

**State Vs. Dinesh Kumar**

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**Court :** Delhi

**Decided On :** Feb-14-1986

**Reported in :** 1986CriLJ1527; 1986(11)DRJ1

**Judge :** R.N. Aggarwal and; Malik Sharief-ud-din, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313(3); [Prevention of Food Adulteration Act, 1954](#) - Sections 2

**Appeal No. :** Criminal Appeal No. 237 of 1985

**Appellant :** State

**Respondent :** Dinesh Kumar

**Advocate for Pet/Ap. :** B.T. Singh and; D.C. Mathur, Advs

**Judgement :**

**Malik Sharief-ud-din, J.**

(1) This appeal is against the acquittal recorded by Additional Sessions Judge, Delhi, on 8-5-85 in favor of the respondent under Section 7/16 of the Prevention of Food Adulteration Act (for short Pfa Act). Earlier, learned Metropolitan Magistrate by his order dated 12-6-84 had found the respondent guilty and had sentenced him to undergo imprisonment for one year and a fine of Rs. 5000.00 In default of payment of the fine, the respondent had to undergo simple imprisonment for five

months.

(2) The field staff Delhi Administration on 14-10-82 at 2.30 p.m. had lifted a sample of 'Suji' from the premises of M/s. Aggarwal Provisions Store, B-69/1, Main Market, Bhajan Pura, Delhi. The sample was sold by Dinesh Kumar respondent to Public Witness 3 Gian Chand, Food Inspector. After sampling the Suji according to the rules, the sample thereof was sent to the Public Analyst who on analysis found the sample containing 26 living and dead insects.

(3) The acquittal was mainly recorded on three grounds. The first ground is that the report of the Public Analyst has not been proved. The second ground is that the Public Analyst's report was not formally put to the respondent while recording his statement under Section 313 Cr.P.C. The learned Additional Sessions Judge found justification in the assertion of the respondent that he has been prejudiced due to the failure of the court below to put the circumstances to him for Explanation. The third ground on which acquittal was recorded was that the Public Analyst has not specifically mentioned that the sample was adulterated on account of living and dead insects found in the Suji or that the same was otherwise unfit for human consumption or was insect infested.

(4) We have heard Mr. B.T. Singh, counsel for the appellant and Mr. D.C. Mathur for the respondent. We may as such take up the first contention that the report of the Public Analyst has not been proved. The learned Additional Sessions Judge has noticed that since it forms the foundation for the conviction of the respondent it ought to have been formally proved and that is what exactly Mr. Mathur also stressed during the course of his arguments. We do not agree with the contention. The report of the Public Analyst is protected under Section 13(5) of the Pfa Act and it is to be read in evidence per se. No formal proof about it under law is required. Section 13(5) of Pfa Act reads as under :-

'ANY document purporting to be a report signed by a public analyst, unless it has been superseded under Section (3) or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceedings under this Act etc. etc.'

It is not denied that this report of the public analyst was placed on record as mark 'A' and this was so identified by Shri R.C. Chopra, Pw 2 Senior Prosecutor. Admittedly, a copy of the result of the analysis was also delivered to the respondent. In view of the fact that the report of the public analyst under law can be used as evidence of the fact mentioned therein, the first contention fails.

(5) In so far as the second contention is concerned, Mr. Mathur argues that the respondent was not specifically asked while recording his statement as to what exactly the case is against him and that this has neither been done at the stage of charge nor has been spelt out in the complaint and in this manner he has been deprived of his right to explain this circumstance. We are not in agreement with the contention raised by Mr. Mathur. There is a specific question that one part of the sample was sent to the public analyst and a copy of the result of the analysis was delivered to the respondent. The purpose of putting each and every circumstance to an accused person is to enable him to explain the circumstances which appear in evidence against him and also the idea is to enable him to understand the case and the evidence is support of the case. It is true that no specific question has been asked from the respondent to the effect that public analyst found 26 living and dead insects in the sample but this has not, in any way, caused any prejudice because from the record we find that the accused respondent was aware of this circumstance and in fact Dw I Dr. N. S. Aggarwal, Ex.-Foo Commissioner, has been purposely examined by him to destroy the evidence regarding the analysis. In any case, we do not find any prejudice having been caused to the respondent. This contention from our point of view also has no force.

