

B.A. Sawant Vs. State

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Court : Mumbai

Decided On : Jul-10-1968

Reported in : AIR1969Bom353; (1968)70BOMLR794; 1969CriLJ1344; ILR1968Bom1305

Judge : Vaidya, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 10(7) and 16; Prevention of Food Adulteration (Amendment) Act, 1964; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 103; Prevention of Food Adulteration Rules, 1955 - Rule 14

Appeal No. : Criminal Appeal No. 1951 of 1956

Appellant : B.A. Sawant

Respondent : State

Advocate for Def. : R.G. Rege, Hon Assistant to Government Pleader

Advocate for Pet/Ap. : A.A. Peerbhoy and ;S.C. Thube, Adv.

Judgement :

1. This is an appeal filed by the accused against the conviction and sentence passed by the learned Presidency Magistrate, 11th Court, Kurla, Bombay under S. 16(1)(a)(I) of Prevention of Food Adulteration Act. 1954 read with Section 7(I) of

the said Act and Rule 5-A 11-01-02 of Appendix B to the Prevention of Food Adulteration Rules, 1955.

2. The prosecution was started on a complaint filed by the Medical Officer of Health L and M Wards Kurla of the Bombay Municipal Corporation. Bombay, on July 13, 1966 in the Court of the learned Presidency Magistrate. 11th Court, Kurla Bombay with the previous written consent of the Deputy Executive Health Officer who is the Officer authorised by the Bombay Municipal Corporation under Section 26(1) of the said Act for consenting to the prosecution under the Act. In the complaint it was alleged that the accused who is the Proprietor of a milk shop viz. Asha Dairy Farm situate at Abu Bakar's Compound. 77. Old Agra Road, Kurla Bombay sold buffalo's unboiled milk on June 2, 1966 at 11.15 A. M. in contravention of the aforesaid section and rules because the said milk contained extraneous water 17.7 percent.

3. The only witness examined in support of the complaint was Ramchandra Rajaram Kumar (P. W. I). Food Inspector attached to L and M Wards, Kurla of the Bombay Municipal Corporation. He stated that on June 2, 1966 at about 11.15 A. M. he visited the milk shop of the accused identified himself as the Food Inspector and demanded from the accused 700 Milli liters of buffalo's milk. He paid the accused Rs, 1.40 p. as the price of the milk and then gave him notice under Form No. 6 stating that the sample was taken for public analysis. He obtained the signature of the accused on the acknowledgment. He divided the milk in three equal parts adding 8 drops of formalin in each bottle. He sealed the bottles and packed them in the presence of a witness. He gave one sample to the accused, retained one in his office and sent the third one to the Public Analyst, on June 2, 1966. the Public Analyst gave his report on June 23, 1966 certifying the result of the analysis of the sample sent as under:

'Fat: 5-5% Solids not-fat: 7-4% Preservatives: Formalin detected. '

The Public Analyst was of the opinion that the said sample contained the percentages of foreign ingredients as under :

' Extraneous water: 17.7 per cent: Fat Deficiency: 0 per cent.' On receipt of said report, Ramchandra Kumar (P. W. 1) Food Inspector, submitted the offence sheet, Ex. C, to the Deputy Executive Health Officer, Bombay Municipal Corporation for his written consent for prosecution. The Deputy Executive Health Officer thereupon directed the Medical Officer L and M Wards, who is also the Food Inspector, to launch the prosecution and then the complaint came to be lodged against the accused. The accused made an application to the Court that the sample with him should be sent to the Central Food Laboratory, Calcutta under Section 13 of the Prevention of Food Adulteration Act. The witness then stated was sent to the Central Food Laboratory after verifying the receipt, seal thereon etc., which were found to be intact. Exh. D is the report of the Central Food Laboratory, dated September 20, 1996. The relevant portion of the said report reads thus:

'Milk Fat : 5-4%Milk Solids: 7-1% other than Starch &milk; fat cane sugar : absent.Opinion: The sample of buffalo milk contains 21% of added water and is adulterated.'In the cross-examination the witness stated that when he visited the shop of the accused along with him were witness Gopinath a senior Food Inspector and a peon from the office and gave the address of witness Gopinath.

