

State of Rajasthan Vs. Chhattar Singh

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Court : Rajasthan

Decided On : Jan-24-1968

Reported in : AIR1968Raj233; 1968CriLJ1214

Judge : L.S. Mehta and; C.M. Lodha, JJ.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2(1), 7, 16 and 23

Appeal No. : Criminal Appeal No. 448 of 1965

Appellant : State of Rajasthan

Respondent : Chhattar Singh

Advocate for Def. : Mangha Ram, Adv.

Advocate for Pet/Ap. : S.K. Tewari, Deputy Govt. Adv.

Disposition : Appeal allowed

Judgement :

Lodha, J.

1. Accused Chhattar Singh was prosecuted in the court of City Magistrate, Bharatpur, by the Municipal Council, Bharatpur, for an offence under Section 7(1) read with Section 16(1)(a) of the [Prevention of Food Adulteration Act, 1954](#).

2. The allegation against the accused was that on October 15, 1962, at about 6.30 p.m., he was found carrying milk in a drum on his cycle by Shri Gopal Prasad, Food Inspector, P. W. 1. Shri Gopal Prasad took sample of milk and put it in 3 bottles, and after carrying out the necessary formalities prescribed under the rules framed under the Prevention of Food Adulteration Act, he sent one of the bottles to the Public Analyst, Rajasthan, Jaipur. On receipt of the report from the Public Analyst, to the effect that the milk was adulterated, the Municipal Council, Bharatpur, filed a complaint in the court of City Magistrate, Bharatpur, against the accused as stated above. The complainant examined P. W. 1 Shri Gopal Prasad, P. W. 2 Shri Nand-Kishore, P. W. 3 Shri Shobha Ram, and P. W. 4 Shri Bakshi Ganpat Singh. In his defence the accused also examined one Shri Showaran Singh, D. W. 1. The learned Magistrate found that it was proved that the sample of the milk was taken from the possession of the accused and further that It was proved to be adulterated. On the basis of these findings the accused was convicted under Section 7 read with Section 16(1)(a) of the Act and was sentenced to pay a fine of Rs. 500/- in default of payment of fine to undergo simple imprisonment for four months

3. Aggrieved of his conviction and sentence, the accused filed an appeal in the court of Sessions Judge. Bharatpur. It was contended, inter alia, before the learned Sessions Judge that the milk which the accused was found carrying was mixed milk of cow and buffalo and since no minimum standard was prescribed for such a mixed milk by the Rules framed under the [Prevention of Food Adulteration Act, 1954](#), the accused could not be said to have committed any offence and was entitled to acquittal. This argument found favour with the learned Sessions Judge and on this ground alone he acquitted the accused.

4. The State of Rajasthan has filed the above appeal from the order of acquittal passed by the learned Sessions Judge, Bharatpur.

5. We have heard Dr. Tewari on behalf of the appellant and Shri Mangha Ram, learned counsel for the respondent, at some length.

6. It may be stated at once that there is now no dispute about the facts. The accused admitted in his statement that the sample of the milk in question was

taken from his possession. The only plea taken by him was that he had brought this milk from a third person for the purpose of sale and that he had not adulterated the milk. It appears to be the admitted case of the complainant as well as the accused that the milk in question was a mixed milk of cow and buffalo, and in this connection we may refer to the statement of P. W. 1 Shri Gopal Prasad, Food Inspector, who has stated that on inquiry from the accused at the time of taking the sample of the milk, the accused had stated that it was a mixed milk of cow and buffalo. Similar is the statement of P. W. 2 Shri Nand Kishore. Even D. W. 1 Shri Showaran Singh, who has been produced in defence by the accused, has also stated that the milk in question, which he supplied to the accused for sale and a sample of which had been taken by the Food Inspector, was mixed milk of cow and buffalo. It is further clear from the seizure memo Ex. P-1 that the milk was a mixed milk of cow and buffalo. So also in the Public Analyst's report Ex P. 3 the milk has been characterised as a sample of cow and buffalo milk. Even before us the case has been argued by learned counsel for both the parties on the footing that the milk in question was a mixture of cow and buffalo milk.

7. Dr, Tewari has argued that the learned Sessions Judge had not correctly interpreted the ratio decidendi of the judgment of this court in Udai Singh v. State, 1961 Raj LW 586, and, therefore, the judgment of the learned Sessions Judge is vitiated. Before we deal with the case of Udai Singh, we would like to refer to the relevant item in appendix B of the Rules on which some argument has been advanced by counsel for both the parties. In appendix B of the Rules framed under the Prevention of Food Adulteration Act, standard of qualities of various types of milk has been prescribed. For instance, the standard prescribed for cow milk is as follows:--

'A.11.01.01 Cow milk shall contain not less than 3.5 per cent of milk fat, except in Orissa, where it shall be not less than 8 per cent and in Punjab and Pepsu where It shall be not less than 4.0 per cent. The milk solids other than milk fat, shall be not less than 8.5 per cent.'

