

Lallu Vs. the State

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Court : Allahabad

Decided On : Dec-13-1988

Reported in : 1990CriLJ835

Judge : G.B. Singh, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 13, 13(2) and 16;
;Prevention of Food Adulteration Rules - Rule 20

Appeal No. : Criminal Revn. No. 362 of 1981

Appellant : Lallu

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : B. P. Srivastava and ;V. Bhatia, Advs.

Disposition : Revision allowed

Judgement :

ORDER

G.B. Singh, J.

1. Lallu, revisionist was convicted under Section 7/16 of the Prevention of Food Adulteration Act and sentenced to six months R. I. and to pay a fine of Rs. 1000/-

and in default to undergo three months R.I. by the Additional Chief Judicial Magistrate, Lucknow. Against this order he preferred an appeal which was dismissed by the learned Sessions Judge. Lallu has now preferred this present revision.

2. The prosecution case is that on 29-12-1977 Lallu revisionist was found carrying milk in a milk can for sale. The Food Inspector S.K. Varma purchased sample of milk from him. It was described by the revisionist as a mixed milk of cow and buffalo. The Food Inspector paid the price of the sample and obtained receipt from him. He divided the sample into three parts; put it in three phials separately after adding formal in preservative; sealed them and completed other formalities. He sent one phial to the public analyst for analysis and report. The public analyst submitted his report on 10-2-1978 that the milk was adulterated. The Food Inspector thereafter obtained sanction and filed the complaint on 28-10-1978. He sent notice along with the copy of the report and the result of the analysis to the revisionist and on 9-4-1979 the revisionist applied for sending the sample to the Central Food Laboratory. On his request the sample was sent to that laboratory and the Director reported on 16-6-1979 that the sample was adulterated. On behalf of the prosecution S.K. Verma Food Inspector was examined as P.W. 1 and three witnesses in support of the prosecution case. One of them is Dr. V.N. Srivastava (P.W.

2) who is the Chief Medical Officer; He proved sanction for the prosecution. Shahzad (P.W.

3) is the Peon of the Food Inspector. He was examined to support the prosecution story. Rahmatullah (P.W.

4) is the Clerk of the Local Health Authority who proved the despatch of the report of the public analyst to the revisionist. The revisionist admitted the taking of sample by the Food Inspector from him. He, however, denied that any price was paid for the same to him. It was admitted by him that it was a mixed milk of cow and buffalo He, however, pleaded not guilty. He did not give any evidence in defence. The learned Magistrate accepted the prosecution evidence and convicted and sentenced him as mentioned above. In appeal several points were pressed on

behalf of the revisionist but they did not find favour with the learned Sessions Judge with the result the appeal was dismissed.

3. In revision the learned counsel for the revisionist pressed only one point. It is that the sample for analysis was sent to the Central Food Laboratory after much delay and the sample was examined in the Central Food Laboratory about 18 months after taking of the sample. He further argued in this connection that on account of lapse of this period of about 18 months, the sample must have deteriorated and would not have remained in fit condition for analysis. The report of Director of Central Food Laboratory was not, therefore, acceptable and the delay in examination of the sample caused prejudice and, thus, the trial stands vitiated. The learned counsel for the State on the other hand argued that there was no unreasonable delay in the case; the revisionist himself is partly responsible for the delay because notice was given to him about the report of the public analyst on 15-11-1978 but he did not apply for sending the sample to the Central Food Laboratory soon after the receipt of the notice and applied after a lapse of more than four months, after the receipt of the notice. It was also contended by the learned counsel for the State that the Director Central Food Laboratory found the sample in fit condition, for analysis and as such it is not open for the learned counsel for the revisionist to argue that the sample must have deteriorated by lapse of time and as such prejudice has been caused to the revisionist. Having carefully considered the relevant provisions and the arguments advanced and the material placed on record I am of the opinion that the argument of the learned counsel for the revisionist must prevail.

4. The sample was undisputedly taken on 29-12-1977, the report of public analyst was obtained on 10-2-1978 and the prosecution was launched by 'filing complaint on 28-10-1978. There is no explanation on behalf of the prosecution as to why the complaint was made by the Food Inspector more than 8 months after the report of the public analyst. It is true that no time limit is prescribed in the Prevention of Food Adulteration Act and Rules framed thereunder within which the prosecution should be launched but it has been emphasised in several decisions that it must be instituted without any delay because delay causes the sample to deteriorate and thereby a valuable right of the accused to get the sample analysed by the

Central Food Laboratory is adversely affected. After filing the complaint notice to the accused under Section 13(2) of the Prevention of Food Adulteration Act was given by registered post on 17-11-1978. Shri Rahmatullah (P.W. 4) who despatched the notice by registered post has stated on oath that he was a clerk in the office of Local Health Authority on 17-11 -1978 and he sent the aforesaid notice by registered post on that day. He has not been cross-examined on this point and it is, therefore, difficult to disbelieve him. The accused, however, denies receipt of the notice and contends that on appearance in the Court he came to know about the report on 5-4-1979 and thereafter he applied on 9-4-1979 for sending another phial of the sample to the Central Food Laboratory for analysis. The sample was accordingly summoned from the office of the Local Health Authority, sent to Director Central Food Laboratory on 3-5-1979 and he gave his certificate on 16-6-1979. From all these facts it is clear that the certificate of the Director Central Food Laboratory was obtained about 18 months after taking of the sample. Learned counsel for the revisionist in order to show that the sample of milk must have deteriorated on account of such a long lapse of 18 months time and as such the certificate of the Director Central Food Laboratory cannot be accepted and prejudice to the accused vitiating the trial may be inferred placed reliance upon two cases. One of them is Babboo v. State of U.P., 1969 All LJ 309 : (AIR 1970 All 122). It has been held in this case that in a case of cow's milk to which the necessary quantity of formalin had been added and which had been kept in normal circumstances, the sample retains its character and is capable of being usefully analysed for a period of about 10 months. The other Case is Ram Subhag v. State of U.P., 1982 Lucknow LJ 82. In this case sample of mixed milk of cow and buffalo had been taken and the analysis was made by the Director Central Food Laboratory after a little less than two years. The Director had mentioned' in his report that the sample was fit for analysis. It was contended on behalf of Ram Subhag revisionist that after a lapse of such a long period it could not be expected that the sample was fit for analysis. The Director had been summoned and examined as a witness. He stated that the sample could be fit for analysis even after a lapse of such a period. Relying upon Babboo v. State of U.P. (supra) it was held that if the sample was not kept in a refrigerator it could remain fit for analysis only for a period of 10 months and since the sample was not kept in

