

Bafati Vs. State

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Court : Allahabad

Decided On : Nov-30-1962

Reported in : AIR1964All106; 1964CriLJ327

Judge : D.S. Mathur, J.

Acts : Uttar Pradesh Prevention of Cow Slaughter Act, 1956 - Sections 2, 4(1), 5, 8, 8(1), 8(2) and 8(3)

Appeal No. : Criminal Revn. No. 594 of 1962

Appellant : Bafati

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : J.N. Chaturvedi, Adv.

Disposition : Revision allowed

Judgement :

D.S. Mathur, J.

1. This is a Revision application by Bafati against the order of the Additional Sessions Judge of Fatehpur dismissing his appeal and thereby maintaining his conviction and sentence of an offence punishable under Section 8 of the U. P.

Prevention of Cow Slaughter Act (to be referred hereinafter as the Act) for contravention of Section 9 thereof.

2. The prosecution case is that on 5-9-1961 Sub-Inspector Kaip Nath Singh of police station Khaga received information that the applicant was coming to Khaga to sell beef as usual. On receipt of the information Sub-Inspector accompanied by police constables and a few witnesses proceeded to the north of the bus stand situate on Naubasta Road, and after they had covered a distance of one furlong they saw the applicant coming from the opposite direction on a bicycle with a bundle tied to its carrier on seeing the police party the applicant threw his bicycle and ran away. In spite of the chase he could not be arrested. The bundle was suspected to contain beef and consequently its contents were sealed and sent to the Assistant Veterinary Surgeon of Vijaipur dispensary for examination and report. Faiz Ahmad, Assistant Veterinary Surgeon, examined its contents and expressed an opinion that it was flesh of a young cow or bullock.

3. The applicant pleaded not guilty and denied all the allegations made against him.

4. The prosecution version was rightly accepted by both the lower Courts and this finding cannot be interfered with in revision. The only point for consideration, therefore, is whether on the basis of the facts as established the applicant could be convicted for contravention of S. 5 of the Act

5. Section 5 prohibits the sale or transport of beef or beef products in any form except for such medical purposes as may be prescribed, Beef has been defined in Section 2 (a) of the Act to mean flesh of cow and of such, bull or bullock whose slaughter is prohibited under the Act, but not including such flesh contained in sealed containers and imported as such into Uttar Pradesh. Cow has been defined in Section 2 (b) to include heifer or calf. Heifer is a young cow which has not given birth to a calf; while calf is a very young cow or bullock, ordinarily not one year old. Times in so far as the instant case is concerned, Section 5 prohibits the sale or transport of flesh of cow, heifer (young cow), calf (very young cow, bull or bullock) and of bull or bullock, young or old, the slaughter of which is prohibited under the 'Act.'

6. This naturally leads us to the consideration in which category does the recovered flesh which the applicant was transporting falls. The Assistant Veterinary Surgeon, Faiz Ahmad, has expressed his opinion in general words without indicating the age of the cattle slaughtered the flesh of which was under examination. Nor was he called upon, in his deposition, to give an approximate idea of its age. We have, therefore, to draw inferences from the vague opinion expressed by him.

7. The Assistant Veterinary Surgeon was of opinion that the recovered flesh was of a young cow or bullock, meaning thereby a cow or bullock not fully grown up. At the same time young cow or bullock cannot ordinarily mean a calf in fact, calf is never called a young cow or bullock. The word 'calf' has a significance of its own. Consequently, in absence of any clarification by the Assistant Veterinary Surgeon we shall have to hold that the flesh was of a heifer or of a young bullock (not calf), in criminal cases where two views, are possible a view favourable to the accused has to be adopted. In other words, for the decision of the present case we shall have to start with the assumption that the flesh was of a young bullock (not calf).

8. Cow was initially defined to include a bull or bullock but under the U. P. Prevention of Cow Slaughter (Amendment) Act No. 33 of 1958 the words 'bull or bullock' were deleted with the result that for purposes of the Act the term 'cow' no longer includes bull or bullock, whether young or old and the flesh of a bull or bullock shall be 'beef' only if its slaughter is prohibited under the Act.

9. The slaughter of cow, irrespective of whether it is old or young, economic, or uneconomic is prohibited under Section 3 of the Act, but a bull or bullock In respect whereof a certificate under Section 3 (1) (b) has been obtained from the competent authority of the area concerned can be slaughtered. The prohibition contained In Section 3 does not apply to cow, bull or bullock suffering from any contagious or infectious disease notified as such by the State Government (vide Clause (a) of Section 4 (1) of the Act) or subjected to experimentation in the interest of medical and public health research (vide Clause (b) of Section 4 (1) of the Act); but the cattle has to be slaughtered in accordance with the prescribed conditions and circumstances. Where the cattle is slaughtered for the reason

stated in Clause (a) of Section 4 (1) intimation shall be given at the nearest police station or to a prescribed authority within 24 hours and the carcass buried or disposed of in the manner prescribed (vide Sub-sections (2) and (3) of Section 4). The law thus permits slaughter of cow, bull or bullock for one of the reasons stated in Section 4 (1) and of bull or bullock if so certified by the competent authority of the area concerned.

