

Madan Mohan Demma Mal Ltd. and anr. Vs. the State and anr.

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Court : Kolkata

Decided On : Jul-02-1957

Reported in : 1958CriLJ574

Judge : Guha Ray, J.

Appellant : Madan Mohan Demma Mal Ltd. and anr.

Respondent : The State and anr.

Judgement :

Guha Ray, J.

1. The appellants Messrs. Madan Mohan Demma Mal Ltd. and O.P. Manglik, the Manager of Madan Mohan Demma Mal Ltd. were convicted under Section 462 read with Section 537 of the Calcutta Municipal Act for storing for sale adulterated mustard oil in Tank Wagon No. 75612 and sentenced each to a fine of Rs. 1000/-.

2. The facts, as far as they are beyond dispute, are briefly that under an arrangement between the Enforcement Branch of the Calcutta Police on the one hand and the U. P. Oil Millers' Association on the other the. Honorary Secretary of the U. P. Oil Millers' Association informed the Deputy Commissioner of the Enforcement Branch on 3-1-1955 by Ex. S. of the arrival of Tank; Wagon No. 75612 containing mustard oil belonging to Messrs. Madan Mohan Demma Mal Ltd. who are both the consignor and the consignee at Pathuriaghat Siding. Kalidas

Ganguli, defence witness no. 9, a Sub-Inspector of the Enforcement Branch together with another Sub-Inspector went to the Corporation office with this letter and similar other letters and there they met the Food Inspector Dr. Bagui, p. w, 1 and then these three went to the Pathuriaghat Railway Siding where they met O.P. Manglik, the Manager of the Firm. Dr. Bagui disclosed Ws identity to him, and told him that he would take samples of the mustard oil from the tank when the appellant Manglik told him that the price was 8 annas for 12 OK. Dr. Bagui then showed him three dry phallus of 4 Oz. each with three corks and got on to the roof of the tank wagon with a peon of his and a representative of the firm, Manglik standing by the side of the wagon. The representative of the firm unlocked the lid of the wagon. The phials were attached to new strings & lowered into the tank & filled with oil. This oil was used for washing the phials and poured into a container which was then handed over to Manglik. The phials were again lowered into the tank and a fresh sample of oil was taken in each of these three phials. After they were taken out they were corked with the oil inside and the exterior of the phials was wiped with a new towel. Then Dr. Bagui got down with the rest and wrote all the four foils of this sample book. The three phials were sealed and labelled with; the last three foils, the first remaininsr in the samole book. The phial labelled with the 4th foil which is meant for the owner of the oil was made over to Mr. Manglik who signed the foil. Ex. 1, in token of the sale of the sample and of his receipt of one phial of the sample., rye of the phials was sent by Dr. Bagui to the Public , Analyst through his peon with a been book on, the very day. namely, the 3rd January 1955 and the other phial was krot with Dr. Bagui himself for future reference. On a preliminary analysis on to 3rd January 1955 the Public Analyst. P.W, 2, could not give any opinion, but on the 4th on a detailed analysis he found that the B.R. Index at 40.C was 60.4 and that the turbidity point on Baular's test fop ground-nut oil was positive at 28.C and he accordingly held the sample to be adulterated with ground-nut oil. The sample was given the P.I. No. 227 in the first foil which was retained on the sample book, on the second loll which was affixed to the sample kept with the Pood Inspector himself for future reference and also on the third foil affixed to the sample sent to the Public Analyst for analysis. In the Laboratory of the public Analyst its registration number was 8731. The results of the final analysis were communicated to Dr. Bagui on the 4th January 1955 and on

the same day the entire stock of mustard oil in the tank weighing 499 maunds and 20 seers was seized, sealed and left in the custody of the appellants (Exs. 4-4(1)). Then on the appellants' bond and the bond of a third parrot the Health Officer of the Corporation of Calcutta allowed the appellants to remove the oil to their godown at Plot 56/1, Strand Bank Road where the receptacles containing the oil and also the lock of the godown were sealed with the corporation seal. Then a complaint was filed in court to the effect that the appellants stored for sale adulterated mustard oil.

3. The defence was a plea of not guilty, first, because according to the defence there was no storing for sale when the sample was seized and secondly, because according to the defence the oil was not adulterated.