Similarly the standard prescribed for buffalo milk is as follows:--

'A. 11. 01. 02. Buffalo milk shall contain not less than 5.0 per cent of milk fat except in Delhi, Punjab, Pepsu, Uttar Pradesh, Bihar, West Bengal, Assam, Bombay and Saurashtra where it shall not be less than 6 per cent. The milk solids other than milk fat, shall be not less than 9 per cent.'

Then comes item A.11. 01. 03. which runs as under:--

'A. 11. 01. 03. Goat or sheep milk shall contain not less than 3.0 per cent of milk fat except in Madhya Pradesh, Punjab, Pepsu, Bombay, Uttar Pradesh and Travancore Cochin where it shall be not less than 3.5 per cent. The milk solids other than milk fat, shall be not less than 9 per cent. Where milk, other than skimmed milk, is sold or offered for sale without any indication as to whether it is derived from cow, buffalo, goat or sheep the standard prescribed for buffalo milk shall apply.'

The contention of learned counsel for the respondent is that in the present case it cannot be said that there is no indication as to whether the milk is derived from cow or any other animal. On the other hand, it is the admitted position that the milk in question, which the accused was found carrying for sale, was a mixed milk of cow and buffalo. Consequently, according to learned counsel, this item will have no application. It is further argued by him that since no standard has been prescribed for mixed milk of cow and buffalo, no offence can be said to have been committed and it is in support of this argument that learned counsel has placed strong reliance on 1961 Raj LW 586 (supra), and the lower court also has entered a finding in favour of the accused on the basis of this ruling. It would therefore, be necessary for us to refer in some detail to the case of Udai Singh

8. In Udai Singh's case, 1961 Raj LW 586 the accused was found in possession of milk, which was mixed milk of cow and goat and it was alleged by the prosecution that it did not fulfil the requisite standard as prescribed by the law, The contention of the prosecution was that in a case of this nature, where the milk was the mixed milk, the standard legally required should be that of buffalo milk and since it did not fulfil that standard, the accused was guilty of the offence under the Prevention of Food Adulteration Act. The learned Single Judge was also of the view that appendix B item A.11. 01. 03, which we have already reproduced above, applied

to the case. It was, however, argued by learned counsel for the accused in that cast that since there was an indication in the case as to the milk being that of cow and buffalo, this item had no application. The learned Judge accepted the contention of the learned counsel for the accused. But at the same time it was found that the standard had been prescribed for mixed milk under the Marwar Pure Food Rules, 1946. and, therefore, it was held by the learned Single Judge that the case would be governed by the standard prescribed by the Marwar Pure Food Rules, 1946, according to which mixed milk must have milk fat not less than 4 per cent and milk solids non-fat not less than 8 per cent. According to the report of the Public Analyst in that case the fat contents as well as the solids non-fat contents came upto the requisite standard, and therefore, the learned Single Judge held that no offence was made out and quashed the proceedings against the accused. Thus, all that was decided in this case was that in case it is known as to from which animal, that is, cow, buffalo, goat or sheep, the milk was derived, item A.11.01.03 would have no application. However. this ruling does not lay down that if a sample of milk is found to be a mixture of milk of more than one type of animal, then no offence would be made out even if it is adulterated to any extent. The whole emphasis in Udai Singh's case 1961 Raj LW 586 was on this point that when the source of the milk is known then item No. A.11.01.03 would have no application. We may here conveniently reproduce the relevant portion of the judgment from Udai Singh's case, to make the position clear. It runs as follows:--

'The learned Sessions Judge appears to think that Appendix D, item A-11-01-03 would apply to such a case and the standard, as contended by the prosecution, should be the standard prescribed for buffalo milk. The relevant part of the item runs as follows :--

'Where milk, other than skimmed milk, is sold or offered for sale without any indication as to whether it is derived from cow, buffolo, goat or sheep, the standard prescribed for buffalo milk shall apply.'

The contention of the learned counsel Cor the petitioner is that this provision should not apply to the present case because in this case admittedly the indication is that the milk was derived from cow and goat and it was not without any such

indication. There appears to be good deal of force in the contention; but then one is faced with the situation that in the case of mixed milk a person would escape punishment even though he may have adulterated the milk. The learned counsel for the petitioner, however, points out that although there is no standard prescribed for 'mixed milk' in the Prevention of Food Adulteration Act of 1954 or in any Rules made thereunder, by virtue of Section 25(2) of the Act, we have to refer to the Marwar Pure Food Rules, 1946 where the standard is prescribed for 'mixed milk ' '

Thus, the utmost that can be said in favour of the accused on the basis of Udai Singh's case. 1961 Raj LW 586, is that the standard prescribed for buffalo milk would not apply in this case on the ground that the source from which the milk is derived was indicated. But that does not conclude the matter and the question still remains as to which item of the standard prescribed for milk in the Rules, would apply in such a case.