10. It will thus be found that the flesh of a bull or bullock is not, within the meaning of the Act, 'beef' if in respect thereof certificate under Section 3 (1) (b) of the Act has been obtained from the competent authority or it was slaughtered for one of the reasons stated in Section 4 (1) of the Act. Stating inversely, the flesh of a bull or bullock, whether young or old, is 'beef' if none of the above conditions are fulfilled and such flesh cannot be sold or transported in any form except for such medical purposes as may be prescribed.

11. In criminal cases the burden lies upon the prosecution to prove the charge levelled against the accused, i.e. to establish beyond doubt all the ingredients of the offence, unless the Courts of law can, in accordance with the law, presume the existence of certain facts or under some valid enactment the burden of proof lies upon the accused. It is under Sub-section (3) of Section 8 of the Act that in any trial for an offence punishable under subsection (1) or (2) of Section 8 of the Act, i.e. for contravention of the provisions of Sections 3, 4 (2) and 5 of the Act or for attempt to contravene or abetment of the contravention of the provisions of Sections 3 and 5, the burden of proving that the slaughtered cow belonged to the class specified in Clause (a) of Sub-section (1) of Section 4 lies on the accused. This being an exception to the general rule applicable to criminal trials shall have to be construed strictly. In other words, in trials not falling within the scope of Section 8 (3) the burden of proof shall always lie on the prosecution.

12. The present offence was committed after the coming into effect of the Amending Act of 1958 and consequently the interpretation of Section 8 (3) shall be based on the law in existence after the amendment and not the law as originally passed. At this place it may be observed though at the risk of repetition, that under the Amending Act of 1958 the definition of the terms 'beef' and 'cow' was

substantially changed and corresponding amendments v/ere made in Sections 3, 4 and 10 of the Act but not in Section 8 (3). For example, in Section 3 provision for bull or bullock was made separately and in Sections 4 and 10 the words 'cow, bull or bullock' were substituted for 'cow'; but in Section 8 (3) the Word 'cow' remained unchanged. The ordinary meaning of Section 8 (3), therefore, is that the rule contained therein shall be applicable to a case of 'cow' and not 'bull or bullock'.

13. Courts of law can depart from the ordinary meaning of the enactment in suitable cases to give effect to the intention of the legislature'--intention to be Judged from the enactment itself or from the history of the legislation. The provisions of Section 8 (3) can lead to only one interpretation and it will be wrong to say that the real intention of the legislature was different to what is expressed therein. The Act was amended in 1958 to bring it in conformity with the decision of the Supreme Court declaring certain parts of the Act to be unconstitutional. The Supreme Court had made differentiation between the slaughter of cow and of bull or bullock and for this -reason while amending the Act in 1958 the legislature laid down one rule for cow and another for bull or bullock. It cannot consequently, be said that the legislature wanted to apply the rule contained In Section 8 (3) to bulls and bullocks also and inadvertently omitted to suitably amend it

14. On consideration of the various sections of the Act it must be held that the flesh of bull or bullock shall not, in the eye of law, be 'beef if the requisite certificate of the competent authority of the area in which it was slaughtered was obtained, or it was suffering from any contagious or infectious disease notified as such by the State Government or it was subjected to experimentation in the interest of medical and public health research; and the burden of proof shall be upon the prosecution to show that none of the conditions justifying the slaughter of the bull or bullock existed.

15. As the Assistant Veterinary Surgeon has opined that the flesh was of young bullock, i.e. of a bull or bullock not over the age of twenty years and hence not permanently unfit and unserviceable for the purposes contemplated by Section 3 (3) (b) of the Act, it can be said that no certificate under Section 3 (1) (b) of the Act could be granted and the Courts of law can presume From the circumstances of

the case, unless proved to the contrary, that no certificate under Section 3(1) (b) had been granted and there existed the bar under Section 3(1) against the slaughter of the bullock, unless of course the slaughter, was permissible under Section 4 of the Act. Even then it was for the prosecution to prove that the young bullock in question was not suffering from any contagious or infectious disease as contemplated by Clause (a) of Section 4(1) and had not been subjected to experimentation as contemplated by Clause (b) thereof. No such evidence was adduced by the prosecution. In other words, the prosecution had failed to prove beyond doubt that the flesh amounted to 'beef and its sale or transport was prohibited under Section 5 of the Act; and on the basis of the material on record the applicant could not be convicted under Section 8(1) of the Act for contravention of the provisions of Section 5 thereof.

16. Before parting with the case a reference may be made to another lacuna in this Act. Sub-section (3) of Section 4 thereof may, by implication, prohibit the sale or transport (other than from the place of slaughter to the place of burial or disposal) of flesh of a cow, bull or bullock covered by Clause (a) of Section 4(1); but no penalty has been provided in Section 8 for the breach of the provisions of the above sub-section. Further, there exists no prohibition against the sale or transport of flesh of a cow, bull or bullock subjected to experimentation under Clause (b) of Section 4(1), nor has any penalty been laid down for breach of the conditions and circumstances prescribed under Section 4(1) of the Act.

17. For reasons given above, the revision is hereby allowed and Bafati is acquitted of the charge under Section 5/8 of the Act. His conviction and sentence are set aside. He is on bail and his bonds are discharged.

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