

FONG SING

A

v.

PURE FOOD INSPECTOR

[SUPREME COURT, 1962 (Hammett P.J.), 13th April, 24th May]

Appellate Jurisdiction

B

Food—adulteration—elastoplast dressing in curried mutton and taro—whether food adulterated—Pure Food Ordinance (Cap. 131) ss.4(a)(i), 5,7(2)(a),7(3).

Criminal law—selling adulterated food—elastoplast dressing in curried mutton and taro—Pure Food Ordinance (Cap. 131) ss.4(a)(i), 5, 7(2)(a), 7(3).

C

The appellant sold a plate of curried mutton and taro which was found by the person eating it to contain a piece of elastoplast dressing. He was charged under section 5 of the Pure Food Ordinance with selling adulterated food.

Held: 1. By virtue of section 4(i) of the Pure Food Ordinance it was, in the circumstances, clear that the onus of proof rested upon the prosecution to show that the food contained an added poisonous ingredient, or an ingredient which might render it injurious to the health of the person consuming it.

D

2. Even if the elastoplast dressing could be viewed as an “ingredient” (which was doubtful) there was no evidence that it was poisonous or might render the mutton and taro injurious to the health of the person consuming it.

E

Appeal from a conviction by the Magistrate’s Court.

H. M. Scott for the appellant.

K. C. Gajadhar for the respondent.

F

The facts appear sufficiently from the judgment.

HAMMETT P.J. [24th May, 1962]—

This is an appeal from the decision of the Magistrate’s Court at Suva whereby the Appellant was convicted of the following offence:—

Statement of Offence

G

Selling Adulterated Food, contrary to Section 5 of the Pure Food Ordinance (Cap. 131).

Particulars of Offence

Fong Sing, Manager of the Industrial Cafe and Mobile Canteen registered number 7610, did on the 13th day of February 1962 at Millers Limited Engineering Shop at Walu Bay, Suva, sell food, to wit a plate of curried mutton and taro which upon examination was found to contain a piece of elastoplast dressing.

H

There are three grounds of appeal which read:

- A “(a) That the learned Magistrate erred in law and misdirected himself when he held that the definition of “adulteration” as set out in Section 4 of Cap. 131 of the Laws of Fiji covered an isolated unintentional act whereby a piece of foreign matter, namely a piece of elastoplast dressing, was found in a plate of curry and dalo.
- B (b) That the learned Magistrate further erred in law and misdirected himself when he held that the defendant now appellant had committed an offence under Section 5 of Cap. 131 when the appellant unintentionally and without any knowledge sold a plate of curry and dalo containing a piece of elastoplast dressing.
- C (c) That the learned Magistrate erred in law and misdirected himself when he held that the prosecution could take action for the said offence under either Section 5 or Section 7 Sub-section 2(a) of Cap. 131 when in fact the only section in the Ordinance that could apply to such an offence was Section 7 Sub-section 2(a) under which the appellant was not charged.”

D The facts are not in dispute. On 13th February, 1962 at Millers Limited Engineering Slip at Walu Bay, Suva, the Appellant sold a plate of curried mutton and taro which was found by the person eating it to contain a piece of elastoplast dressing.

Section 5 of the Pure Food Ordinance reads:—

E “5. No person shall sell any article of food which is adulterated or falsely described or which is packed or enclosed for sale in any manner contrary to the provisions of this Ordinance or of the regulations.”

Section 4 of the Ordinance sets out the circumstances under which food is deemed to be adulterated.

F For the Appellant it was submitted that the only subsection of Section 4 which could possibly apply to the circumstances of this case are those contained in subsection (a) and (i) but that in fact, upon examination neither of these do in fact apply. For the Respondent it was submitted that the provisions of subsection (i) do cover the circumstances of this case.

The material part of Section 4 reads as follows:—

G “4. An article of food shall be deemed to be adulterated or falsely described within the meaning of this Ordinance —

(a) if any substance has been mixed with it so as to reduce or lower or injuriously affect its quality or strength;

.....

H (i) if it contains any added poisonous ingredient or any ingredient which may render it injurious to the health of the person consuming it, whether added with intent or otherwise;”

It is the contention of the Appellant that the only Section of the Pure Food Ordinance that could apply to the facts in the case was Section 7(2) (a) which reads:—

“7(2) No person shall —

- (a) sell any food which is not of the nature, substance or quality of the food demanded by the purchaser;

A

.....

(3) In any prosecution under this section it shall be no defence to prove that the food the subject of the prosecution though defective in nature or in substance or in quality was not defective in all three respects.”

B

It is clear from the provisions of Section 4(i) that the onus of proof rested on the prosecution to show that the food concerned contained —

- (1) An added poisonous ingredient; or
 (2) an ingredient which may render it injurious to the health of the person consuming it.

C

I find it difficult to view an elastoplast dressing as an “ingredient” in a plate of curried mutton and taro. If it could come within the meaning of the term “ingredient” then there should have been also evidence either —

- (1) That it was poisonous; or
 (2) That it might render the mutton and taro injurious to the health of the person consuming it.

D

There was no evidence of whether this elastoplast dressing was a new or a soiled dressing. There was also none to show that it was poisonous or that it might render the mutton and taro injurious to the health of the person consuming it.

E

The learned trial Magistrate held that the facts in this case amounted to “adulteration” under the provisions of Section 4(i) of the Ordinance. I do, with some reluctance, find myself unable to agree. In my view there was, in any event, insufficient evidence to justify such a finding, however much it may be deplored that food for human consumption should have been sold containing a foreign body such as this.

F

For these reasons I do, with considerable reluctance, allow the appeal and quash the conviction. The fine, if paid, is ordered to be refunded.

Appeal allowed.