

State Vs. Karson Zaver

State Vs. Karson Zaver

SooperKanoon Citation : sooperkanoon.com/733319

Court : Gujarat

Decided On : Jul-27-1960

Reported in : AIR1960Guj34; 1960CriLJ1582; (1960)GLR119

Judge : Shelat and; Raju, JJ.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 8, 13 and 16(1)

Appeal No. : Criminal Appeal No. 79 of 1960

Appellant : State

Respondent : Karson Zaver

Advocate for Def. : A.D. Desai and; G.T. Nanavathy, Advs.

Advocate for Pet/Ap. : H.M. Thakore, Asst. Government Pleader

Judgement :

Raju, J.

(1) This is an appeal by the State of Guajrat against the acquittal by the learned Sessions Judge of Surat, who set aside the conviction and sentence passed upon the Karsan Zaver under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act. The learned Special Judicial Magistrate, First Class, Surat, convicted the respondent under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act,

which will be hereinafter referred to as the Act, for having sold adulterated milk to the complainant Food Inspector D. K. Desai of Surat, on 4-8-1958. The respondent was going with 15 seers of milk for sale. The complainant Food Inspector, who was accompanied by two Panchas, asked the respondent about the quality of milk and he was told that it was buffalo's milk. He purchased 1 1/2 seers of milk from the respondent and after following the procedure laid down under the Act, he took samples of milk and sent one sample to the Public Analyst. According to the prosecution the result of the analysis by the Analyst was that the milk was found to have contained 5.3 per cent of fat and 8.6 per cent of solids other than fat, whereas according to the standard laid down in the rules under the Act, buffalo milk should contain the territories of Bombay State 8.6 per cent of fat and 9 per cent of solids other than fat. The respondent was, thereupon, prosecuted and convicted by the learned Magistrate, who relied on the certificate issued by the Public Analyst Shri S. S. Bhatt who was examined as a witness. The learned Magistrate also considered the fact that the respondent had a previous conviction under the same Act, and passed sentence of three months' rigorous imprisonment and a fine of Rs. 500/-, in default rigorous imprisonment for one month.

(2) The appeal filed by the respondent before the learned Sessions Judge, Surat, was allowed by the Sessions Judge on the ground that Shri S. S. Bhatt was not the Public Analyst when he examined the sample of milk which was sent to him, as Shri Limdi who had been appointed by the State Government as Public Analyst had gone on leave and Shri Bhatt had merrily been appointed Acting Officer-in-charge of the Public Laboratory at Surat by the Sanitary Committee of the Surat Borough Municipality and had not been appointed a Public Analyst. The learned Sessions Judge referred to the notification by the State Government dated 17-7-1959 issued under Section 8 of the Act, appointing the officer-in-charge of the Public Health Laboratory, Surat Borough Municipality to be the Public Analyst for the Surat municipal area. The learned Sessions Judge thought that the officer-in-charge of the Public Health Laboratory. The learned Sessions Judge also observed that the State Government had not delegated the power of appointing Public Analyst to the Sanitary Committee of the Surat Borough Municipality, and he therefore came to the conclusion that the report Ex. 5 of the Public Analyst

could not be considered in evidence. As regards the oral evidence of Shri Bhatt, the learned Sessions Judge observed that there is no material on record to hold that Shri Bhatt was appointed by the Government a Public Analyst and so the opinion of Shri Bhatt cannot be said to be that of a Public Analyst, or of a person competent as such. The learned Sessions Judge, therefore, came to the conclusion that the prosecution had failed to prove that the milk in question was adulterated milk. He thereupon set aside the conviction and sentence passed upon the respondent.

(3) The State has now come in appeal against the acquittal and the learned Assistant Government Pleader for the State has challenged the reasoning of the learned Session Judge on both the points, namely that Shri S. S. Bhatt was not a Public Analyst and 92)the evidence of Shri S. S. Bhatt is also not admissible to prove that the milk in question was adulterated. Mr. Desai, the learned counsel for the respondent has contended that Shri Bhatt for the respondent has contend that Shri Bhatt was Acting Officer-in-charge of the Public Health Laboratory and that there was no appointment by the State Government appointing him as Public analyst. It is also contended that the State Government had not considered whether Shri S. S. Bhatt was qualified to be appointed as a Public Analyst, and whether he could be appointed as a Public Analyst under the rules framed under section 23 of the Act. It is also urged that the State Government must appoint a Public Analyst by name. He therefore supports the finding of the learned Sessions Judge that the report Ex. 5 of Shri Bhatt is therefore inadmissible in evidence. As regards the oral evidence of Shri Bhatt, the contention of Shri Desai, the learned counsel for the respondent, is that the Act i a self-contained Act and provides the only method of proving the fact that milk was adulterated. According to him, the Food Inspector as to take a sample and to send one part of the sample to the Public Analyst. According to him, this is the only method of proving the fact that milk was adulterated. It is not open to the prosecution to rely on the oral evidence of a person who is not a Public Analyst.