4. The accused examined as his witness. Gopinath (D. W. I). who stated that he had gone to the accused on the date on which the sample was taken by witness Kumar. At that time the other Inspector had also gone to the accused. When the sample was taken the accused was in his office. The witness was asked to see the sampling and sealing of the bottles and to sign the receipts and labels as a witness. He was not shown the empty bottles. In cross-examination the witness stated that he was receiving milk from the accused for about one and half years. The distance between the place where the milk was filled in and the office of the accused was about 25 feet and the office and the place of storing of milk were in one shed. He also admitted that from the office of the accused the place where the milk was filled in was visible and that both he and the accused were present when the sample was taken,

5. The accused also examined as his witness the other Food Inspector Anant Govind Gawankar (D. W. 2). who stated that he was supervising the work of Junior officers and that he had gone to the place of the accused on June 2, 1966 at about 11.15 A. M. to take a sample of milk. Along with him were two Assistant Food Inspectors and two peons. He asked the accused whether he did the whole-sale business or retail one and the accused said that he was doing both. It was he who demanded the sample from the accused. He saw at that time about 500 Handas of milk on the platform just near the office. The accused told the Food Inspectors that they may choose any one of the Handas to take a sample and this witness told his junior officers to select the Handas. Asst. Food Inspector then selected two handas and demanded 700 Milli liters of milk from each. The accused told them that one of the handas contained cow's milk. One sample that was other selected by Kumar was buffalo's unboiled milk. The Handa (vessel) from which Kumar took the sample contained about 20 litres. The accused gave the milk to Kumar. After taking the sample Kumar went to the office of the accused for sealing.

6. The accused admitted that Food Inspector Kumar (P. W. 1) took 700 Milli liters of milk and that he passed a receipt for Rs. 1.40 P as the price of the milk. He also admitted having received the notice in Form No. 6 and that the sample was divided into three equal parts and formalin was added to each bottle. He further and one of the bottles was given to him. He admitted his signature on the receipt of Rs. 1.40 P. He also said that one witness was present at the place and the witness had signed the labels and the sample bottles as well as the receipt. He had nothing to say with regard to the report of the Public Analyst or the report of the Central Food Laboratory. He, however, pleaded not guilty to the charge, which was framed on October 21, 1966 by the learned Presidency Magistrate, which stated that the accused sold buffalo's unboiled milk to witness Kumar and it contained extraneous water 21 per cent.

7. The learned Presidency Magistrate of the basis of the above material convicted the accused, assuming that the accused in his statement under Section 342 of the Criminal Procedure Code admitted the prosecution case. It must be noted here that before the Presidency Magistrate the accused was not represented by any advocate. The statement under Section 342 of the Criminal P. C, recorded in the

case purports to be in answer to the one question put by the learned Magistrate, viz. 'What do you wish to say with reference to the evidence given and recorded against you.' In answer to that question., almost every other sentence begins with the words 'it is true,' 'it is not true.' etc., which clearly means that different questions were put to the accused. I am aware that that is the practice followed in the Presidency Magistrates' Courts with regard to the recording of the statement of the accused under Section 342 of the Criminal P. C. Section 364 of the Criminal P. C. requires that whenever the accused is examined by the Magistrate, the whole of such examination including every question put to him and every answer given by him should be recorded in full in the language in which he was examined; or if that is not practicable, in the language of the Court or in English. But that does not apply to a trial held by a Presidency Magistrate and, therefore, the manner in which the statement of the accused has been recorded in this case cannot be considered to be illegal. But here the statement as recorded does indicate that the questions put to the accused were not only with regard to the circumstances which were appearing against him but virtually by way of cross-examination. Thus, the accused was asked whether it was true that he gave 700 Milli liters of milk to Kumar. I told Kumar to take sample from the tin which was in front of me about 35 feet away.' Then it appears a question was asked as to whether he admitted signature on Ex. A and the accused has admitted the same. Then he was asked about the presence of the witness and the witness signing on the labels of the sample bottles and the accused has replied in the affirmative. These answers show that the questions put to the accused were so worded as to elicit from the accused the truth or otherwise of the prosecution case. They do not suggest that the circumstances against the accused were put to him in order to enable him to explain them, if possible. It was, therefore, wrong on the part of the learned Presidency Magistrate to assume that the accused had admitted the case of the prosecution, in view of the fact that the whole of the statement under Section 342, Criminal P. C. was in answer to the questions in the nature of putting the prosecution case to the accused. At the same time it must be stated that the learned Magistrate did ask the accused to explain as to what he had to say with regard to the report of the Central Food Laboratory and the report of the Public Analyst and to that question he stated that he had nothing to say about it. It is also

true that as regards the circumstance that the Food Inspector was given milk sample by the accused, the accused said that he did not give the sample, but the Food Inspector took it. Hence it is clear that the accused has denied having given the sample voluntarily and whatever statement he has made is only with regard to the question put to him and not with respect to all the circumstances appearing against him. Hence it is necessary to consider whether the prosecution has established its case independently of the statement of the accused.