4. Before the trial began there was first a prayer on behalf of the defence for a fresh sample being taken. To this the Corporation objected. This prayer was rejected. Secondly, at the instance of the defence the sample left with Dr. Bagui for future reference was sent to the Director of Health Services, Government of West Bengal (Vide Order dated the 29th April 1955). The sample was analysed by court witness no. 1 on the 11th May 1955 and the report signed by defence witness no. 2 Dr. S.K. Chatterjee is Ex. G. According to it the saponification value of the sample was 175.5 and its iodine value was 106.8 and the turbidity point was 27C which indicated the presence of ground-nut oil. There was also either insoluble bromide precipitate indicating the presence of a small amount of linseed oil. On behalf of the defence a prayer was made for examination of one Om Prakash, the Oil Expert to the U.P. Government on commission at Kanpur and this was turned down by the learned Magistrate. The appellants thereafter appeared to have sent on their own initiative the sample made over to them to Om Prakash for examination and his report, Ex. P. is to the effect that the sample is free from adulteration.

5. The learned Magistrate rejected the opinion expressed in Ex. P and held on the strength of the opinion of the Public Analyst, witness no. 2 for the prosecution and of court-witness no 1 Dulal Chandra De who examined the sample sent to the Director of Public Health Services. Govprnment of West Bengal, that it was

adulterated with ground-nut oil and convicted the appellants

6. Mr. Basu on behalf of the appellants raised the following points, first, that the sample was not taken according to law: secondly, that it was not a fair sample; thirdly, that what was analysed by Hness was not the sample for prosecution Asit Ranjan Sen was identical with the sample taken by Dr. Bagui from the oil in tank wagon no. 75612 on the 3rd January 1955; fourthly, that the presumption of the oil having been stored for sale has been rebutted; fifthly, that the oil is not adulterated and sixthly, that there was no mens rea on the part of the appellants.

7. On the first point Mr. Basu referred to Section 479(4) of the Calcutta Municipal Act and argued that it is clear from its terms that a sample is to be taken in one lot & then this one lot is to be divided into three equal parts, but what the Food Inspector in this case appears to have done was to take the sample in three phials of 4 Oz. each instead of taking 12 Oz. from the tank and then dividing it into three parts of 4 Oz. each. The section undoubtedly speaks of the sale of a quantity of any food or drug exposed or intended for sale not more than? is reasonably requisite for division and then it speaks of the division of the quantity sold into three equal parts. Literally, therefore, the section provides for the taking of a sample in one lot and for the division of that one lot into three equal parts.

According to Mr. Basu the Food Inspector contravened this provision when instead of taking the sample in one lot he did so in three equal parts. That the Food Inspector dipped after having washed the three phials with oil from the tank each of the three phials once into the tank and thereby filled each with oil from the tank are facts beyond dispute. What, however, he did amounted to an omission of one step in the process of taking the sample and its division, the division taking place simultaneously with the taking of the sample. As this makes no difference whatever to the quality of the oil taken from the same receptacle, what the Food Inspector did cannot but be held to be a substantial compliance with the requirements of Section 479(4).

8. On the second point Mr. Basu's contention is two-fold, namely, first, that the samples were not marked in the presence of the accused and as a matter of fact the foil attached to the sample made over to the accused did not contain any

column for the identification mark put on the other foils including the one written in the sample book and the P.I. No. entered on the other foils was not noted on the foil attached to the sample made over to the accused; secondly, the sample analysed by the Public Analyst. P.W. 2 and the sample analysed by the Director of Health Services, though supposed to be different part of one and the same sample yielded on analysis different results which would bring into doubt the fact of the two samples having been taken from the same recentacle and there by the fact that the sample analysed by the Public Analyst, witness no. 2 for the prosecution, was. the same as had been taken by the Food Inspector on the 3rd January 1955 from tank wagon no. 75612.

9. It is true that the part of the foil to be attached to the sample which is meant to be made over to the storer for sale does not contain any column as to the rest of the foils where the serial number of the sample is to be put and naturally this number was not put on that foil. The storer therefore, is left in ignorance as to the identifying mark put on the sample. Mr. Banerjee appearing for the Corporation of Calcutta seeks to explain this by saying that the storer deliberately left in ignorance about this identifying mark in order that he might not, even if he chose, approach the Public Analyst and try to influence his findings. This seems to me to be a very reasonable explanation of the fact that on the 4th foil there is no column at all for the serial number of the sample, where the P.I. number entered in the corresponding column of the other foils could be entered. That still is so, would be quite clear from the differences in the four foils. In each of the first three foils there is a column for the serial number of the sample while in the 4th foil which is to be affixed to the bottle containing the part of the sample to be left with the seller instead of the serial number there is a column in which the nature and the brand, if any, of the stuff have to be entered. There is a column for the place of collection in the first, second and the fourth foils, this being absent from the third which is to be attached to the bottle to be sent to the public Analyst for analysis. This is left out from the 3rd foil evidently because if the place of collection is noted on the 3rd foil that is likely to give the Analyst a chance of tracing the sample for analysis to a particular place of collection and through the place to the seller so as to make it possible for the seller to approach him. There are three columns for the date and the time of collection in all the foils but while on the 1st, 2nd and the 4th there are

columns for the names of the proprietor and the seller, from the 3rd this is absent and in the 3rd there is a column for the date of despatch to the Laboratory.

