

(2012) 04 GAU CK 0028

Gauhati High Court

Case No: Criminal Rev. Petition No 675 of 2004

Rajaram Rathi

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: April 27, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Food Adulteration Act, 1954 - Section 13(2), 16, 7

Citation: (2013) 2 Crimes 543 : (2012) 3 GLD 94 : (2012) 3 GLT 276

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: N. Choudhury, Mr. S.C. Keyal, Mr. S.K. Ghosh and Mrs. R. Das, for the Appellant;
D. Das, Addl. PP, for the Respondent

Judgement

I.A. Ansari, J.

The present petitioner, raced the trial in CR Case No. 206 of 1999, in the Court of learned Chief Judicial Magistrate, Jorhat, on a charge framed u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (in short, "PFA Act")-Heard Mr. N Choudhury, learned counsel, for the petitioner, and Mr. D Das, learned Additional Public Prosecutor, Assam.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus: On 15.06.1999, at about 11 am, the complainant, a Food Inspector (PW1), accompanied by his office peon (PW2), visited a grocery shop, at Socklating Tea Estate, Jorhat, which is run under the name and style of M/S Raja Ram Rathi, and, on inspecting the articles of food kept there exposed for sale for human consumption, he disclosed his identity to accused No. 1, namely, Sudama Rai and purchased sample of iodized salt after giving to the accused No. 1 a notice in Form-VI. The sample, so purchased, was divided into three equal parts. One part of the sample was sent to the Public Analyst, Government of Assam. The Public Analyst reported

that the sample was adulterated inasmuch as the same did not conform to the standards. On receipt of the report, the Food Inspector (PW1) obtained necessary sanction for prosecution of Sudama Rai and the present petitioner, namely, Rajaram Rathi, as accused No. 2, the accused No. 1 being the vendor and accused No. 2 being the proprietor of the said business establishment.

3. In course of time, as indicated above, the charge, u/s 7 read with Section 16 of the Prevention of Food Adulteration Act (in short, "PFA" Act) was framed. To the charge, so framed, both the accused pleaded not guilty.

4. In support of their case, prosecution examined two witnesses, namely, the Food Inspector and his office peon.

5. The Two accused were, then, examined u/s 313 Cr.P.C. In his examination, the present petitioner denied that he had committed the offence, which was alleged to have been committed by him, the defence of the present petitioner being that he was not the proprietor of the said business establishment and that he had been wrongly and illegally made an accused in the said case. In support of this contention, the petitioner also pointed out, at the trial, that in the Form-VI, the name of the proprietor was, originally, written as Madan Mohan Taparia, but the said name was subsequently struck off and the name of the present petitioner, i.e., Rajaram Rathi, was inserted. The Food Inspector explained the reason for striking off the name of Madan Mohan Taparia, the reason, according to the Food Inspector, being that it was by mistake that the name of Madan Mohan Paparia was initially written and that it was the vendor, namely, Sudama Rai, who had disclosed the name of the present petitioner as the proprietor of the said business establishment and it was, thereafter, that the name of the present petitioner was written, in Form-VI, as proprietor in place of Madan Mohan Taparia. The defence did not, however, adduce any evidence.

6. On finding the present petitioner guilty of the offence charged with, as proprietor of the said business establishment, the learned trial Court convicted him accordingly and passed sentence against him, as mentioned hereinabove. Yet another defence, taken by the present petitioner, was that no notice, u/s 13(2) of the PFA Act, had been received by, or served upon, the petitioner.

7. Being aggrieved, the petitioner preferred an appeal, which gave rise to Criminal Appeal No. 11 of 2004. By judgment and order, dated 31.12.2003, passed by the learned Additional Sessions Judge (Ad hoc), Jorhat, the appeal was dismissed and the conviction and the sentence, passed against the appellant (i.e., the present petitioner), was upheld. The petitioner has, now, come to this Court with the present revision putting to challenge his conviction and also the sentence passed against him.

8. While considering the present revision, it needs to be noted that once the present petitioner had denied that he was the proprietor of the said shop and, in this regard,

he had also pointed out that in Form-VI, his name was mentioned as proprietor of the said shop after striking off the name of Madan Mohan Taparia, in Form No. VI, as the proprietor of the said shop, it was the burden of the prosecution to prove beyond doubt that its contention that the present accused-petitioner was the proprietor of the said shop, is correct.

9. While considering the above aspect of the case, it needs to be noted that the petitioner was, admittedly, not present at the time, when the sample was purchased. It is also an admitted position that, initially, the name of Madan Mohan Taparia was mentioned, in Form-VI (Ext. 1), as proprietor of the said shop; but the said name was struck off and the name of the present petitioner was written as the proprietor of the said shop. In his cross-examination, the Food Inspector (PW1), however, admitted that it was Sudama Rai, who had told him the name of the present petitioner as proprietor of the said shop. The Food Inspector, however, admitted that the vendor, Sudama Rai, could not produce any document in support of his alleged claim that the petitioner was the proprietor of the said business establishment.

10. What is, now, of utmost importance to note is that the Food Inspector (PW1) claims that he, later on, made investigation of his own and found that it was Rajaram Rathi (i.e., the present petitioner), who was the proprietor of the said shop. The Food Inspector, however, admitted that he had not mentioned, in his inspection report (Ext. 15), that he had made any investigation. This apart, what cannot be ignored and must not be ignored is the fact that at the trial, no material was produced to show that the present petitioner was the proprietor of the said business establishment.

11. What emerges from the above discussion is that when the present petitioner had denied that he was the proprietor of the said shop, it was the duty of the prosecution to prove, beyond reasonable doubt, their contention, that it was the accused-petitioner, who was the proprietor of the said shop, was true and correct. In this regard, except the assertion of the Food Inspector that it was the co-accused (i.e., the vendor), who had told him (PW1) the name of the present petitioner as proprietor of the said shop, nothing was produced by the prosecution in proof of their assertion that the present petitioner was the proprietor. While the Food Inspector claims to have made his own investigation in this regard and claims to have also ascertained that the present petitioner was the proprietor, his inspection report (Ext. 15) is, strangely enough, completely silent in this regard. Thus, there is no documentary or oral evidence other than the claim of PW1, before the Court, to hold that the accused-petitioner was the proprietor of the said shop.

12. Situated thus, it becomes clear that the prosecution had failed, and failed miserably, to prove that the present petitioner was the proprietor of the said shop. When the prosecution had failed to prove the present petitioner as the proprietor of the said shop, it was sufficient to hold him not guilty of the charge, which had been

framed against him and, the question as to whether notice, u/s 13(2) of the PFA Act, had or had not delivered to him, or served upon him, became immaterial and insignificant.

13. What logically follows from the above discussion is that the finding of guilt, which was reached against the present petitioner, is wholly against the weight of the evidence on record and against the fundamental principle of criminal jurisprudence that it is the prosecution, which has to prove its case beyond all reasonable doubt against a person, who is arraigned as an accused.

14. Because of what have been discussed and pointed out above, the conviction of the accused-petitioner and the sentence, passed against him, cannot be sustained.

15. In the result and for the reasons discussed above, the conviction of the accused-petitioner and the sentence passed against him are hereby set aside. The accused-petitioner is held not guilty of the charge framed against him and is acquitted of the same. The bail bond of the accused-petitioner is cancelled and his surety stands discharged.

16. With the above observations and directions, this criminal petition shall stand disposed of. Send back the LCR.