9. We have been referred to a Full Bench decision of the Allahabad High Court in Prem Das v. State, AIR 1961 All 590, which seems to us to have a direct bearing on the point arising for decision in this case. A similar situation had arisen in Prem Das's case, AIR 1961 All 590. The accused in that case sold a mixture of buffalo and cow milk The Public Analyst reported that the sample contained 3.0 per cent milk fat and 5.9 per cent non-fats solids, and it also contained 7.2 per cent added water. Even though the proportion in which the buffalo milk and the cow milk was mixed was not found, the Public Analyst treated the sample as if the two kinds of milk were mixed in equal proportion. It was on the basis of this report of the Public Analyst that the sample was found to be adulterated and the accused was convicted under Section 16 of the Prevention of Food Adulteration Act, for infringement of the provisions of Section 7, which prohibits sale of adulterated food. A contention similar to the one, which has been raised before us, was advanced before the Allahabad High Court and their Lordships were pleased to observe as follows:--

'There can no standard prescribed for a mixture because there is no need for it; the standard depends upon the proportion in which the two kinds of milk are mixed together, and it is a matter of simple arithmetical calculation to find out what should

be the minimum quantities of the milk fats and of the non-fatty solids. When no standard has been fixed, the court has to fix a standard, as pointed out in *Marston v. Loney*, 1955 Cri. LR 778, and the court should fix a standard for the particular mixture.

Even if the proportion in which the two milks are mixed is not known, the mixture can in certain circumstances be proved to be below the prescribed standard. If the total quantity of milk fats or of the non-fatty solids is less than the prescribed minimum for cow milk, it is below standard. The prescribed minima for cow milk are lower than those for buffalo milk. If buffalo milk is added to cow milk, the quantities of the milk fats and of the non-fatty solids must necessarily be more than if equal quantity of cow milk were added instead of buffalo milk.'

10. In the present case also it is not known as to what was the proportion in which the two kinds of milk, viz.. cow milk and buffalo milk were mixed but it is clear from the Public Analyst's report that in the milk in question, the fat content was 4 per cent and solid non-fats 7.29 per cent, and there was 19 per cent of added water. At this stage we may refer to the prescribed standard in case of cow milk -- 3.5 Per cent of milk fat, and 8.5 per cent of milk solids other than fat. For buffalo milk the standard is a little higher i. e., 5.0 per cent milk fat, and 9 per cent milk solids other than milk fat. Since it is not known as to in what proportion the two types of milk were mixed, we would like to give the benefit of the lesser standard prescribed for the two types of the milk to the accused and judging the milk in question by standard pie-scribed for cow milk, we still find that the milk in question contains solids non-fat 7.29 per cent only as against the prescribed standard of 8.5 per cent. Thus, there is no escape from the conclusion that the milk in question was not of the standard prescribed even for cow milk and was, consequently, adulterated, and the accused cannot escape the punishmest prescribed under Section 16 of the Prevention of Food Adulteration Act.

11. No authority taking a view contrary to the one taken in the Full Bench case of the Allahabad High Court has been placed before us. With great respect, we agree to the view taken by the learned Judges of the Allahabad High Court as, in our opinion, taking any other view would lead to absurdity. If the contention of the

learned counsel for the respondent were accepted, it would be impossible to punish a milk-vendor who may mix two types of milk, e. g., cow and buffalo milk or cow and goat or sheep milk and make it adulterated to any extent. Such an interpretation, in our opinion, would defeat the very intent and the purpose of the Prevention of Food Adulteration Act, specially in the case of milk, which is so essential for the health of the society. In the circumstances, we are constrained to hold that the accused-respondent has been wrongly acquitted by the learned Sessions Judge, Bharatpur and the order of his acquittal must be set aside.

12. Learned counsel for the respondent has, then, submitted that a fine of Rs. 500. imposed by the learned trial court would be excessive in the present case. This amount of fine was imposed by the learned Magistrate by keeping in view the standard prescribed for buffalo milk, which is a little higher than that prescribed for cow milk. He has also submitted that this incident had taken place as far back as in October, 1962. and the accused has already undergone sufficient harassment. We have given due consideration to the submissions made by the learned counsel for the respondent and having regard to all the circumstances of the case we feel that the interests of justice would be met by imposing a fine of Rs. 250 only. No other point was argued before us.

13. The result is that we allow this appeal, set aside the judgment of learned Sessions Judge, Bharatpur, and restore the order of conviction passed by the trial court, but, in the circumstances of the case, we reduce the amount of fine of Rs. 250. We grant one month's time to the accused to deposit the fine, if not already paid. In default of payment of fine, he shall undergo simple imprisonment for a period of one month.