

Shah Ashu Jaiwant

Vs

State of Maharashtra

Criminal Appeal No. 119 of 1971

(M.H. Beg, P.N. Bhagwati R.S. Sarkaria JJ)

18.08.975

JUDGMENT

BEG, J. -

1. The appellant was charged in the Court of Presidency Magistrate of Bombay as follows :

That you on December 3, 1968 at 8 a.m. at Bandra, in contravention of provisions of Sections 2(1)(f) and 7(i) of the Prevention of Food Adulteration Act, sold 450 grams of til seeds to the Food Inspector and that the til seeds were unfit for human consumption, and thereby committed an offence under Section 16(1)(a)(1) of the same Act and within my cognizance.

2. The two witnesses produced to support this charge were D. P. Tambe and S. P. Gaydhani.

3. D. P. Tambe, (PW 1), a businessman, said that he had gone to "a shop to make purchases", without giving either the name of the shop or approximate date or time of his visit. Under cross-examination, he said that he did not know whether it was a foodgrain shop. He said that he saw the complainant pick up a jar, open it, and look at its contents. He deposed that there was "some talk" between the complainant and the accused. The complainant was then said to have come up to and told this witness that he would be taking "some commodity from the jar" which would be sent for analysis. After that, the complainant, it was alleged, asked for some til seeds. Thereupon, according to this witness,

some persons in the shop found til seeds in three plastic bags and gave the bags to the Inspector.

He said that the Inspector (i.e. the complainant) sealed the packets and that the witness signed the packets. He deposed :

Cash memo was prepared by some persons in the shop. Inspector paid money to accused No. 1.
Accused No. 1 was with the Inspector all the while.

His cross-examination showed that he could remember nothing material. He did not even remember who made the cash memo and whether anyone signed it in his presence. He said he only thinks that he signed it. To almost every question under cross-examination his answer was that he does not remember. Even after making every possible allowance for a memory which could fade with lapse of time, his version was extraordinarily nebulous and non-committal.

4. The principal witness in the case was S. P. Gaydhani, PW 2, the prosecuting Food Inspector, who stated that, after having gone into the grocery shop at 731 Hill Road, Bandra, he disclosed his

identity to the accused and demanded 450 grams of til seeds for which he paid Rs. 1.35. He said that he himself divided this quantity into 3 parts each of which was put into a separate plastic bag and then sealed and labelled by him. He claimed to have obtained the signatures of the accused in the presence of Tambe whom he described as "the independent witness Tambe". Under cross-examination, he said that he took the signatures of Tambe on the cash memo but not on the packets, although he had deposed in his examination-in-chief that Tambe had signed the sealed packets also. Incidentally, the seals of the packets were found broken due to what the Inspector described as "handling". He admitted that no signature of the witness was obtained on the counterfoil of the cash memo. He stated :

Black tils can be used for human consumption. It is not correct to say they are used only for pooja. It is not true that the accused told me that he had only black tils used for pooja. It is not true that the accused told me that he will write on the cash memo the purpose for which black tils are sold.

5. The accused appellant denied the presence of Tambe and asserted that he had clearly told the Food Inspector that the black tils in his shop were only meant for pooja and not for human consumption. Apparently, as the Inspector wanted to buy these til seeds despite this information given to him, the accused sold them to him and signed the necessary papers. The accused produced no witness in defence.

6. The real dispute on facts revolves round the question whether the black tils were sold to the Food Inspector specifically for the purpose of pooja after the accused had told him that they were not meant for human consumption, or, they were sold without giving such information to the Food Inspector. In order to judge whether the Food Inspector's version or the accused's explanation was more credible, it became necessary to examine the evidence of the only witness produced to corroborate the Food Inspector. We have considered the question whether it actually corroborates or contradicts the Food Inspector's account. It seems to us that there is such vagueness and apparent contradiction in the pictures conveyed by Tambe and the Food Inspector that Tambe's testimony tends to demolish more than to corroborate the version of the Food Inspector on points of fact in issue. It indicates that Tambe was probably not present at the time when the seeds were sold by the appellant to the Food Inspector.

7. The Presidency Magistrate, after examining the whole evidence, had concluded that the version of the appellant, that there was a talk about the actual purpose for which the til seeds at his shop were meant, was more probable because it was supported by what the appellant had written on the cash memo when he sold these til seeds to the Food Inspector. After all, the appellant, who had a grain shop, must have known that the Food Inspector could prosecute him if he kept adulterated foodstuffs for sale for human consumption. If, as the analyst's report showed, these black til seeds were full of cocoons, visible to the naked eye, nobody could be expected to purchase them for consumption as food. The learned Magistrate, after finding that it was more probable that there was a talk about the purpose for which the til seeds were kept in the accused's shop, despite the Food Inspector's denial about such talk, held that the purpose for which the til seeds were kept was quite immaterial.

