

**State Vs. Ganpat**

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**Court :** Rajasthan

**Decided On :** Feb-25-1980

**Reported in :** 1980WLN174

**Judge :** M.L. Shrimal, and; K.S. Sidhu, JJ.

**Appeal No. :** D.B. Criminal Appeal No. 534 of 1979

**Appellant :** State

**Respondent :** Ganpat

**Disposition :** Appeal allowed

**Judgement :**

**M.L. Shrimal, J.**

1. This State appeal by grant of special leave is directed against the judgment, dated February 14, 1979, of learned Sessions Judge Tonk.

2. The prosecution story in nut-shell is that on November 27, 1976, PW 1 Kutubuddin, the Food Inspector, law the accused-respondent carrying milk for sale After having disclosed his identity, he checked the accused respondent The Food Inspector then served him a notice and purchased 660 ml. of milk (or Rs. 1/12 paise. The milk was divided into three parts. Each part was then filled in a dry and clean bottle. After having added 18 drops of for maline to each of the three bottles

containing milk in the presence of the accused respondent, the three bottles were cocked and sealed. A men orandum, containing the details of the proceeding conducted by the Food Inspector, was prepared and the same was marked Ex. P/4 It bears the signatures of the Food Inspector as also of the two attesting witnesses, Devkinandan and Azizuddin. It also bears the signature of the accused-respondent Ganpat. One of the sample bottles was given to the accused-respondent, and the other was sent to the Public Analyst, Jaipur, along with the specimen of the seal impression The form containing specimen seal in Ex. P/4 was also sent. The third bottle was retained by the Food Inspector. The sealed bottle was received by the Public Analyst on 1st December, 1976. The Public Analyst received the bottle duly staled and the seal was noticed by him to be infect, as shown in the memorandum. An endorsement to that effect was made (b) the Public Analyst. He analysed the contents of the bottle and declared the result as under:

Fat contents 6.4%

Solids non fats 7.55%

In the opinion of the Public Analyst the sample of the milk was adulterated as it contained about 11% of added water.

3. The Food Inspector filed a camplaint in the Court of the Chief Judicial Magistrate. Tonk, against the accused-respondent for prosecution under Section 7/16. Prevention of Food Adulteration Act, 1934 (hereinafter referred to as 'the Act'). The accused respondent filed an application under Section 13(2) of the Act on April 23, 1977, in pursuance of which the bottle was sent by the learned Magistrate and he after satisfying himself that it was duly sealed, sent it for analysis to the Director of the Central Food Laboratory, Calcutta, along with the specimen signatures The Director, Central Food Laboratory, analysed the milk and found the same to be adulterated He found that the milk had fat contents to the extent of 5 6% and the milk solids nonfat were 7.2% He also found that the formaline was present. The accused respondent denied his complicity in the offence. The prosecution in support of its case, examined PW. 1 Kutubuddin, PW 2 Devkinandan and PW. 3 Azizuddin. The accused, in his statement recorded

under section, 313 Cr. P.C. stated that he was not a milk-vendor. He, however, admitted that the sample of milk was taken from him by the Food Inspector. He further pleaded that he was carrying the milk for some other person. In support of his plea he examined D.W. I Anandilal. The trial court relying upon testimony of the Food Inspector, got support of the prosecution case from the statements of the two witnesses, Devkinandan and Azizuddin. and held that the accused was carrying milk for sale and the same was found adulterated. The court further held that the accused was selling milk without licence. The learned Magistrate found the accused guilty of the offence, under section. 7/16 of the Act and sentenced him to undergo three months' rigorous imprisonment and to pay a fine of Rs. 500/- He was also convicted for violation of Rule 15 of the Food Adulteration Rules 1955 Dissatisfied with the above judgment, the accused respondent preferred an appeal in the court of learned Sessions judge, Tonk The Sessions Judge, placing reliance on Ramlal v. State 1974 FAC. 445, partly accepted the appeal, acquitted the accused of the charge for selling adulterated milk on the ground that in both the reports, that is of the Public Analyst and that of the Director, Central Food Laboratory, the total of the milk fat and solid not fat were more than 12% and as such it could not be said to be adulterated milk. He however, maintained the conviction and sentence awarded to the accused for violation of Rule 15 read with Section 16 of the Act. Feeling aggrieved by the judgment of the Sessions Judge, the State Government has come up in appeal before this Court.

4. The learned Public Prosecutor, appearing on behalf of the State, has urged that the Sessions Judge committed a grave error in law in placing reliance on the case reported in Ramlal v. State (supra), which is contrary to the Division Bench case of this Court. He further urged that the learned Sessions Judge instead of placing reliance on a decision of the Punjab High Court ought to have cared to look to the decision of this Court. He also urged that a close perusal of both the reports shew that the sample of the milk taken from the accused did not conform to the requirement of the prescribed standard as far as solid not-fat content was concerned and as such the learned Judge has no alternative except to treat the milk as adulterated. In support of this contention he placed reliance on the State v. Badri , State of Kerala v. Vosudeoan Nair 1975 FAC (1) 8, and Municipal Committee Amratsar v. Hozara Singh AIR 1975 SC 1087. The learned course)

appearing on behalf of the accused-respondent, placed reliance on a Single Bench decision of this Court reported in *Potas Ram v. The State of Rajasthan* 2978 RCC 324 and supported the judgment of the lower appellate court.

