

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 79 OF 1993
GOURI SANKAR PROSAD
VS
THE STATE OF WEST BENGAL

For the Amicus Curiae : Mr. Soham Banerjee, Adv.

For the State : Mr. R. Ray Chaudhury, Adv.
Ms. Faria Hossain, Adv.
Mr. B. Basu, Adv.

Last heard on : 03.12.2026

Judgement on : 06.02.2026

Uploaded on : 06.02.2026

CHAITALI CHATTERJEE DAS:-

1. Challenging the judgement and order of conviction passed on 30.3.93 by the Judge SPECIAL court (E.C) Suri in Special Case no 33 of 1992 whereby the learned Judge convicted the appellant under section 7(1)(a)(ii) of the Essential Commodities Act 1955 for the violation of para 17 of the West Bengal Rice and Paddy (Licensing and Control)order 1967 and sentenced the appellant to suffer simple imprisonment of six months and to pay a fine of Rs 1000/- in default simple imprisonment for another 3 months .

Fact of the case

2. On 7.6.1992 between 9.30 hours and 12-15 hours raid was held in the place of business of the appellant by one Sri Dutta D.E.O Rampurhat (De-facto Complainant) and other Police Personnel .On scrutiny of ash Memo Register and other relevant materials it was found that the stock of paddy on 5.6.1992 was up to 12.5.1992 .On verification the stock of 75 quintals of paddy was found in 125 bags containing 60 bags each and as such there was excess stock of paddy of 33.50 quintals .The paddy and other relevant documents were seized and the appellant was arrested . After completion of the investigation the charge-sheet was on 11.9.1992 was submitted against the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act 1955 for violation of para 18 of West Bengal Rice and paddy (licensing and control) order (1967).The appellant was pleaded not guilty and claimed to be tried .

Submission

3. The learned Amicus Curiae argued that the judgement and order of conviction is liable to be set aside. The learned Court failed to appreciate the evidences adduced by the witnesses which create doubts upon the credibility of the prosecution case. The seizure list witnesses did not support the prosecution case and even a member of raiding party was declared as hostile .No convincing evidence to pass an order of conviction.
4. The learned prosecution raises objection and argued that the prosecution in order to bring home the charges adduced 5 witnesses and proved the documents and considering the facts and circumstances the learned Court passed the order of conviction. The appellant has failed to make out any case

for interfering such order of conviction and hence this appeal is liable to be dismissed.

Analysis .

- 5.** Heard the submissions. The prosecution case was lodged on the strength of the complaint filed by S.I S. Dutta before the O/C Margram P.S intimating that he along with w/c Kalipada Ghose and force of Rampurhat P.S went for raid on 7.2.92 between 9.30 hours to 12.15 hrs. on source information at a sealed premises of Abu Bakkar the owner of the business and huge quantity of paddy was found in two rooms of the premises. A notice was issued to the owner to produce cash memo license, stock register and ors. relevant documents required for a business . Some local people were asked to help. On scrutiny of that excess of 33.50 paddy was found which was not mentioned in the stock register. The seized paddy was kept in the zimma of one Mahasin Khan.
- 6.** In this case the prosecution has adduced evidence of 5 witnesses. Mir Asmat Ali the P.W. 1 stated on oath that he was a resident of Bishnupur. On 7.6.92 the witness noticed an Officer at the PPC of the accused .He identified the signature on the seizure list which were at the PPC .He also identified his signature on the Register dated 7/6/92 and the stock register of the accused. The witness notifies his signature on the weighment chart but states that at the time of his signature the paper was blank. From his cross examination it can be gathered that Sirajul ,Mohim ,Anwar an Mohabbat have their shops near the PPC of the accused and continuous to it. At 2.20 p.m. He was in the market and the I.O. went to them and he sign on all the papers sitting at the tea stall of one Jafar . His friend Mohasin also signed all papers .Witness

states that he declined to sign on papers but he was assured by the I.O. that he would not face any trouble. He did not see the actual seized paddy and he saw a huge agitating crowd over the incident in the market. This witness further said that he was not examined during his evidence. Mahasin Ali deposed as P.W. 2 on S/A .He stated that when he signed on the seizure list it was blank but he identified his signature on the Seizure list, Weighment Chart with comment that it was blank when he signed it .Witness identified his signature on the zimmanama but stated not to have seen the seized paddy. He could not said who wrote the body of zimmanama .He said he is illiterate and can only signed his name. He was not aware wherefrom the seizure was made. This witness was also not examined by the I.O. and went to depose as per direction of the I.O.

7. P.W. 3 Maharam also a resident of Bishnupur.He deposed that the accused run PPC at the house of his brother of the witness as a tenant and he was absent during the visit of DEB Inspector and he knows nothing about the case. This witness was declared as hostile. The S.I S. Dutta deposed that on 7.6.92 he was holding the same post when at about 9.30 a.m. with his W/C Kalipada Ghosh and other staff he went to Bishnupur Bazar and then visited the PPC of Gauri Shankar Prosad .The owner G.P. Prosad was present during his visit. Witness served a notice up to the accused expressing the purpose of his visit. The accused produced the cash memo .challan and both stock and purchase register and also a rough hand book for inspection by the witness. The witness show the purchase register seized by him The witness found the stock register was written up to 6/6/92 as opening stock and visible discrepancy found

between the stock as shown on the book and stock physically available on 7.6.92 .