(4) In order to decide the questions raised before us, it is necessary to refer to the relevant provisions of the Act. The expression 'adulterated' is defined in Section 2 of the Act as follows:

'Adulterated' an article of food shall be deemed to be adulterated-

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability'.

'Prescribed' in Section 2(xii) of the Act is defined as meaning prescribed by rules made under the Act. Section 7 of the Act prohibits amongst other things the sale by himself or by any person on his behalf of any adulterated food. Section 8 provides that the State Government may, by notification in the Official Gazette appoint persons in such number as it thinks fit and possessing such qualifications as may be prescribed, to be Public Analysts and define the local areas over which they shall exercise jurisdiction. Rule 6 of the rules framed under Section 23 of the Act prescribes the qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be adequate knowledge and competence may be appointed as Public Analysts. Rule 5 of the said Rules provides that standards of quality of the various articles of food specified in Appendix B to these Rules are as defined in that Appendix. Appendix B to the Rules prescribes that buffalo milk shall contain not less than 5.0 per cent of milk fat except in Delhi, Punjab, Peeps, Uttar Pradesh, Bihar, West Bengal, Assam, Bombay and Saurashtra where it shall be not less than 6 per cent. The milk solids other than milk fat shall be not less than 9 per cent. The powers of a Food Inspector are laid down in S. 10 of the Act and the procedure to be followed by him is contained in Section 11 of the Act. Sub-section (5) of Section 13 of the Act provides that

'any document purporting to be a report signed by a Public Analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Secs. 272 to 276 of the Indian Penal Code (Act XLV of 1860): Provided that any

document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein'.

Section 16 of the Act is a penalizing section, which provides penalty for the offences committed under the Act.

(5) Under Section 8 it is for the State Government to appoint a Public Analyst. In the instant case, the State Government has passed a general order by the notification dated 17-7-1958, whereby in exercise of the powers conferred by Section 8 of the Act, the Government of Bombay appointed the officer-in-charge of Public Health Laboratory, Surat Borough Municipality, to be the Public Analyst for the Surat Municipal area. It is contended by Mr. Desai, the learned counsel for the respondent, that the State Government must appoint the Public Analyst by name after making sure that he possesses such qualifications as are prescribed by R. 6 of the Rules made under the Act, and he relies in particular on the use of the word 'person' in Section 8 of the Act. The word 'person' does not necessarily mean that the person should be described by name. It is open to the State Government to appoint a person holding a particular office as a Public Analyst, but at the same time it can do so, provided the other requirements of Section 8 of the Act are satisfied, because Section 8 requires that the State Government can appoint a person possessing such qualification as may be prescribed to be a Public Analyst. If the State Government appoints a person holding a particular office as Public Analyst. In this case, the State Government has appointed the officer-in-charge of the Public Health Laboratory Surat Borough Municipality, without specifying the name of the officer in charge. No provision has been pointed out, which requires that the officer-in-charge of Public Health Laboratory, Surat Borough Municipality, should possess the qualifications prescribed by R. 6 of the Rules framed under the Act, for appointment as Public Analyst. By passing such a general order, the State Government runs the risk of finding that the officer-in-charge of the Public Health Laboratory of the Surat Borough Municipality may happen to be a person, who does not hold the necessary qualification for appointment as a Public Analyst. The previous officer-in-charge of the Public Health Laboratory Mr. Limdi had proceeded on leave during the period from 14-7-1958 to 13-9-1958, and during his absence on leave the Sanitary Committee of the Surat Borough Municipality

passed a resolution appointing Shri Bhatt to be Acting Officer-in-charge of the Public Health Laboratory, Surat Borough Municipality and there is no merit in the contention of Mr. Desai that officer-in-charge does not include an Acting officer-in-charge for a short period and such an officer would be an officer-in-charge albeit for a short period. But the order appointing Shri Bhatt as officer-in-charge of Public Health Laboratory was made by the Sanitary Committee of the Surat Municipality and not by the State Government. Section 8 of the Act requires that Public Analysts should be appointed by the State Government. The State Government has not delegated its powers of appointment of Public analysts to the Surat Municipality. Nor has the Surat Municipality appointed him as Public Analyst. After having issued the notification dated 17-7-58, the State Government did not issue any further notification appointing Shri Bhatt as Public Analyst. There is no order of the State Government appointing Shri Bhatt as Public Analyst during the absence on leave of Mr. Limdi, The prosecution relied only on the Notification dated 17-5-58. Mr. Bhatt has stated in his evidence that he is B.Sc. of the Bombay University, one of his subjects being Chemistry and that he had served in Public Health Laboratories as Technical Assistant and it was his duty to help the officer-in-charge of public health laboratory in the analysis of food and water. But there is no evidence on record to show that the post-graduate experience of Shri Bhatt was as required by Rule 6 of the Rules in the analysis of food in a laboratory under the control of a Public Analyst appointed under the Act or a Chemical Examiner to Government of a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or the head of an institution specially approved for the purpose by the State Government. It is therefore conceded by the learned Asst. Government Pleader for the State that Shri Bhatt is not qualified to be a Public Analyst under Section 6 (sic) of the Act and could not have been appointed as Public Analyst except by the application of the proviso to that section. The proviso to that section lays down that for a period of four years from the commencement of the Act, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as Public Analysis. The date of the commencement of the Act is 1-4-1955, and Shri Bhatt was appointed as officer-in-