(6) As we have observed earlier, the main ground on which acquittal has been based is that the public analyst has only opined about the presence of 26-living and dead insects in the sample and has neglected to specifically mention that the sample was adulterated on account of the presence of such living and dead insects or that the sample was otherwise unfit for human consumption or was insect infested. The learned Addl. Sessions Judge has observed and it was also argued by Mr. Mathur that in deciding whether a sample of Suji in a particular case is adulterated or not it must come within the ambit of the definition under Section 2(ia)(f) of the Pfa Act according to which an article of food shall be adulterated if it

consists wholly or in part of any filthy putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption. The learned trial Judge relying upon the case of Municipal Corporation of Delhi v. Kacheroo Mal, 1975 2 Fac 223, and also on the case of Delhi Administration v. Puran Mat, 1985 1 Fac 161, held that since the public analyst has not said in his report that the sample of Suji was insect infested or was otherwise unfit for human consumption the mere fact that it contains 26 living and dead insects would not necessarily lead to an inference that the same was either insect infested or was otherwise unfit for human consumption, it is also remarked that an article of food would normally be declared as insect infested if it had been attacked by insects in swarms and in large numbers. Reliance in this connection was placed by him on Dhan Raj v. M.C.D., 1972 Fac 335 and N.D. M.C.v. ChamanLal and State, 1980 (1) Fac 272 In short, the learned Addl. Sessions Judge held that there is no proof as such that the sample of Suji was adulterated and on this ground he acquitted the appellant-respondent.

(7) In Delhi Administration v. Puran Mal, 1985 (1) Fac 161, the Supreme Court held that proof of unfitness of the articles of food for human consumption is a must for bringing the case within its purview. The Supreme Court while dealing with that case noticed M.C.D. v. Kacheroo Mal, 1975 2 Fac 223 and made the following observations :

'ALL the adjectives used in this sub-clause are presumptive and not an absolute test of the quality of the article being unfit for human consumption. To be more particular 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 insects 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 public analyst who examines and analyses the sample would constitute legal evidence. As an expert in the science he is competent to opine and testify about this fact.'

Again reliance was placed on M.C.D. v. Kacheroo Mal, (supra).

(8) The Supreme Court also noticed the views of another bench, equally strong, in *M.C.D. v. Tek Chand Bhatia*, 1979 (II) Fac 218 wherein the opinion expressed was as under :-

'WE are of the opinion that the High Court was clearly wrong in its interpretation of Section 2(l)(f). On the plain language of the definition it is quite apparent that the words 'or is otherwise unfit for human consumption' are disjunctive of the rest of the words preceding them. It relates to a distant and separate class altogether. It seems to us that the last clause 'or is otherwise unfit for human consumption' is residuary provision which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively the mere proof of the article of food being filthy, putrid rotten, decomposed..or insect-infested 'would be per se sufficient to bring the " case within the purview of the word 'adulterated as defined in Sub-clause (f) and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption.'

(9) In the *Puran Mal* case (supra) one of the members of the Bench, Hon'ble Ranganath Misra, J. opined that in his opinion to the true meaning of Sub-section 2(a)(f) has been brought out in *M.C.D. v. Tek Chand* (supra) and the conclusion that it would not be necessary in such a case to prove further that the article of food was unfit for human consumption is a correct statement of law.

(10) Before we deal with the merits or the contention, we would like to notice that in *Puran Mal's* case (supra) the article of food was 'Lal Mirch' powder and it was found to contain 9 living meal worms. In our view the reliance on the case (supra) is misplaced. In the first place worms can hardly be equated with insects as found in the sample taken from the respondent. In the second place, in Appendix 'B' to the Rules framed under provision of Pfa Act, 'Lal Mirch' powder has been defined to mean :-

'THE powder obtained by grinding clean dried chilli pods of *Capsicum frutescens* L/*Capsicum annum*. The chilli powder shall be dry, free from dirt, mould growth insect infestation, extraneous matter, added coloring matter and flavouring matter.'

(11) This would show that the standard prescribed for chilli powder is that it must be free from insect infestation. In other words it means that if a few worms were found in the chilli powder though it was otherwise found not insect infested, the public analyst was bound to state whether the presence of a few insects have rendered the chilli powder adulterated. It was in that context that the Supreme Court emphasized the requirement that the public analyst must express his opinion. This case, therefore, is distinguishable from the present case.