8. Mr. Peerbhoy, the learned counsel for the accused, contended that after the amendment of the Prevention of Food Adulteration Act by Act 49 of 1964, the offences under the said Act have grave consequences and it is necessary, in the ends of justice, that the Courts should insist on strict proof of the case by the prosecution. He urges that in the present case the Food Inspector did not care to observe the provisions of Section 10(7) which require him to keep one or more persons present from the time he enters the shop till he takes the sample of food. He submits that in view of the evidence of Gopinath (D. W. 1), it is clear that he was not taken by the Food Inspector from the time of his entry in the shop and still he was asked to sign the labels on the sample bottles. He further relies on Rule 14 of the Prevention of Food Adulteration Rules, 1955, which requires that the sample of food for the purpose of analysis should be taken in a clean and dry bottle and submits that in the present case the food Inspector has not even cared to see that the bottles in which the samples were taken were clean and dry ones. He contends that the food Inspector did not even care to examine witness Gopinath in support of his case, nor was any other witness examined to corroborate the version of the Food Inspector. He has also relied on the discrepancy obtaining between the analysis done by the Public Analyst and the one done by Central Food Laboratory, particularly in regard to the water contents and contends that it is quite possible that the Food Inspector might have taken the bottles, for the purpose of samples, which contained a little water. In any event, there is no other evidence explaining the discrepancy between these two reports and although the report of the Central Food Laboratory supersedes the report of the Public Analyst, under Section 13(3) of the Act both the reports are relevant for the purpose of considering as to whether the reports are based on some rational basis. According to him, the difference in the extraneous water contents, as mentioned in the two

reports, can be explained only on one hypothesis that the bottles in which the samples were taken were not clean and dry as required by Rule 14. He further contends that a reasonable doubt should arise in the mind of the Court with regard to the manner in which the samples were taken particularly because, Gopinath (D. W. 1) stated that he had not seen the empty bottles.

9. For appreciating the contentions raised by Mr., Peerbhoy it is necessary, first, to consider the relevant sections and the rules under the [Prevention of Food Adulteration Act, 1954](#) and the [Prevention of Food Adulteration Act, 1954](#) and the Prevention of Food Adulteration Rules 1955, Section 7, in so far as it is material, states that no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any adulterated food. 'Food' is defined in Clause (V) of Section 2 as any article used as food or drink for human consumption other than drugs and water and includes any article which ordinarily enters into or is used in the composition or preparation of human food and any flavouring matter or condiments. The word 'adulterated' is defined in Clause (I) of Section 2 which says that an adulterated in certain circumstances. The material circumstance, so far as the present case is concerned is contained in Clause (1) of the definition which says:

'(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability.'

The word 'prescribed' is defined in Clause (xii) of the said section, meaning as prescribed by rules made under the Act. The relevant rule is R. 5 which says that the standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that Appendix. So far as buffalo's milk is concerned we have to turn to the relevant provision in Appendix B, which says:

'A, 11.01.02. Buffalo milk shall contain not less than 5.0 per cent of milk fat except in Delhi, Punjab, PEPSU, Uttar Pradesh, Bihar, West Bengal, Assam, Bombay and Saurashtra where it shall not be less than 6 per cent. The milk solids other than milk shall be not less than 9 per cent.'

It may be noted here that the report of the Director of Central Food Laboratory at Exh. D, shows that the milk fat in the sample which was sent at the instance of the accused to him was only 5.4 per cent and the milk solids other than milk fat were only 7.1 per cent and hence the sample of milk in the present case was below the standard prescribed under Appendix B. It may also be noted here that apart from asking the accused general question as to what he had to say about the report, no particular question was asked to him as to what he had to say about the milk being below the standard prescribed under the Prevention of Food Adulteration Rules. If he was asked a specific question, perhaps, he would have given some explanation as to how milk fat contents and milk solids other than milk fat contents were below the standard prescribed. Merely asking the accused, who was unrepresented, as to what he had to say about the report cannot be considered to be giving an opportunity to the accused to explain the circumstances appearing in the evidence against him.

10. Coming back to the other relevant provisions of law, the important section under which the person who contravenes Section 7 is penalised is Section 16. Section 16(1), in so far as it relates to this case, lays down:

'16(1) If any person-

(a) Whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food

(1) which is adulterated

he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees:- Provided that the Court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.'

