

State of M.P. Vs. Patiram

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Court : Madhya Pradesh

Decided On : Jan-21-2003

Reported in : 2003(2)MPHT312; 2003(3)MPLJ333

Judge : S.L. Jain, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7(1) and 16(1); Code of Criminal Procedure (CrPC) , 1974 - Sections 378(3); [Evidence Act, 1872](#) - Sections 134 and 156

Appeal No. : Criminal Appeal No. 500/92

Appellant : State of M.P.

Respondent : Patiram

Advocate for Def. : B.R. Koshta, Adv.

Advocate for Pet/Ap. : S.K. Gangrade, Panel Lawyer

Disposition : Appeal allowed

Judgement :

S.L. Jain, J.

1. Being aggrieved by the judgment and order of acquittal, passed by Judicial Magistrate, First Class, Gadarwara, the State of M.P. has filed this appeal under

Section 378(3) of the Code of Criminal Procedure, 1973 for setting aside the judgment and order of the Trial Court. By the impugned judgment and order dated 26-9-91, respondent/accused Patiram was acquitted of the offence punishable under Section 7(1) read with Section 16(1)(a)(i) of [Prevention of Food Adulteration Act, 1954](#) (hereinafter referred to as 'the Act'). Leave to appeal was granted on 30-4-1992.

2. The case of the prosecution in short is that on 8-6-90 the respondent/accused was carrying three containers of milk on a bicycle. K.P. Rai (P.W. 1), the Food Inspector exercising the jurisdiction over Gadarwara, accosted the respondent and disclosed his identity. On being questioned, the respondent disclosed his name to be Thola son of Bhola Yadav, resident of Khursipar, P.S., Gadarwara. On being further questioned, the respondent informed the Food Inspector that he was carrying buffalo milk for sale. The Food Inspector expressed his desire to purchase milk for the purpose of analysis. He served a notice in writing of his intention to have the milk analysed. He having purchased 750 ml. of milk from the respondent, divided it into three equal parts in three different clean and dry bottles. Before taking sample, the milk of the container was properly stirred to make it homogeneous. Each bottle was marked, sealed and fastened. The signature of respondent was taken on each bottle. The Food Inspector sent one of the three parts for analysis to Public Analyst under intimation to Local Health Authority and sent the remaining two parts to the said authority. The Public Analyst, after analysis of the sample of milk reported that the milk did not conform to the standard prescribed under the law for the buffalo milk and was, therefore, adulterated. After complying with the other formalities, the Food Inspector filed a complaint against the respondent for the offence punishable under Section 7(1) read with Section 16(1)(a)(i) of the Act.

3. After concluding the trial, the learned Magistrate found that the prosecution has failed to prove that respondent is the same person from whom the sample was taken by the Food Inspector. He also found that the prosecution has failed to prove that the sample which was alleged to have been taken from the containers possessed by the respondent was adulterated. As such, by the impugned judgment and order, the learned Magistrate acquitted the respondent of the charge

levelled against him. It is against this judgment and order of the Trial Court that the State has come up in this appeal.

4. I have heard Shri S.K. Gangrade, learned Panel Lawyer for the State/appellant and Shri B.R. Koshta, learned Counsel appearing for the respondent.

5. Learned Panel Lawyer assailed the acquittal of the respondent on the ground that from the evidence of K.P. Rai (P.W. 2), the Food Inspector, offence against the respondent was proved beyond all reasonable doubt. Learned Judicial Magistrate First Class, Gadarwara was not justified in acquitting the accused. As against this, Shri B.R. Koshta, learned Counsel for respondent has supported the impugned judgment and order of acquittal.

6. I have carefully gone through the record of the Trial Court. K.P. Rai (P.W. 2), the Food Inspector, in his evidence before the Trial Court, has stated that on the relevant date, he was posted as Food Inspector in the Narsinghpur District. His appointment order has also been proved by him. He has also stated that on the relevant date at about 7.30 A.M. he saw the respondent selling milk. On enquiry, the respondent stated that his name is Thola Yadav son of Bhola Yadav, resident of Khursipar. The respondent also informed him that for last six months, he is regularly selling milk at Gadarwara. Accused was also having a measure for the purpose of selling the milk. He also served a notice in prescribed Form No. 6. The Food Inspector then purchased 750 ml. of milk from the respondent and divided it then and there into three equal parts in three different bottles. He marked and sealed each part. He also affixed a slip provided to him by the Local Health Authority. The thumb impressions of the respondent were also obtained on all the bottles. Food Inspector further stated that he prepared a Panchnama (Ex. P-12) in respect of the proceedings taken by him on the spot. He sent one part for analysis to Public Analyst and sent remaining parts to Local Health Authority. Statement of K.P. Rai (P.W. 2) is corroborated by the documents prepared by him contemporaneously.

8. The Food Inspector has stated that he subsequently, learnt that the respondent disclosed his incorrect name and address on 8-6-90 when the sample was taken from him for analysis and his correct name is Patiram son of Ramphal and he is a

resident of Village Khori. On 18-6-90 the respondent submitted an affidavit Ex. P-17 to the Executive Magistrate stating that his name is Patiram son of Ramphal, resident of Village Khori. The Food Inspector has unequivocally stated before the Trial Court that the accused person present in the Court is the same person from whom the sample was taken. The Food Inspector also deposed that the Local Health Authority after institution of the prosecution against the respondent forwarded a copy of the report of result of analysis to the respondent informing him that if he so desires, he may make an application to the Court within a period of ten days from the date the copy of the report is served on him to get the sample analysed by the Food Laboratory.

