution that the milk was made homogeneous renders doubtful.

6. The next point urged by the learned Counsel is that Rule 22 of the Prevention of Food Adulteration Rules says that the quantity of milk to be sent is 250 ml. In this case, the sample of 220 ml. of milk was only sent. Hence, Rule 22 is violated. The benefit of the violation of this rule should go to the accused. In support of his contention he relied on the judgment of the Supreme Court in *Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra*, . In this case their Lordships held that if the statutorily required quantity is not sent, the analyst report renders doubtful.

7. The learned Public Prosecutor on the other hand contended that the previous rule required only 220 ml. to be sent and by the amendment in the year 1985,

the quantity was enhanced to 250 ml. Further, the Public Analyst did not raise any objection and also did not opine that the quantity sent is not sufficient for the purpose of analysis. The fact that lesser quantity is sent was not an impediment for making proper analysis. Therefore, this objection is untenable.

8. I do not agree with the learned Public Prosecutor. When the statute required that the minimum quantity of 250 ml. should be sent, it should be strictly complied with. No excuse or convenience can be looked into by explanation.

9. Further Rule 15 of the Prevention of Food Adulteration Rules indicates that the Code number and serial number should be specifically mentioned in the sample and also in the report sent by the Analyst. In this case, the sample bore the Code No. F-923 and Sl. No. 64/92. However, in Ex.P-13 which is the Analyst report, no code number is mentioned. Hence, it is doubtful whether the report pertains to the sample sent by P.W.1 in this case. In similar circumstances, this Court in *Khem Chand v. State of A.P.* 1997(1) ALT (CrI.) 293 : 1997 (1) ALD (CrI.) 285 held that if there is discrepancy between the code number of the sample and also the code number given in the report of the Analyst that discrepancy should accrue to the accused. Following this judgment, I am of the opinion that in this case also the accused is entitled for the benefit of doubt.

10. For all the above reasons, I set aside the conviction and sentence passed by the Courts below. The Criminal revision is accordingly allowed.