

Emperor Vs. Nur Ahmad

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Court : Allahabad

Decided On : Mar-08-1934

Reported in : AIR1934All842

Appellant : Emperor

Respondent : Nur Ahmad

Judgement :

Thom, J.

1. This is an appeal by the Local Government against the acquittal of one Nur Ahmad who was charged under Section 4 of the Prevention of Adulteration Act of 1912.

2. In support of the charge the prosecution examined two witnesses, the sanitary Inspector and the Health Officer. Both these witnesses deposed that the accused sold them ghee on a certain date. The ghee was bought by the witnesses for the purposes of analysis. Two samples were taken by the witnesses and one sample was left with the accused. The accused also gave a receipt Ex. P-1. which is in the following terms:

Pandit Tribhuwan Nath Zutshi, Sanitary Inspector, purchased three Chataka of ghee from my shop this 5th day of July 1933. He put that ghee in three phials and sealed them in my presence. Out of those phials he took two with him for testing

the ghee and gave one phial to me.

3. This receipt is signed by the accused and he has not denied his signature.

4. The accused in his defence led evidence to show that he was not the licensee of the shop in which the ghee was bought. The licensee is his brother Azimuddin. This fact is not disputed by the prosecution. The accused further led evidence to prove that he is engaged in selling fruit in front of the shop in which the ghee was bought and that he has nothing to do with his brother's ghee business. One witness Haji Muzuffar Husain gave evidence to the effect that now the accused is engaged in fruit selling business. Another defence witness was the licensee of the shop, the brother of the accused Azimuddin. He deposed that the ghee which was sold to the Municipal Board officers was his property and that he is engaged in selling the ghee and that the accused his brother has nothing to do with it. Upon that evidence and the evidence of one or two other witnesses who testify to the accused being regularly engaged not in selling ghee, but in fruit business, the learned Magistrate of Saharanpur acquitted the accused. He concludes his judgment with these words:

I hold that the prosecution evidence is not sufficient for a conviction of the accused in view of the preponderating evidence of the defence witnesses to the effect that the accused does not sell ghee and that the prosecution has examined no independent witness unconnected with the Municipal Board to prove it. I accept the defence testimony and finding the accused not guilty acquit him and dismiss the case against him.

5. The learned Government Advocate has contended that it is not necessary in order to secure a conviction under Section 4. Prevention of Adulteration Act, to prove that the seller of the ghee is engaged regularly in the sale of that commodity. It is sufficient, he contended, to prove that the accused actually did sell ghee which was below quality. The terms of Section 4 of the Act, appear to us to be perfectly plain. Section 4(1) is in the following terms:

Whoever sells to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance or quality of the article or drug demanded by

such purchaser or sells or offers or exposes for sale or manufactures for sale any article of food or any drug which is not of the nature, substance or quality which it purports to be, shall be punished for the first offence with fine which may extend to Rs. 100, and for a second or any subsequent offence with fine which may extend to Rs. 600.

6. It will be observed that there is no reference in this section to the offender being one who is engaged regularly in selling ghee. Learned Counsel for the respondent however has drawn our attention to the terms of Section 6 of the Act, and especially to Sub-sections (b) and (c) thereof. Section 6 and Sub-sections (b) and (e) are in the following terms:

In any prosecution under Section 4 it shall be no defence to allege that the vendor was ignorant of the nature, substance or quality of the article or drug sold by him or that the purchaser having bought only for analysis was not prejudiced by the sale. Provided that the vendor shall not be deemed to have committed an offence under Section 4 if he proves to the satisfaction of the Court...(b) that he had no reason to believe at the time when he sold it that the article or drug was not of such a nature, substance and quality as aforesaid and (c) that he sold it in the same state in which he purchased it.

7. Learned Counsel for the respondent has contended that Section 4 must be read along with Section 6 and reading the two sections together he has invited us to hold that the intention of the legislature was only to penalize those people who are habitually engaged in the selling of an adulterated commodity. Section 6 however relates to the defence which one charged under Section 4 may advance. The onus is upon the accused person to prove to the satisfaction of the Court that he had no reason to believe that the drug or commodity was not up to the standard or quality and that he sold it in the same state in which he purchased it. Now, the defence of the accused in the present case is referred to by the learned Magistrate in the record of the summary trial at p. 6 of the record. Para. 8 is as follows:

Plea of accused and his examination if any. Pleads not guilty. I was selling mangoes in front of the shop in question. I do not sell ghee.

8. It will be obvious therefore that the accused made no attempt to prove that he was ignorant of the quality or standard of the ghee which he sold to the Municipal Board Officers. His defence in short was, simply that he did not sell the ghee at all, that is, that the Municipal Board Officers, gave false evidence when they stated that they bought ghee from him. Now, the learned Magistrate has not dealt with this part of the case, namely whether in fact ghee was sold to the Municipal Board Officers by the accused. He has decided the case in favour of the accused upon the defence evidence that the accused is not engaged in the ghee selling business.