(12) In the case of Kacheroo Mal (supra), the food article was cashew nut pieces and no standard had been prescribed for the same. In that view, that case is also distinguishable from the present one. It seems to us, therefore, that in view of the peculiar facts of this case, reliance on Kacheroo Mal case as well as Pural Mal case (supra) is misplaced.

(13) Relying on the case of Tek Chand Bhatia (supra) we are of the view that under Section 2(ia)(f) if an article of food or part thereof is filthy, putrid, rotten, decomposed, or diseased animal or vegetable substance or insect infested, no further proof for its being adulterated article and unfit for human consumption is required and if the opinion of the public analyst is covered by any of the aforesaid adjectives, he need not specifically say that it is unfit for human consumption. It is only in cases where he finds an article of food, otherwise unfit for human consumption that this opinion he must express. That, in fact, is also the contention of Mr. Mathur. Mr. Mathur urged that indeed, the public analyst has found 26 living and dead insects and having found so he should have specifically said that the presence of these insects makes the article adulterated or therefore unfit for human consumption. The suggestion, is that since he has not specifically made a mention of it, it should be assumed that the article is fit for human consumption.

(14) We do not agree with the above assertion of Mr. Mathur. The reason is that if the law due to the presence of something extraneous makes an article of food adulterated and unfit for human consumption, there is no need for the public analyst to say so. Suji has been defined in Appendix 'B' at A. 18.03. It means the product prepared from wheat by process of grinding and bolting. It should be free from musty smell and off-odour, and shall be creamy yellow in colour. It shall

conform to the following standards:-

(A)Moisture-Not more than 14.5 per cent (when determined by heating at 130-133 C for 2 hours. (b) Total ash (on dry weight basis)-Not more than 1.0 per cent. (c) Ash insoluble in dilute Hcl (on dry weight basis)-Not more than 0.1 per cent. (d) Gluten (on dry weight basis)--Not less than 6.0 per cent. (e) Alcoholic acidity (with 90 per cent alcohol) expressed as H<sub>2</sub>SO<sub>4</sub> (on dry weight basis)--- Not more than 0.18 per cent. Rodent hair and excreta shall not exceed 5 pieces per kg.

(15) This would clearly go to show that what is permitted is rodent hair and excreta not exceeding 5 pieces per kg and no insects are permitted. That in fact is the tolerance limit prescribed and since the rule clearly makes Suji containing insects adulterated food no further obligation was cast upon the public analyst to say that it was adulterated and unfit for human consumption due to the insect infestation. A combined reading of Section 2(ia)(f) with Rule A. 18.03 clearly goes to show that the food article was adulterated and the mere fact that the public analyst has not specifically said so does not make any difference.

(16) The next point raised by Mr. Mathur is that the food inspector does not say that he saw the insects and that they may have developed during the period when the sampling was done and when the sample was analysed. In the present case we find that the simple was taken on 14th October 1982 and it was analysed within 24 hours. This is not a case therefore, which can attract, this argument and we do not agree with it. Moreover, it is not possible for a Food Inspector to detect insects in all the food articles with naked eye.

(17) Lastly, Mr. Mathur urged before us that the sanction in the present case was a mechanical one and that this is no sanction in the eye of law and that invalidates the entire prosecution. We have gone through the sanction and we find specific mention therein that the sanctioning authority has examined the documents and other relevant records and on that basis he was satisfied that a prima facie case is made out against the respondent. There is no reason for us to doubt that all relevant papers were not placed before the sanctioning authority and there is no reason to doubt that he has recorded the sanction only after going through the relevant record and satisfying himself about the nature of the offence committed

by the respondent. This argument, therefore, cannot be sustained.

(18) We may also notice the argument of Mr. Mathur that 12 living Sundis, 13 dead Sundis and one living Sulsuri have been detected in the sample by the public analyst. The contention is that these are not insect. We are unable to agree with Mr. Mathur in view of the specific categorisation of these as insects by the Public Analyst. The public analyst in fact has been more careful in not only detecting the insects also in finding the nature and character thereof. This is the opinion of an Expert in this field and this cannot be discarded as irrelevant piece of evidence on this point.

(19) With these observations we are of the view that the order of acquittal passed by the learned Addl. Sessions Judge is not sustainable in law. We accordingly accept this appeal reverse the order of acquittal, restore and maintain the order of conviction passed by the learned Metropolitan. Magistrate. The appeal is accepted.

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