

State Vs. Satyabadi Jena

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Court : Orissa

Decided On : Apr-05-1974

Reported in : 40(1974)CLT544; 1974CriLJ879

Judge : S. Acharya, J.

Appellant : State

Respondent : Satyabadi Jena

Judgement :

S. Acharya, J.

1. This is an appeal against a judgment of acquittal passed in Criminal Appeal No. 207-C of 1970 dated 23-4-1971 by the Additional Sessions Judge. Cuttack, The accused (Respondent herein) was prosecuted under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act and Rule 23 of the Prevention of Food Adulteration Rules. In the trial court he was convicted to R. I. for six months and to pay a fine of Rs. 100/-. in default, to undergo R. I. for three months, but was acquitted in appeal as stated above.

2. The prosecution case against the accused was that on 24-5-1965 P.W. 3. the Food Inspector visited a bakery known as the New Orissa Bakery at Cuttack and found that some cakes were kept stored there for sale for human consumption in a tin tray in that bakery. As P.W. 3 suspected those cakes to be adulterated he

purchased 1.500 Grams of the same as sample on payment of its price. Thereafter, he divided the said sample into three equal parts and kept each part in a dry and clean bottle and corked sealed and labelled those bottles and gave one of the bottles to the accused on obtaining from him the receipt, Ext. 2/2. for the same. Out of the other two bottles of sample he sent one to the Public Analyst at Bhubaneswar through a Constable. On analysis by the Public Analyst (P. W. 4) it was found that the icakes received by him were adulterated as they contained metanil yellow, a prohibited colouring material. After necessary sanction P.W. 3 submitted the prosecution report. Ext. 7.

3. The accused in his defence in effect took the plea that the New Orissa Bakery was a company consisting of five partners and he was one of those partners of the said Bakery. He was totally unaware of the colour used in preparing the said cakes as the said bakery was managed by one Bachha Panda. It was also contended on his behalf that the prosecution against him was vitiated as the charge framed against him was improper and not in accordance with law, and he was not in charge of the said factory.

4. Mr. Dora the learned Counsel for the accused-respondent at the outset contended that on the evidence on record it was not established beyond reasonable doubt that the cakes sent to the Public Analyst were actually from the same stock purchased by P.W. 3 from the aforesaid bakery. In this connection he contended that the prosecution evidence relating to this aspect of the matter was of a very unsatisfactory nature and therefore the court below was perfectly justified in arriving at the finding that the prosecution failed to establish beyond reasonable doubt that actually a portion of the cakes purchased from the bakery was examined by the Public Analyst and hence such a reasonable finding of the court below was not liable to be set aside in this Appeal. On a perusal of the evidence on record and its discussion in the impugned judgment. I am satisfied that the above mentioned (contention of Mr. Dora has sufficient weight and substance, P.W. 3. who purchased the said cakes from the bakery has deposed to the effect that after purchasing the cakes he divided the same into three equal parts, kept each part in a bottle packed ' sealed and labelled the bottles in the presence of the accused, and thereafter sent one of the said bottles to the Public Analyst. The said

purchase was made on 24-5-65. According to P.W. 3 himself the memorandum to the Public Analyst was written by him on 27-5-1965. The prosecution report (Ext. 7) shows that the above mentioned memorandum and the sample bottle containing some sample cakes were sent to the Public Analyst on 28-5-1965 through one Jagan-ath Misra. a Constable of the Vigilance Department. The Public Analyst. P.W. 4 in his deposition states that he at Bhubaneswar received the aforesaid articles on 31-5-1965. It is not understood why the samples purchased on 24-5-1965 were kept with P.W. 3 till 28-5-1965, and if on that date he really handed over the same to a Constable of his own department to 'be delivered to P.W. 4 at Bhubaneshwar why the same reached P.W. 4 on 31-5-1965. Apart from the above unsatisfactory feature, it is also seen from Ext. 3. the above mentioned memorandum that red and yellow coloured cakes weighing about 500 grams were sent to P. W, 4. P. W, 1 has also stated in ' his cross-examination that in the sample purchased by him there were red and yellow coloured cakes. But P.W. 4 states that no red coloured material-was found in the sample sent to him, thus obviating the possibility of receiving any red coloured cakes in the sample sent to him. This is vet another very unsatisfactory feature in the prosecution evidence on which the possibility of tampering with the sealed packet sent to the Public Analyst cannot be ruled out. The aforesaid suspicion gains support from the delay caused in sanding the sample on its delivery to the Public Analyst as discussed above.

5. Apart from the above consideration it is also seen that though the Public Analyst was examined in this case he has not testified to the effect that after he received the said packet containing the same-from the Food Inspector he compared the seals on the container and the outer cover with the specimen impression of the seal received separately by him as contemplated under Rule 7 framed under the Prevention of Food Adulteration Act 1954. The provisions of Rules 7 and 18 of the rules framed under the Food Adulteration Act are of course not mandatory but are merely directory as has been held in a Division Bench decision of the Allahabad High Court in 1969 All LJ 757. Though that is so it is always for the prosecution to establish that the sample analysed by the Public Analyst is in all respect the same sent by the Food Inspector. The. object of the said rules is to ensure the fact that the food materials which were seized for the required purpose at the Food Inspector's end were actually the materials analysed and examined by the Public

Analyst at the other end That being so though the rules are not of mandatory mature the persons concerned with and referred to in the said rules should spare no pain to follow the provisions of those rules as best as possible. As the Public Analyst was examined in this case he should have assured the court that he examined and analysed the materials after being satisfied that the materials which were sent to him by P.W. 3 reached intact and he analysed those very materials. As there is no evidence on record that he actually compared the seals as contemplated under Rule 7 and because of the other unsatisfactory features in the prosecution evidence discussed above it becomes extremely difficult to hold beyond reasonable doubt that the cakes analysed by P.W. 4 were actually a portion of the cakes seized by P.W. 3 from the above named bakery.

6. P. Ws. 1 and 2 are the only two persons who witnessed the aforesaid purchase of cakes from the bakery and their packing and sealing by P.W. 3. It has been elicited from P.W. 1 that the bakery in question at one time was in his house as the accused had taken the same on rent but the accused and his partners left that house without paying the rent of the house for six months, and that they had not paid the said arrears of rent till the time of deposition in the court below. P.W. 2 belonged to the department to which P.W. 3 was attached. Both P, Ws. 2 and 3 on the date of occurrence went together to the bakery to purchase the aforesaid sample. On the above facts Mr. Dora contends that P.W. 1 was illdisposed towards the accused and P.W. 2 was interested in the success of the prosecution case and so no court should place implicit reliance on their evidence without anything to support their interested version. The seizure in question was made by about noon time on the date of occurrence at a place in the midst of a busy market area. It was therefore possible for the prosecution to get some disinterested persons to witness the purchase packing and sealing of the bottles by P.W. 3 in the said bakery. Non-examination of any such disinterested witness assumes importance in view of the other unsatisfactory features in the prosecution evidence.

7. Considering all the above unsatisfactory and unconvincing features in the prosecution evidence. I do not see any reason to interfere with the finding of acquittal arrived at by the court below on a reasonable approach to the evidence

on record. Accordingly. I do not find any merit in this appeal and it is hereby dismissed.

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