charge of the Surat Municipal Public Health Laboratory in July 1958, that is, within four years from the commencement of the Act. But the proviso requires that the State Government should consider the qualifications, training and experience and if the State Government regards the training qualifications and experience as affording a reasonable guarantee of adequate knowledge and competence, such a person may be appointed by the State Government as Public Analyst. But the prosecution did not contend that the State Government considered the case of Shri S. S. Bhatt. If it had it would have appointed him by name. the prosecution relied merely on the fact that Shri Bhatt had been appointed by the Sanitary Committee of the Surat Borough Municipality, as Acting officer-in-charge of their Public Health Laboratory. Shri S. S. Bhatt cannot, therefore, be regarded as Public Analyst, and the certificate given by him, cannot be admissible in evidence.

(6) But, in this case prosecution has actually examined Shri S. S. Bhatt, who has deposed that he had analysed the sample in question. He also proved the certificate, Ex. 5. given by him which shows that the sample contained 5.3 per cent of fat and 8.6 per cent of solids other than fat. Shri Bhatt has also deposed that the sample was adulterated with water to the extent of 4 per cent and was deficient in fat to the extent of 7 per cent under the standard prescribed by the rules framed under the Act. Under the Act, the percentage of fat in Bombay in buffalo's milk should be 6 per cent and the percentage of solids other than fat should be 9 percent as the actual percentage of fat was only 5.3 per cent the fat deficiency would be 7 per cent that is 7/10 percent and the deficiency in solids other than fat would be 4/10 percent. But it is contended that the oral evidence of Shri Bhatt is not admissible and that the Act provides the only method of proving the adulteration of milk. It is true that the Act provides for the appointment of Food Inspectors who are authorised to take samples of milk. But for the provisions of the Act, it would not be open to the Sanitary Inspector of any Municipality to take samples of milk from any vendor. It is also provided that the Food Inspector has to send a sample to the Public Analyst and that the report of a Public Analyst is admissible in evidence. Although such a special rule of evidence has been provided even in the Act, it cannot abrogate the general rule of evidence, regarding proof of facts. Facts can always be proved by oral evidence and by the evidence, of experts. Mr. S. S. Bhatt is, no doubt, an expert in the analysis of food and milk. He

has actually analyse the sample in question, and has actually analysed the sample in question, and there is no reason not to accept his evidence that the sample in question contained 5.3 percent of fat and 8.6 percent of fat and 9 percent of solids other than fat. It does, however, appear that the opinion of Shri Bhatt given in his deposition and also in his certificate that the sample of adulterated milk was adulterated with water to the extent of 4 percent is not correct. If standard buffalo's milk should contain 6 percent of fat buffalo's milk, which is adulterated with water to the extent of 4 per cent would contain 5.77 percent of fat and not 5.3 percent of fat. However, it is clear from the evidence of Shri Bhatt that the sample in question was a sample of adulterated milk. Under Section 7 of the Act, a person is prohibited from selling milk which is adulterated, and it is an offence under section 16(1) therefore wrong in setting aside the conviction and sentence of the respondent passed by the learned Magistrate. We therefore, set aside the acquittal and restore the conviction of the respondent passed by the Magistrate under section 16(1) (a) (ii) of the Act. In view of the admitted fact that he had a previous conviction for a similar offence, he is liable to a sentence of imprisonment of not less than one year and a fine of not less than two thousand rupees. But the learned Magistrate has sentenced him to three months' rigorous imprisonment and a fine of Rs. 500/- and the State of Gujrat has not made any application for enhancement of the sentence. In these circumstances, we feel that the sentence passed by the learned Magistrate must be retained and need not be enhanced.

(7) We therefore allow the appeal, set aside the order of the learned Sessions Judge acquitting the respondent and convict him under section 16 of the Act and sentence him to rigorous imprisonment for three months and a fine of Rs. 500/-, in default rigorous imprisonment for one month. Warrant to issue.

(8) Appeal allowed.