refrigerator but in an ordinary almira the sample could not remain fit for analysis. The revision was, therefore, allowed and the conviction and sentence of the revisionist was set aside. The facts of this reported case are similar to the present one. In this case also the sample was of mixed milk of cow and buffalo. From the statement of S.K. Verma Food Inspector (P.W. 1) and Rahmat Ullah (P.W. 4) who is a Clerk in the office of the Local Health Authority, it is clear that the sample was kept in an ordinary safe and not in a refrigerator. It is also evident from their statement that there is no refrigeration system in the room where the sample was kept. It follows from it that the sample was kept in ordinary temperature, till its analysis was made by the Director Central Food Laboratory. The milk was analysed by the Director Central Food Laboratory about 18 months after taking of the sample. From all this and the observations made in the aforesaid cases it is evident that the sample could not remain in a fit condition for analysis after 10 months. Thus, the certificate of the Director of Central Food Laboratory that the sample was in a fit Condition for analysis cannot be attached much importance and it must be presumed that the prejudice has been caused to the revisionist by unnecessary delay in the analysis.

5. It may be mentioned here that the rule of law laid down in the aforesaid cases that the sample of milk retains its character and is capable of analysis for about 10 months has been laid down on the basis of the judgment of Hon'ble D. S. Mathur, J. of Allahabad High Court in *Gokul Chand v. State*, (Criminal Revn. No. 1612 of 1962 decided on 30-9-1965). Though the judgment of this Criminal Revision was not produced before me by the learned counsel for the revisionist its some of the facts have been given briefly in *Sirajuddin v. The State*, 1982 All LJ 813. They indicate that 121 samples of milk were obtained and, sent for analysis. The analysis was to be done after every four days and in this experiment it was found that where cow milk had one drop of formalin as preservative, then the milk did not get deteriorated in 210 days and where it had two drops of formalin as preservative it did not get deteriorated for 308 days but partial deterioration starts after 295 days. It was also found that in the matter of preservation of milk there would not be much difference in cow milk and in buffalo milk. Keeping in view these facts it had been held in this reported case that the delay of over 210 days in absence of any evidence to indicate how much formalin was added to the sample,

delay over 200 days deteriorated the sample and it amounts to denial of the opportunity to get the sample examined by the Director Central Food Laboratory and, thus, the prejudice vitiated the trial.

6. In the present case the evidence is that each phial of sample contained 220 millilitres of milk, and the Food Inspector had added 18 drops of formalin to each phial. Rule 20 of the Prevention of Food Adulteration Rules prescribes mixing up of two drops of formalin in 25 milliliters of milk. Thus, the formalin was added according to the prescribed standard. In view of the observations made in *Gokul Chand v. State* (supra) the sample could not have deteriorated up to 295 days and deteriorated after 308 days. Thus, the sample taken in the present case must be held to have deteriorated after 10 months as contended by the learned counsel for the revisionist.

7. In *Nebhraj v. State*, AIR 1981 SC 611 the report of the Director Central Food Laboratory was that Dal Biji was adulterated. The report of the Director Central Food Laboratory was challenged on the ground of delay in analysis. In this connection the following observations were made:

'Prima facie the sample was adulterated. The burden of proving that the free fatty acid content of the Vanaspati had increased due to the natural causes was upon the appellant. But, in the present case the burden is sufficiently discharged by the very passage of so long a time as three years from the date of taking the sample to the date of the analysis by the Director Central Food Laboratory.'

8. It shows that undue delay in analysis discharges the burden upon the accused to show that the sample had become unfit for examination by lapse of time. The observations made in this case also support the contention of the revisionist.

9. It may also be mentioned here that in the present case the revisionist applied for summoning the Director Central Food Laboratory for cross-examination but it was rejected by the learned Magistrate without assigning satisfactory reasons. When abnormal delay had occurred in the analysis of the sample the case law on the ground of delay was against the prosecution; the Director had mentioned in his report that the sample was in a fit condition for analysis and the public analyst had

found the milk fat 6.1 per cent; the Director found 4.2 per cent whereas the prescribed standard is 4.5 per cent, the learned Magistrate should have summoned the Director even though Section 13 of the Prevention of Food Adulteration Act provides that his certificate is conclusive, this circumstance also goes in favour of the contention of the learned counsel for the revisionist that prejudice had been caused to the accused and the certificate of the Director should not be much relied upon.

10. From the above discussion it is clear that the delay in analysis by the Director Central Food Laboratory of about 18 months made the sample unfit for analysis and it amounted to the deprivation of a right to get the sample analysed by the Central Food Laboratory and, thus, resulted in serious prejudice to the accused revisionist.

11. The revision, is, therefore, allowed and the conviction and sentence of the revisionist are set aside. He is on bail. He need not surrender. The fine, if any, realised shall be refunded to the revisionist.