

Madan Lal Vs. the State

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Court : Delhi

Decided On : Nov-24-1980

Reported in : 1981CriLJ514

Judge : Charanjit Talwar, J.

Acts : Evidence Act - Sections 154

Appeal No. : Criminal Revn. No. 34 of 1978 (To revise order of J.D. Jain Addl. S.J., Delhi, D/- 16-1-1978)

Appellant : Madan Lal

Respondent : The State

Advocate for Pet/Ap. : Mr. D. C. Mathur

Judgement :

ORDER

1. The petitioner herein Madan Lal was convicted for an offence under S. 7 read with S. 16 of the Prevention of Food Adulteration Act, and sentenced to undergo rigorous imprisonment for three months and a fine of Rs. 500/- by Shri J. D. Kapoor, metropolitan magistrate, Delhi. In default of payment of fine he was further awarded rigorous imprisonment for three months. The conviction and the sentence have been upheld by Shri J. D. Jain (then Additional Sessions Judge, Delhi) vide his judgment dated January, 16, 1978.

2. The prosecution allegations were that on August 4, 1976, at about 5.30 p.m. Food Inspector M. L. Chawla accompanied by another Food Inspector M. L. Sharma visited the petitioner's shop. They found 20 litres of milk contained in the drum bearing the inscription 'cow's milk.' After disclosing his identity, Food Inspector Chawla purchased 660 ml. of milk as sample for analysis on payment of Rs. 1,30 P. as its price vide the receipt Exhibit P.A. Prior to the payment of price he had thoroughly stirred the milk stored in the drum and had also issued notice Exhibit P.B. to the petitioner. The milk so purchased was divided into three equal parts which was thereafter transferred to three clean bottles. He added 18 drops of formalin in each bottle as preservative. The three bottles were duly sealed.

3. The testimony of the Food Inspector P.W. 2 M. L. Chawla and P.W. 3 M. L. Sharma shows that 660 ml. of milk purchased was a representative sample of the milk contained in the drum. This version of the official witnesses, however, is at variance with the testimony of the public witness P.W. Ramji Dass who, according to the prosecution's own showing, was present throughout the proceedings at the shop of the petitioner. He has categorically stated that out of the drum containing 20 litres of cow's milk Food Inspector had poured 220 mls in one bottle, 220 mls. in the second bottle and 220 mls, in the third bottle. According to him, 660 mls, of milk were not taken out of the container at the same time. This witness was permitted to be cross-examined by the Additional Municipal Prosecutor on the plea that the witness was suppressing the truth. The order reads :

'At this stage a.m. P. requests that the witness ins not speaking the truth and he may be allowed to cross-examine the witness. Request allowed.'

4. The learned prosecutor did not place any material on the record to show that the witness had been won over or was suppressing the truth. No statement of the witness had been recorded by the Food Inspector; thereforee, the question of confronting him with the previous statement did not arise. The permission to cross-examine him was granted by the trial Court on an oral application. From the record I have not been able to discern the reasons for exercise of this judicial discretion allowing the Prosecutor to ask questions by way of cross-examination from this prosecution witness.

5. It is well-settled that a party would not normally be allowed to cross-examine its own witness and declare him hostile unless the Court is satisfied that the statement of the witness exhibited an element of hostility or that he had resiled from a material statement which he had made earlier or where the Court was satisfied that the witness was not speaking the truth. Before this discretion is exercised there must be some material to show that the witness is not stating the truth. In *Rabindra Kumar Dev v. State of Orissa*, : 1977 CriLJ173 , the Supreme Court has observed :

'This much is clear that the contingency of cross-examining the witness by the party calling him is an extraordinary phenomenon and permission should be given only in special cases. Furthermore, it is not merely on the basis of small or insignificant omission that the witness may have made before the earlier authorities that the party calling the witness can ask the Court to exercise its discretion. The Court before permitting the party calling the witness to cross-examine him, must scan and weigh the circumstances properly and should not exercise its discretion in a casual or routine manner.'

6. In my view the trial Court by permitting this witness to be cross-examined without recording any reasons for doing so, did not validly exercise its discretion under S. 154 of the Evidence Act. The result is that the testimony of this witness cannot be discarded from consideration as has been done by the Courts below on the ground that he had tried to favor the petitioner. There is no basis on the record for such a finding.

7. The testimony of this witness clearly casts a doubt whether the sample of milk purchased from the petitioner by Food Inspector M. L. Chawla was of a representative character. In reply to the questions asked from him by way of cross-examination by the learned Prosecutor, the witness maintained the version given by him in examination-in-chief that at a time only 220 ml. of milk was taken out of the drum and poured into separate bottles. There cannot be any controversy that if the testimony of this witness is to be accepted, the milk purchased and analysed was not a representative sample. It is urged that on this ground alone, the petitioner is entitled to acquittal.

8. Mr. D. C. Mathur, learned counsel for the petitioner, further submitted that the deficiency of 0.44% in milk solids not fat found by the Public Analyst being marginal, the petitioner was in any event entitled to the benefit of doubt. In support of his contention he cited a case reported in (Delhi) (Municipal Corporation of Delhi v. Om Parkash) wherein a Division Bench comprising P. N. Khanna and Rangarajan, JJ. following the decision of the Supreme Court in Malwa Co-operative Milk Union Ltd. v. Bihari Lal (Criminal Appeals Nos. 235 and 236 of 1964) had upheld the acquittal on the ground that the marginal deficiency in milk solids not fat entitled the accused in the facts of the case to the benefit of doubt. In my opinion, the law laid down in this case is not that whenever there is a marginal deficiency in milk solids not fat, the accused are entitled to the benefit of doubt. In the facts of that case it was found that marginal deficiency was possible due to the delay of one year in analysing the sample. In the present case it (can) be said that the marginal deficiency in milk solids not fat found by the Public Analyst can be due to the reason that 220 mls, of milk analysed was not a representative sample of the milk stored in the drum. Under the circumstances of this case, the petitioner is thus entitled to the benefit of doubt. I, therefore, set aside the conviction and sentence of the petitioner for the offence under S. 7 read with S. 16 of the Prevention of Food Adulteration Act, and acquit him.

9. The revision petition is accordingly allowed.

10. Petition allowed.

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