9. It is true that Jagdish Prasad (P.W. 1) has not supported the Food Inspector but he has admitted his signatures on Exs. P-1, P-2 and P-3. If milk was not purchased in his presence and other formalities were not completed by Food Inspector in his presence, there was no reason for him to put his signature on the Panchnama and on the other documents prepared by the Food Inspector.

10. There is no rule of law or prudence that the evidence of Food Inspector should be corroborated by independent witnesses. A conviction can be based on the sole testimony of the Food Inspector if found reliable. The Food Inspector had no animosity towards the respondent. No personal allegations are made against the Food Inspector by the respondent. The learned Trial Court did not properly appreciate the evidence and acquitted the accused only on the ground that the Food Inspector has failed to establish that the respondent is the same person from whom the sample was taken.

11. I have carefully perused the evidence of K.P. Rai (P.W. 2), the Food Inspector. He has clearly stated that it was the respondent from whom he took the sample and at the time of taking the sample respondent disclosed his incorrect particulars. At the time of taking sample the respondent was with the Food Inspector for sufficiently long time, therefore, there was no difficulty for the Food Inspector to recognize the respondent either before the Executive Magistrate or before the Trial Court at the time of evidence. There is no reason why the Food Inspector will spare the real person and falsely implicate the respondent. The respondent had

also given an affidavit before the Executive Magistrate which reveals that the respondent had earlier disclosed incorrect particulars to the Food Inspector at the time of taking sample. Thus, I find that the finding of the learned Trial Magistrate that the prosecution has failed to prove that the respondent was the same person from whom the sample was taken cannot be allowed to stand.

12. The learned Counsel appearing for the respondent has also submitted that it would not be proper to interfere with the order of acquittal after about 12 years as the respondent has already suffered sufficient harassment. There is no law prohibiting the Court from interfering with the order of acquittal solely on the ground of long lapse.

13. The learned Counsel for respondent has also contended that the milk did not conform to the prescribed standard because it was not stirred at the time of taking the sample. It has been suggested to the Food Inspector in his cross-examination that before taking the sample the milk was not stirred, but the Food Inspector has controverted the suggestion. In his examination-in-chief he has specifically stated that the milk was stirred before taking the sample. This fact has also been recorded in the Panchnama prepared at the spot while taking sample. Therefore, the contention that milk was not stirred and the sample taken by the Food Inspector was not representative also cannot be accepted.

14. The learned Counsel for respondent also submitted that at the time of taking sample it was disclosed to the Food Inspector that the milk is of cow. The Food Inspector denied the suggestion in this regard. The report of Public Analyst reveals that the sample taken from the respondent does not conform even to the standard prescribed for the cow's milk. Therefore, the milk sold by the respondent to the Food Inspector was below the prescribed standard and was therefore, adulterated. Any document purporting to be a report signed by Public Analyst, unless it has been superseded by the report of Director, Central Food Laboratory, may be used as evidence of the facts stated therein in any proceedings under the Act. Thus, from the evidence of Food Inspector, K.P. Rai (P.W. 2), and the report of Public Analyst, it is established that the respondent sold adulterated milk.

15. Where the Food Inspector completed all the formalities for taking sample of milk and the sample was found adulterated and there is no reason to disbelieve the evidence of Food Inspector to the effect that it was the respondent from whom the sample was taken, and the respondent has disclosed wrong particulars to the Food Inspector, the learned Trial Magistrate was not justified in acquitting the respondent.

16. Accordingly, this appeal is allowed. The order dated 26-9-91, passed by Judicial Magistrate First Class, Gadawara, District Narsinghpur, in Criminal Case No. 776 of 1990 acquitting respondent/accused Patiram is set aside. The respondent/accused patiram is convicted for the offence punishable under Section 7(1) read with Section 16(1)(a)(i) of the Act.

17. So far as the question of sentence is concerned, Section 16 of the Act provides that offence of sale of adulterated article shall be punishable with imprisonment for a term which shall not be less than six months and with fine which shall not be less than Rs. 1,000/-. Thus, a minimum sentence is prescribed under the Act. It is true that over 12 years have elapsed after the date of the offence and accused has suffered sufficient harassment, but it is not a justification for awarding sub-minimum sentence particularly, when the accused very cleverly disclosed wrong particulars to the Food Inspector to escape the punishment. I, therefore, impose respondent Patiram a punishment of R.I. for six months and to pay a fine of Rs. 1,000/- (Rupees one thousand), in default whereof, he shall undergo further imprisonment for a period of one month. The period of imprisonment if any, already undergone by the respondent during pendency of the trial or the appeal, shall be set off in the sentence indicated hereinabove. The respondent shall surrender within 15 days from today before the Chief Judicial Magistrate, Narsinghpur, to undergo the remaining sentence of imprisonment, failing which all steps shall be taken by the Chief Judicial Magistrate to take him in custody to serve out the sentence.