8. It is true that mens rea in the ordinary or usual sense of this term is not required for proving an offence defined by Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). It is enough if an article of adulterated food is either manufactured for sale, or stored, or sold or distributed in contravention of any provision of the Act or of any rule made thereunder. Nevertheless, the prosecution has to prove, beyond reasonable doubt, that what was

stored or sold was 'food'. The charge was that the til seeds sold were unfit for human consumption. This necessarily meant that it was part of the prosecution case that the til seeds with which we are concerned were meant for human consumption. Recently, this Court has held in *Bhagwan Das v. Delhi Administration* (AIR 1975 SC 1309, 1318 : (1975) 1 SCC 866, 876 : 1975 SCC (Cri) 410, 420, paras 18 and 19), that, although mens rea, in the ordinarily understood sense, may not be needed to be proved in such cases, yet, the purpose for which articles of food covered by the Act are manufactured, distributed or sold was that they "should reach the consumer to be used as food". Thus, the use of the article sold was not entirely irrelevant. It is more correct to say that it is presumed from the nature of the article itself or the circumstances and manner of offering it for sale. Where circumstances raise a genuine doubt on the question whether what was kept by a seller was "food" at all, this must be resolved by evidence in the case. After all, if what is stored or sold in a shop was neither "food" nor meant to be so used could a person be prosecuted on the ground that he sold it in an adulterated condition ?

9. It was contended on behalf of the appellant that the whole object of the Act was to prevent adulteration of "food" meant for human consumption. Our attention was invited to a passage from *Pyare Lal v. New Delhi Municipal Committee* ((1967) 3 SCR 747, 755 : AIR 1968 SC 133), where this Court said :

The object of this Act was to ensure that food which the public could buy was inter alia prepared, packed, and stored under sanitary conditions so as not to be injurious to the health of the people consuming it.

10. Section 2, sub-section (v) of the Act lays down :

(v) 'food' means any article used as food or drink for human consumption other than drugs and water and includes -

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments;.

Hence, where Section 7 prohibits manufacture, sale or storage or distribution of certain types of "food", it necessarily denotes articles intended for human consumption as food. It becomes the duty of the prosecution to prove that the article which is the subject-matter of an offence is ordinarily used for human consumption as food whenever reasonable doubts arise on this question. It is self-evident that certain articles, such as milk, or bread, or butter, or foodgrains are meant for human consumption as food. These are matters of common knowledge. Other articles may be presumed to be meant for human consumption from representations made about them or from circumstances in which they are offered for sale. What is the position in this respect about black til seeds with which are concerned here ?

11. It is submitted that it is a matter of common knowledge that black til seeds are not used as food. Even if this be true, it is not so widely known a fact that we could take judicial notice of it. It is also urged that, when the case of the appellant, supported by his cash memo, is that the particular black 'til' seeds were meant to be sold only for pooja for being burnt like incense or thrown into fire in the course of pooja, it cannot be said that his case had been repelled by the mere statement of the Food Inspector that they can be used as food also. Such a statement amounted at least to a partial

admission that they are used for pooja. Therefore, it is urged, they could have been kept for the purpose of being sold only as a substance used for pooja and not as human food. It is pointed out that there is nothing in evidence on this question, to dislodge the statement of the accused. We find no evidence on record to show the actual manner in which such seeds are used in the course of pooja. Therefore, the view of the High Court that they could be consumed by people after the performance of pooja rests on bare conjecture. There had to be credible evidence to show that black til seeds are ordinarily used as food. If that were so, the burden would have shifted on to the shoulders of the accused to prove that what he had stored was not really food meant for human consumption but an article kept for a special use. We are left in doubt on this question on the evidence in this case. We think that the appellant must get the benefit of that doubt.

12. As already indicated above, we are not impressed by the nature of the evidence led by the prosecution. We cannot entirely ignore the fact that the signatures of Tambe are absent on all those documents on which they would have been present if Section 10(7) of the Act had been strictly complied with. We think that it is more likely, for the reasons already given by us, that Tambe was not there at all to witness the occurrence. If that be so, the evidence of the prosecuting Food Inspector, who said that Tambe was there, cannot be implicitly relied upon in this case. It is quite unsafe to base the appellant's conviction on such shaky foundations.

13. Accordingly, we allow this appeal, set aside the conviction and sentence of six months' rigorous imprisonment and fine of Rs. 1,000, and in default, further rigorous imprisonment for two months, imposed upon the appellant. The appellant who is on bail need surrender. His bail bonds are discharged. The fine, if realised, shall be refunded to him.

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