5. The short point which falls to be considered in this case is that if the deficiency in the milk solids other than fat can be made up by excess quantity of milk fat, Prima facie, the solid contents of the milk are below the prescribed standard. In the case in hand the report of the Public Analyst stands superseded by the certificate of the Director, Central Food Laboratory Calcutta, who found the milk fat 5.6% and milk solid, non fat 7.2%. Thus the milk was not in accordance with the standard fixed in as much as the milk solids other than fat were deficient by the 1.3%. Hence the sample was clearly adulterated.

6. The case relied upon by the learned Sessions Judge was based on the Interpretation of a Supreme Court case *Malwa Co-operative Milk Union Ltd. Indore and Ors. v. Biharilal and Anr.* 1973 FAC. 375. This case came up for interpretation before their Lordships of the Supreme Court. Krishna Iyer J, speaking for the Court observed that the point which arose in the Malwa Milk case was whether the High Court was justified in setting aside an acquittal in revision when the jurisdiction was invoked by a rival trader the alleged adulteration having been so negligible that the State had withdrawn the prosecution resulting in acquittal. The Court observed that it would not be fair to read into that judgment something which is not there. The law of food adulteration as also the right approach have been if we may say so with respect set out correctly there. Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141 of the Constitution, Statement on matters other than law have no binding force. After carefully analysing the case Krishna Iyer J. observed as under:

The standard fixed under the Act is one that it is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability,

uncertainty and imprssibility of arriving at fair and consistent decisions are great.

7. The Act authoris the Central Government to constitute a Commttee to advise the. Central Government and the State Government on matter arising out of the administration of the Act and to carry out the other functions assigned to it under the Act. Under Section 23(1)(b) of the Act the General Government may after consultation with the Cmmittee and subject to the conditions of previous publication make rules to define the standards of quality for, & fixing the limits of variability permissible in respect of anyarticle of food. It is in exercise of this power that in Appendix clause All Order 11 of the PFA Rules 1955, the standard of minimum percentage of milk fat & milk solid non-fat for cow's milk in various parts of the country has been prescribed As per this minimum percentage of the milk solid upon fat for cow's milk in Rajasthan is 3 5 and 8 5 respectively. Any person who sells milk which is not of this quality contravenes the provisions of the Act and there by he commits an offence. If the solids other than fat or fats are less than the prescribed minimum, the sample of the milk would be taken to be adulterated within the meaning of Section 2(1)(i) of the Act, regardless of the fact that the total percentage of solids other than fat and fats equal or exceed the total percentage of the two ingredients put together When the standard of quality or purity has been prescribed under a statute for an article of food, it is not within the scope and province of the court of law to question the reasonable ness or correctness of the standard so prescribed. The Act has not made a distinction between the cases on the basis of the degree of adulteration. The offence is punishable whether the adulteration is greater or small.

8. It appears that the learned Government Advocate appearing before the Single Bench in Paras Ram v. The State of Rajasthan (supra) did not care to submit to the court the following important cases, State v. Badri (supra) which is a Division Bench case. Chamoalal v. State of Rajasthan 1976 RLW 514, a Full Bench decision of the Kerala High Court reported in State of Kerala v. Vasudevan Nair (supra) and Municipal Committee, Amritsar v. Hazare Singh (supra). In view of the authoritative pronouncement made by their Lordships of the Supreme Court in Municipal Committee, Amritsar v. Hazare Singh (supra) the decision of the Single Bench of this Court in Parasram v. The State of Rajasthan (supra) cannot be said

to be a good law.

9. The not result of the above discussion it that the appeal filed by the State Government is accepted and the order of acquittal passed by the learned Sessions Judge is set aside.

10. We have heard learned Counsel for the parties on the print of sentence. In our opinion a sentence of three months, simple imprisonment will meet the ends justice.

11. Having regard to fact that the respondent is a rustic villager Who could not, perhaps, due to poverty arrange appearance of a lawyer of his own choice before us and to the fact that the adulteration has not been shown to be by any noxious - substance and that the harm done has not been'of any magnitude the respondent deserves clemency by the State Government.

12. With.these observation, the appeal stands allowed as indicated above The accused-respondent is not before us. The Chief Judicial Magistrate, Tonk shall issue warrant of arrest against him after the expiry of two months from today in case the State Government does not grant clemency so that the accused-respondent may save out the sentence awarded to him by this Court.

13. A copy of this judgment may be delivered to the learned Addl. Government Advocate who will forward it to proper authorities for such action as they may deem proper on the basis of the recommendation made by us.

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