

Purshottam Vs. State of U.P.

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Court : Allahabad

Decided On : May-12-2006

Reported in : 2006CriLJ3314

Judge : V.D. Chaturvedi, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7 and 16; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Reven. No. 994 of 1987

Appellant : Purshottam

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : V.C. Tiwari, Adv.

Disposition : Revision allowed

Judgement :

ORDER

V.D. Chaturvedi, J.

1. This criminal revision is directed against the judgment and order dated 24-06-1987, passed in Criminal Appeal No. 56 of 1987 by 6th Additional Sessions Judge

Azamgarh, whereby the learned Sessions Judge upheld the conviction of the revisionist under Section 7/16 of Prevention of Food Adulteration Act recorded by Spl. Judicial Magistrate Azamgarh in Crl. Case No. 656 of 1985 however, learned 6th Additional Sessions Judge reduced the sentence of imprisonment from one year RI to 6 months RI and that of fine from Rs. 2000/- to Rs. 1000/-.

2. The fact giving rise to this criminal revision may be briefly summarized as under:

That on 30.10.1983 at about 11.00 hours P.W.1 Ram Ashrey Singh, Food Inspector took the sample of pulses of Archer from the shop of the revisionist Purushottam on payment of its price. The sample of 750 grams of pulses of Archer was divided in three parts, and each was sealed in three separate phials. The Signatures of the witnesses were obtained and a lable on each of the phials was pasted. One phial was sent for chemical examination and the remaining two phials were submitted to CMO office; that after receiving the report (Ex.Ka 4) from Sri Shiv Balak Singh, the Chemical Examiner, P.W. 1 Sri Ram Ashrey, Food Inspector, filed the complaint In the court of Spl. Judicial Magistrate Azamgarh to prosecute the revisionist for adulteration in Arehar pulses.

3. The charge under Section 7 read with Section 16 of Food Adulteration Act was framed against the revisionist to which he denied.

4. The prosecution produced P.W. 1 Ram Ashrey Singh (Food Inspector) and P.W.2 Chandrama Rai the Clerk of the office of the C.M.O. Azamgarh.

5. P.W. 1 proved the memo of taking sample as Ex. Ka 1, the memo of purchasing pulses on payment of its price as Ex. Ka. 2, the memo of sending one phial to the public analyst as Ex. Ka. 3, the report of the Public analyst as Ex. Ka. 4, the order of the C.M.O. as Ex. Ka. 5 and the challan report as Ex. Ka. 6.

6. P.W.2 Chandrama Rai proved Ex. Ka.7, which is permission granted by the C.M.O. to prosecute the revisionist. He also proved Ex. Ka 8 and Ex Ka. 9.

7. After the prosecution evidence the statement of the revisionist was recorded under Section 313 of the Cr.P.C. The learned Special Judicial Magistrate found the revisionist guilty under Section 7/16 of the Food Adulteration Act and

sentenced him to one year R.I. and the fine of Rs. 2000/- by the judgment and order dated 21-03-1987.

8. The said judgment and order dated 21-03-1987 passed by the Special Judicial Magistrate was challenged in Appeal No. 56 of 1987.

The learned 6th Additional Sessions Judge upheld the conviction of the revisionist reducing the sentence of imprisonment to 6 months from one year and the fine to Rs. 1000/- from Rs. 2000/-.

9. Feeling aggrieved by the said judgment and order of conviction upheld by the learned 6th Additional Sessions Judge Azamgarh, and the sentences awarded by both the courts below, the revisionist has filed this revision.

10. I have heard Sri V.C. Tiwari learned Counsel for the revisionist and learned AGA for the State.

11. Learned Counsel for the revisionist challenged the process of taking sample by the Food Inspector. He pointed out that the phials, in which samples were sealed, were not clean and dry nor the witness has stated that the phials were clean and dried. No precaution was taken in sample; that the sample was examined 11 months after the date when the sample was taken; that for want of the use of preventive measure the Ghuns were born and the pulses taken in sample were damaged; that there was no insect in the pulses when the samples were taken; that for want of the use of the insecticide and preservatives, the Ghuns were born and consequently the report of the analyst became adverse. The revisionist's counsel challenged that no public witness was examined in the trial court; that both the prosecution witnesses are the employees of the same department and that these witnesses are bound to support the prosecution; that for want of public witnesses the prosecution story could not be relied upon.

12. Ex. Ka. 4, which is the report of the analyst, shows that the analyst found that Carbonic material (powder of pulse) was 8.91% in the sample; that 29.07% were the damaged beens; that he found 10 dead and alive Ghuns in each of 100 grams of pulses. The carbonic material was nothing but the powder of pulses. Thus the

entire report shows only that there were Ghuns in the sample which was examined by the analysts; that it was due to these Ghuns that 29.07% of beans of pulses were found damaged. The powder of pulses damaged by Ghuns was termed as 'carbonic material' in Ext. Ka.4. Needless to say that the presence of the carbonic material was the result of the natural activities of the Ghuns.

13. P.W. 1 Ram Ashrey Singh stated in his cross-examination that'

(Matter in vernacular omitted...Ed.)

14. I have read the statement of P.W. 1 Ram Ashrey Singh minutely. He never said in his entire statement that the phials, in which samples were taken, were dried and cleaned. P.W.2 Chandrama Rai also failed to state that phials were dried and cleaned. In such circumstances there is no presumption that the phials in which pulses were sealed and sent were dried and cleaned. The sample was taken on 30-10-1983 whereas it could be analysed by the analyst on 29-09-1984, about 11 months after the date of taking sample. It was highly probable that due to the moisture present in the phials, the Ghuns had taken birth therein and developed and multiplied in 11 months. This probability cannot be ruled out.

15. These circumstances create strong reasonable doubt regarding the guilt of the revisionist. It is therefore, not safe to uphold the conviction of the revisionist recorded by the learned Special Judicial Magistrate and - the learned 6th Additional Sessions Judge Azamgarh. The revision, therefore, deserves to be allowed.

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