9. In our opinion, for the reasons we have already given, however, this is not a defence to the charge under Section 4, Prevention of Adulteration Act. According to our interpretation of the Act if a person sells ghee which is found to be below standard then he is liable to a conviction under Section 4 of the Act, unless he successfully establishes the defences which are set out in Section 6 of the Act. The accused in the present case has not attempted to prove any of the defences referred to in the latter section. Learned Counsel for the accused has contended that the Magistrate who tried the case has come to a definite finding of fact in favour of the accused and that we should not interfere with that finding. In support of his contention he has referred us to certain passages in the Full Bench judgment in the case of *Emperor v. Sheo Janak Pande* : AIR1934 All27 . In that judgment the Bench reviewed the course of decision upon the question as to how far an appellate Court is entitled to interfere with the findings of fact of the Court of first instance. It appears that there had been prior to the Full Bench decision certain doubt as to the powers of the appellate Court to interfere with an order of acquittal. So far as the provisions of the Criminal Procedure Code, are concerned the powers of the appellate Court are exactly the same in the case of an order of acquittal as in the case of an order of conviction. The duty of the appellate Court is to review the entire evidence to make up its mind upon that evidence and to reverse the decision of the lower Court if it be satisfied upon a consideration of the evidence that the decision is unjustified. The presumption of innocence with which the accused starts continues right through until he is held to be guilty by the final Court of appeal. If he is acquitted by the Court of first instance the presumption of innocence of course remains. The presumption of innocence is absolute. It is not

strengthened by an acquittal nor weakened by a conviction in the trial Court.

10. The appellate Court approaches a consideration of the evidence uninfluenced by the decision of the trial Court which is evidence neither for nor against the accused. It proceeds upon the principle that the accused is presumed to be innocent by the law and it is for the Crown to prove its case. The onus of proof is neither increased nor lightened by an order of conviction or acquittal. So far as there may be dicta in the Full Bench decision already referred to, to the effect that the presumption becomes stronger in the case of an order of acquittal we would observe that these dicta are entirely obiter. The law upon this matter was clearly stated in the Privy Council decision referred to by the Full Bench in which their Lordships of the Judicial Committee observed that where the issue is simple and straightforward and the only question is which set of witnesses is to be believed the verdict of the Judge trying the case should not be lightly disregarded. There is no authority for any further qualification of the power of the appellate Court.

11. The appellate Court therefore is entitled and indeed bound to interfere with the order of the trial Judge if it is convinced upon a consideration of the evidence that that order is not justified by the evidence. Their Lordships of the Privy Council say that the verdict of the Judge should not be lightly disregarded. We do not understand that it has ever been argued that in any case the verdict of the Judge may be lightly disregarded. It is true where the question in issue depends very largely upon the credibility of the witnesses in the trial Court then the opinion of the trial Judge who saw them in the witness-box and observed their demeanour as to which witnesses are reliable and which are not reliable is an opinion which must carry very great weight with the appellate Court. Beyond that however there is no restriction or qualification under the Criminal Procedure Code, of the power of the appellate Court to interfere with the verdict of the trial Judge be that verdict one of acquittal or of conviction. In the present case however this point does not really arise because the learned trial Judge has accepted the evidence which he holds to be reliable upon the point as to whether the accused was engaged regularly in sailing ghee. It may be that the Magistrate was entitled to accept that evidence. It may be that that evidence does prove that the accused whatever he may have been in the past is not now a vendor of ghee. The learned Magistrate however has

failed to record any decision upon the main issue in the case which in the absence of any defence under Section 6 of the Act, is whether in fact the accused sold ghee to the Municipal Board Officers. Now, in support of their allegation that ghee was so sold by the accused to the Municipal Board Officers; the two officers have been adduced as witnesses and further there has been produced a receipt signed by the accused himself in which he acknowledged that ghee was sold by him to the Municipal Board Officers. In our opinion therefore there can be no doubt upon the evidence that the accused did sell adulterated ghee to the Municipal Board Officers and we so hold.

12. Learned Counsel for the respondent took a preliminary objection to the appeal. He contended that no appeal lay against the order of acquittal under the Criminal Procedure Code. He referred to Section 414 of the Code, which enjoins that there shall be no appeal against an order of conviction in certain cases. He argued that Section 417 which confers upon the Local Government the right to appeal must be read with Section 414. Section 417 is in the following terms:

The Local Government may direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than the High Court.

13. The terms of this section are perfectly plain. They are unqualified by any restriction which may be derived from a consideration of the terms of Section 414. Had the Legislature intended to limit the right of the Local Government to appeal against an order of the lower appellate Court in a criminal case it would have said so specifically. No such qualification appears in the statute and we hold that there is none. In the result we set aside the order of acquittal of the learned Magistrate and convict the accused under Section 4, Prevention of Adulteration Act, 1912. We have been informed by the learned Government Advocate that the accused has already been convicted on three separate occasions under Section 4 of the Act. It is clear that the accused has habitually engaged in the selling of adulterated ghee. It is true that the license for the selling of ghee in the present instance was not in the name of the accused, but in the name of his brother Azimuddin. But the accused according to his own statement and the evidence of several defence

witnesses sells fruit at the door of the shop at which the ghee is sold. It appears to us that the arrangement whereby the license of the shop at which the ghee is sold and at the door of which the accused sells fruit is held by the brother of the accused is simply a dodge by which the accused is endeavouring to evade the law.

14. Taking all the facts into consideration we impose a fine of Rs. 500, and sentence the accused in default of payment thereof to simple imprisonment for a period of six months.

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