There is a column in the 1st and the 3rd for the nature of the place of business from which the sample is seized and the amount of trade license fee paid if the seller is a retailer and there is a column for the price paid in the 1st, 2nd and the 4th.

It is clear, therefore, that the particulars to be entered in each of the foils have been so devised as to reduce to a minimum the chances of the Public Analyst being accessible to the proprietor or to the seller concerned. While from the date and time of collection, the names of the proprietor and the seller and the price paid there could be no doubt whatever as to the identity of the sample left with the seller with what is retained with the Food Inspector and what is retained with the Food Inspector is capable of being identified with what is sent to the Public Analyst from the F.I. number.

All these particulars appear also on the first foil which is retained in the sample book and on which the signature of the seller was taken. In the circumstances it is impossible to entertain any doubt as to the identity of the sample analysed by the Public Analyst with the sample left with the appellant Manglik and with the one kept with the Food Inspector and ultimately sent to the Director of Public Health Services for analysis.

10. The third and the fifth points, namely, that the presumption arising under Section 462(4) that the oil in question was stored for sale has been rebutted and that the appellants had not the requisite mens rea may conveniently be taken up together, for by the requisite mens rea Mr. Basu, as he made it perfectly clear, did not mean anything more than an intention on the part of the appellants to offer the oil stored for sale and that intention really forms an ingredient of the offence with which the appellants were charged. The facts upon which these contentions are based are that there was an arrangement between the U.P. Oil Millers Association on the one hand of which the firm, appellant no. 1, was one of the members and the Enforcement Branch of the Calcutta police on the other that immediately on arrival of a tank wagon containing oil the U. P. Oil Millers

Association would inform the Enforcement Branch and the Enforcement Branch in its turn will inform the Calcutta Corporation in order that a sample could be taken without delay, the U. P. Oil Millers Association undertaking not to offer the oil for sale till the oil was analysed and found to be pure. This question was considered by me in an unreported judgment in Ghasiram Lachminarayan Co v. Corporation of Calcutta, Cri. Appeal No. 178 of 1956 (Cal) (A), in which the Deputy Commissioner of the Enforcement Branch was examined before me.

In this case the evidence about the arrangement in question consists of the statements of defence witnesses Nos. 5 and 6, Narendra Nath Sen and Ganeshi Lai Gupta, Clerk and Secretary respectively of the U. P. Oil Millers Association and Ext. P series, it is admitted by P.W. 6 that the resolutions of the conference held on the 9th June, 1954 were not signed by Mr. Mukherjee, the Deputy Commissioner of the Enforcement Branch who attended it, nor was a copy of the proceedings sent to him. How far, therefore, Ext. P correctly represents the trend of the discussions in the conference it is difficult to say. Even if it be assumed that it does, it by no means discloses on the part of the U. P. Oil Millers Association a clear intention to abstain from offering the stuff for sale till it was established on analysis to be pure.

On the other hand, it is clearly stated that when the Deputy Commissioner suggested that the quantity of oil imported should first be passed and then it should be taken delivery of, the members said they always and invariably import pure mustard oil and for this they were enjoying a special position in the market. The ultimate acceptance of the suggestion of the Deputy commissioner, therefore by the U. P. Oil Millers' Association must be judged against this preconception of its constituents. In vain have I looked into the evidence of D. Ws 5 and 6 and numerous documentary exhibits filed on behalf of the defence for a clear expression of an intention on the part of the U. P. Oil Millers' Association to refrain from selling the oil if it was found on analysis to be adulterated.

In the absence of any such clear intention the understanding between the Enforcement Branch and the U. P. Oil Millers Association, in whatever light the Enforcement Branch might have taken it, could not possibly have meant for the U.

P. Oil Millers Association anything more than their willingness to allow the Enforcement Branch in co-operation of the Calcutta Corporation to take samples from the consignments immediately after they reached Calcutta, it being left delightfully vague as to what the members of the association would do in the event of an unfavourable report from the Public Analyst.