8. The witness arranged for weighment of physical stock and it came to 75 quintals .P.W. identified the weighment chart which is marked as Ext 4 .The witness stated that as per the stock register it was 41 quintals 50 kgs. The witness thereafter prepared the seizure list in presence of the witnesses and seized the articles .The accused put the signature on the weighment chart also. Thereafter the seized paddy was handed over and weighment instrument to one Mahasin Khan .He thereafter lodged the complaint. The trend of cross examination of the witness by the defence would manifest that the defence tried to establish that the prosecution failed to establish beyond doubt that they visited the place on the relevant day and time since the witness no4 did not record any entry on the PSE GDE Book before visiting the P.O. but he obtained force. The witness could not give the name of the driver of the police jeep or the number of the jeep. He admitted that no witness signed on the seizure list at 2.30 p.m. He could not mention as to who actually weighed the paddy .There is nothing on the weighment chart to show as to who actually weighed the paddy .Nothing has been mentioned specifically as to what quantity of paddy was seized from what room. He admitted that Sirajul Anwar and Mohim did not sign on any document.

9. P.W. 5 Kalipada Ghosh the W/C who accompanied during his visit at the stated that he found discrepancy between the stock register and the physical stock at PPC. He stated that S.I. Dutta seized paddy along with his signature on the S.L. from the accused and P.W. denies his signature on the S.L. Marked Exhibit 1/4. PW identifies his signature on the purchase register marked

exhibit 3/2 and 2/2 .This witness stated that he heard from S.I. Dutta about 40 quintals of paddy shown on the books of account and about 35 quintals not mentioned . At the time they reached at 9/9.30 a.m. A few nearby shop owners came to the spot who also signed on the document .The witness spent 2/2.30 hours at the spot. He could not remember whether he signed on the weighment chart. He denied that there was any quarrel between two political parties supporting the accused.

10. P.W. 6 S.I. Ashoke Maity who stated that he took charge of this case on 10.6.92 and he visited the P.O. recorded the statement of witnesses and perused the necessary papers and being satisfied as to the prima facie case submitted the charge sheet .This witness could not provide the dag no or khatian no of the shop, He did not examine the persons who actually weighed the paddy.

11. The Appellant accused in his examination under Section 313 Cr.P.C stated that at about 11/12 in the am the persons visited their place and denied about handing over the seized paddy by zimmanama .He denied the accusation levelled against him. In this case the owner of the house that is the brother of P.W. 3 was not examined nor any document was seized to ascertain the ownership of the house. No witness was examined who actually weighed the paddy. The seizure list witness and the witness signed on the weighment chart has stated that the documents were blank and as per instruction they put their signatures on the blank papers. S.I. S. Dutta himself stated that the Sirajul Anwar, Mohim and Mohhabat did not sign on any document. P.W. 1 Asmat Ali said the abovenamed persons had their shop contiguous to it. According to him at about 2.30/3 p.m. he was in market when he was called

by the I.O. and signed at the tea stall of Jafar but as P.W. 4 Seizure list was not signed at 2.30 p.m. In this case the accused persons had 75 quintals of paddy in his stock while he showed the balance up to 5/6/92 as 41.50 quintal. The Learned Special Court refused to accept the point raised by the defence that no credible evidence could be found to show that such alleged quantity of 75 quintals of paddy was actually there which were seized and held that mere omission to record the names of the persons who weighed and without having any valid reason as to why the accused will be falsely implicated.

12. In this case the seizure witnesses turned hostile. The P.W. 4 did not record any GD Entry when he asked for force and went for a raid with a team in a police Jeep. Non mentioning of the name of the driver or the number of the jeep may not be fatal but when their raid itself is under challenge the non-recording of GD entry during exit and entry certainly creates a doubt in the mind of Court. No person was examined who weighed the paddy when the specific allegation is storing of excess paddy. No evidence that weighing machine was taken from whom. That apart it was specifically stated by P.W. 4 that they visited the place at about 9/9.30 a.m. and spent there about 2/2.30 hrs. and this is admitted by the accused himself but PW 1 said he was at the market around 2.20/3 p.m. when he was called to sign on the seizure list .So this inconsistencies further raised suspicion that the seizure list was not prepared at the spot in presence of the witness. The prosecution fails to clear this inconsistency as no GD was produced nor the registrar was produced to show time they left their respective place. The Learned court was on the view

that there was scope of doubt regarding seizure of 75 quintals paddy but hold the appellant guilty since he did not maintain the stock register properly.

Conclusion

- 13.** In criminal jurisprudence while passing the order of conviction discarding the general presumption of innocence that must be prove beyond doubt .Once a court has a doubt unless it's clear from proof beyond doubt the court must be loath in passing the order of conviction. Hence this court is of the view that the prosecution has not been able to prove the case beyond the shadow of all reasonable doubt.
- 14.** Therefore on considering the above facts and circumstances this criminal appeal stands allowed. The judgement and order of conviction is hereby set aside.
- 15.** This Court records appreciation for the able assistance rendered by the learned Amicus Curiae in disposing of this appeal.
- 16.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)