

Jagdish Prasad

Vs

State of Delhi and Another

Criminal Appeal No. 17 of 1980

(CJI Y.V. Chandrachud, A. Varadarajan JJ)

15.09.1981

JUDGMENT

CHANDRACHUD, C.J. -

1. A sample of Amchoor Sabat, made from the peels of unripe mangoes, was taken from the appellant's shop on October 3, 1970. Three days later the Analyst found that the sample was 'insect-infested'. He did not mention in his report the extent of insect infestation but he stated that 23.8 per cent of the pieces of Amchoor Sabat were insect-infested. The report did not mention that any living or dead insects were discovered in any part of the sample.

2. The case was fixed for arguments in the trial court on August 5, 1971. On August 17, the prosecution applied to the learned Trial Judge under Section 13(2) of the Prevention Food Adulteration Act, 1954 asking that the sample should be sent to the Director of Central Food Laboratory for analysis. The sample was accordingly sent to the Director on August 23, who reported on September 1, 1971 that the sample was 'highly insect-infested'.

2-A. The learned Trial Judge convicted the appellant by his judgment dated November 26, 1971 but in appeal the appellant was acquitted by the learned Additional Sessions Judge by a judgment dated February 10, 1972 on the ground mainly that the sample was not stated to be unfit for human consumption and secondly, that there was no evidence on the record to show as to what was the state of the sample on the date on which it was taken, that is to say, on October 3, 1970. The Municipal Corporation of Delhi filed an appeal in the High Court of Delhi against the judgment of the learned Additional Session Judge. The High Court set aside that judgment and restored that of the trial court under which the appellant was sentenced to six months' rigorous imprisonment and to pay a fine of Rs 1000. Being aggrieved, the appellant has filed this appeal by special leave.

3. The offence took place nearly 11 years ago and there is no evidence on the record to show what was the extent of insect infestation in the sample when it was taken. A rather interesting feature of this case is that is when, on the application of the prosecution, the report of the Director of Central Food Laboratory was brought on the record of the case, the earlier report of the Analyst was replaced by that report. The result is that though there is evidence on the record to show that the sample was "highly insect-infested" on September 10, 1971 when the Director of the Central Food Laboratory gave his report there is no evidence on the record to show as to what was the state of the sample on October 3, 1970. Shri. Bawa Gurcharan Singh argues that in this state of affairs the appellant is entitled to an acquittal but we are not inclined to accept that submission. The evidence

on the whole can be accepted as justifying the conclusion that on the date on which the sample was taken, it was insect-infested within the meaning of Section 2(ia)(f) of the Act.

4. At the time when the offence was committed on October 3, 1970 court could pass less than the minimum sentence if there were good reasons for doing so and they had also the power to release the offender on probation in appropriate cases. Taking all the circumstances of the case into account we are of the opinion that this is not proper case for imposing any substantive sentence. While upholding the conviction therefore, we set aside the sentence of imprisonment and fine imposed on the appellant and direct that he should be released on probation on his executing a bond for a period of one year in the sum of Rs 2000. We may mention that the appellant has stopped his grocery business long since.

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