Clause (1-D) of the said section provides for enhanced penalties for the second or the subsequent offence. Before March 1, 1965, Section 16 provided for the first offence imprisonment for a term which extended upto one year or fine which may extend up Rs. 2,000 or with both. There was no minimum sentence required to be imposed. After the amendment by Act 49 of 1964 which came into force on March 1, 1965, the offence under Section 16 of the Act has, therefore, become a grave one and the Court should normally insist on strict proof of the offences committed by the accused in the manner required by law.

11. The relevant provisions of law relating to the procedure to be followed by Food Inspector before taking a sample are contained in Sections 10 and 11 of the Act. Section 10 empowers the Food Inspector to take samples of any article of food from any person selling such article and to inspect the place where the article is exposed for sale and take sample thereof for analysis, But all this has to be done by following strictly the provisions of Clause (7) of Section 10 which is as under:-

'(7) where the food inspector takes any action under Clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6)m he shall call one or more persons to be present at the time when such action is taken and take his or their signatures.'

There is no doubt that the wording of these provisions is very plain and the Food Inspector is bound to call one or more persons before he takes any steps under Section 10. Thus before he enters and inspects a place and takes the samples of articles of food for analysis he must be accompanied by one or more persons. It is true that the section does not require a memorandum to be kept of what was done by the food inspector. But it is evident that he must be accompanied by witnesses whose signatures must be obtained not merely on the samples thus obtained, but also to show that at every state i.e. of entry, inspection and taking of the sample the witnesses were present. These powers can be compared with those of Police Officers vested in them under Section 103 of the Criminal Procedure Code which are provided both in the interests of Police and the citizens whose premises are searched under Section 103 of the Criminal Procedure Code. It is well known that the provisions of Section 103, which apply to the search by the Police of places,

were enacted to guard against possible chicanery and unfair dealings on the part of the officers entrusted with search warrants and to ensure that anything incriminating that may be said to have been found in the premises searched was really found there and was not introduced by the members of the raiding party. Similarly very often the persons whose places are searched make allegations against the Police Officers, and, therefore, to exclude such a possibility, it would be in the interests of Police Officers themselves to have independent and respectable witnesses to corroborate what they say. The provisions contained under Section 10 of the Act have been passed with a similar object and the Food Inspector acting under the Act must scrupulously follow these mandatory provisions every time the Food Inspector enters the premises for the purpose of taking samples. Section 11 deals with the procedure to be followed by the Food Inspector after the samples are taken. With regard to the manner of taking samples also rules have been laid down. In this respect Rule 14 says:-

'14. Manner of sending samples for analysis - Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed.'

Mr. Peerbhoy relies on this rule and contents that it is the duty of the prosecution in every such case where the accused pleads not guilty, to establish beyond reasonable doubt that the Food Inspector had taken samples in the manner prescribed i.e. in a clean and dry bottle in the presence of independent witness and in the absence of such evidence it cannot be said that the report made in respect of the sample can be the sole basis of conviction of an accused person, merely because the Food Inspector says that he took the samples. He has also urged that in the present case the prosecution did not even care to examine witness Gopinath who had accompanied the Food Inspector. The accused has called him as his witness and he deposed that he had never seen the empty bottles. The Food Inspector nowhere says that he took the sample in clean and dry bottles. Mr. Peerbhoy relies on the statement of the accused wherein he says that he did not give the sample, but the Food Inspector took it and while he took it, he was about 23 feet away from the place. He, therefore, contends that it is quite

possible that the Food Inspector himself had put some water in the bottles before he put milk in them and in the absence of any evidence to show why there is a discrepancy between the report of the Public Analyst and that of the Director of the Central Food Laboratory a doubt must arise with regard to the manner in which the sample was taken by the Food Inspector and in that view of the matter the benefit of doubt must be given to the accused.

12. Mr. Rege, the learned Hon.Astt. Government Pleader appearing for the State has tried to repel these contentions on the ground that no such suggestion was made to the Food Inspector in cross examination. If it was the case of the accused that there was possibility of the Food Inspector using unclean and wet bottles with water in them, the questions to that effect ought to have been put to the witness while being cross-examined and at least a statement to that effect should have been made by the accused before the Magistrate. He has also drawn my attention to the evidence of Food Inspector Kumar (P. W. 1). Food Inspector Favankar (D. W. 2) and Gopinath (D. W. 3) and stated that all of them admit that they were present when the sample was taken and even then no such suggestion was made and even then no such suggestion was made to any of these witnesses that the accused protested at any time to the sample being taken. He urged that the very fact that the accused himself applied to the Court for sending the sample retained with him, to the Central Food Laboratory shows that he knew that the sample was taken properly and regularly by the Food Inspector and he could rely on that sample.

13. In my judgment the contentions raised by Mr. Peerbhoy on behalf of the accused must be upheld in the present case because, in the first place, there is no evidence to show that the Food Inspector complied with the provisions of Section 10(7) by taking independent witnesses for the purpose of entering inspecting and taking sample from the shop of the accused. It was only after the bottles were filled in and the labels were put that witness Gopinath was made to sign on them. Secondly the Food Inspector himself has not cared to state in his evidence that he had taken the samples in clean and dry bottles as required by R. 14 of the Prevention of Food Adulteration Rules. It is true that breaches in the performance of his duties under Section 10(7) and R. 14 may not necessarily result in vitiating

the trial. But they certainly affect his credibility. A Food Inspector, who does not care to follow strictly the mandatory provisions of the [Prevention of Food Adulteration Act, 1954](#) and the rules with which he is vitally concerned cannot be assumed to have much regard for truth. Even supposing that he may be truthful, I think the rule of prudence requires the Court to insist on some corroboration to his evidence. In the present case, as stated above, the food Inspector did not even care to examine the witness who had accompanied him. It may be argued that it is not necessary for him to examine the witness who accompanied him. Whatever his evidence is challenged or is liable to be challenged, it is desirable that the witness who accompanied the Food Inspector should be examined, so that the evidence of the witness will lend assurance and corroboration to the evidence given by the Food Inspector. It is necessary to guard against baseless allegation which might be made by the accused against him particularly because the Food Inspectors are likely to forget one or the other of the provisions laid down under the Prevention of Food Adulteration Act and the rules made thereunder, with regard to the manner in which the samples have to be taken and forwarded for analysis.

14. In the present case, however, witness Gopinath has been examined by the defence and he has stated emphatically that he did not see the empty bottles at all. The argument of Mr. Rege that no such case was put to the Food Inspector by the accused is of no avail because the accused in this case was unrepresented and the Food Inspector himself did not state in his evidence that he had used clean and dry bottles as required by Rule 14: and, therefore, it was not necessary to ask him in his cross examination anything about it. I have already referred to above, as to how the statement of the accused under Section 342 of the Criminal Procedure Code has been recorded in this case. If the accused has not specifically stated that the bottles were not clean and dry when they were filled in with the milk supplied by the accused, it cannot be said to be a ground which debars him from arguing on the facts and the circumstances of the case, that unless the compliance with the provisions of Rule 14 is strictly proved the benefit of doubt which must arise in the present case as a result of the evidence of Gopinath (D. W. 1) should be given to him.

15. Further a grave doubt arises with regard to the contents of the two samples which were analysed in this case because of the striking discrepancy between the analysis by the Public Analyst and the one by the Director of Central Food Laboratory with regard to the water contents of the two bottles. So far as milk fat is concerned the difference is only of 0.1 per cent in the report of the Public Analyst and the one given by the Director of Central Food Laboratory. With regard to the milk solids other than milk fat the difference is 0.3 per cent. These differences can be considered to be negligible. But it is difficult to understand how there could be one bottle with 21 per cent of water and the other with 17 per cent. The main question in this case is whether the accused can be convicted merely relying in the evidence of the Food Inspector and the report of the Director of Central Food Laboratory for holding that the accused sold adulterated milk. In view of the fact that the Food Inspector did not lead any evidence with regard to the following of the procedure under Rule 14 and did not try to explain how this difference in the two reports was caused, it will be difficult to convict the accused relying on the evidence of the Food Inspector alone. Further, a doubt is created in accepting his evidence because of the statement of the defence witness, Gopinath, who stated that he did not see the empty bottles. As I have stated above, the offences under Section 16 of the Prevention of Food Adulteration Act are grave ones and before an accused person can be convicted, the Court must be satisfied beyond any reasonable doubt that the accused sold the adulterated article of food. In the present case a grave doubt arises with regard to the way in which the samples were taken by the Food Inspector and if it is not satisfactorily established that the sample that was taken was in a clean and dry bottle, it would be reasonable to doubt whether the sample that was sent to the Director of Central Food Laboratory was the article of food which the accused sold or the article, which was mixed with some water which was already there in the container used. This is not to suggest that the water in the bottle might have been deliberately put in, but it is quite possible that while cleaning those bottles some water remained in them and Rule 14 which required that the bottles should be clean and dry was not complied with. Therefore, in the absence of any reliable evidence on this point led by the reliable evidence on this point led by the prosecution, the prosecution case must fail.

16. In the result, I give the benefit of doubt to the accused, set aside the conviction and sentence passed against him, acquit him and direct him to be set at liberty. Bail bond cancelled. Fine, if paid, to be refunded. Appeal allowed.

17. Appeal allowed.

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