In this context I am not forgetful of the fact that the U. P. Oil Millers' Association also accepted the suggestion of the Deputy Commissioner of the Enforcement Branch that every application for drawing a sample should be accompanied by a certificate from the Chemist of the Factory where the oil is being prepared about this oil being pure and directions to that effect were Issued by the. Association to its members (Exts. Q2 and Q). But the acceptance of this proposal shows nothing more than the anxiety of the Association to co-operate with the Enforcement Branch up to the point when samples were to be drawn and not beyond it. It was argued by Mr. Basu that the facts that there was this arrangement between the U. P. Oil Millers Association and the Enforcement Branch, that in pursuance thereof a sample was taken on the 3rd January, 1955^f that the oil was seized and sealed on the 4th January, 1955 and that even after it was removed to the godown of the firm with the permission of the Health Officer of the Corporation the containers and the lock of the godown were sealed with the Corporation seal would go to show that there was no sale and that there was no intention on the part of the appellants to sell the same.

That there was no sale apart from the compulsory sale for taking a sample on 3rd January 1955 is clear, but it is far from clear that there was no intention on the part of the appellants to offer the stuff for sale. Admittedly, the consignment had been taken delivery of though the oil was still in the tank wagon at the railway siding and appellant No. 2 who sold the sample to Dr. Bagui, witness No. 1 for the prosecution, was in possession of the tank wagon. It is also true that apart from the compulsory sale of the sample under Section 479 (2), there was not and could not be any sale at the siding itself and if there was an intention on the part of the appellants to offer the oil for sale, they had obviously the intention of offering it for sale after the oil had been removed from the tank wagon and not while it was still stored in the tank wagon.

But 'storing for sale' does not necessarily mean that the sale and the storage must be at the same place in order to bring the storer within the mischief of the section and it will be enough, in my opinion, for the prosecution to prove that the storage was with the Intention of ultimate sale, whether at the place of storage or not. Otherwise, it would be the easiest of things for a storer to contravene the section with impunity by merely storing the oil at a place other than the place of sale. As admittedly appellant No. 1 was both a manufacturer and a dealer of mustard oil and as admittedly appellant No. 2, Manager of the Firm was in possession of the consignment while it was still at the railway siding, there is a presumption under 8. 462 (4) that the oil was stored for sale and as this presumption has not, in my opinion, been rebutted by the materials on the record, it must be held that the oil was stored for sale.

11. The 4th and the most important point raised in the appeal is whether the oil was adulterated. Ex. 3 is the report of analysis of the sample by the Public Analyst, P.W. 2 According to it the B. R. reading at 40°C was 60.4 and the turbidity point on Bellier's test for ground nut oil was 28°C and the tests for some other kinds of oil including linseed oil were negative. Though this report is dated the 24th January, 1955, the evidence of the Public Analyst, P.W. 2, is that on the 4th January, 1955 he stated in reply to the Food Inspector's question if the sample was adulterated that it was adulterated and this opinion he formed after holding all the tests and between the 5th January, 1955 and the 24th January, 1955 he did not do any test.

In other words, therefore, he completed the analysis on the 4th January, 1955, but did not fill up the form, Ex 3, till the 24th January, 1955. He denies the suggestion that he could not make up his mind till the 24th January, and this denial is confirmed by the fact that though he could not on preliminary tests on the 3rd January 1955 form any opinion, he gave a decided opinion on the 4th January, 1955 that it was adulterated. The non-production of the loose sheets in which the results of the experiments held were mentioned has been commented upon on behalf of the appellants, but it is the evidence of the Public Analyst, P.W. 2, that after the final results had been arrived at these were entered in the Register of Analysis and the loose sheets which were necessary only for arriving at the final results were destroyed. There is no reason why this evidence should be

disbelieved. It must accordingly be held that the Public Analyst completed his analysis on the 4th January, 1955 and Ex. 3 correctly represents the results he arrived at.

12. The question now arises whether on the data which his analysis yielded the conclusion arrived at by him is correct). It has been attacked on the ground that the B. R reading and the turbidity temperature on Bellier's test do not furnish sufficient data for the conclusion arrived at and must be supplemented by the saponification value and the iodine value and in support of this contention reliance has been placed on my-un-reported judgment in Model Electric Mills v Corporation of Calcutta, Cri Appeal No 283 of 1955 (Cap (B). That was a case in which also the Public Analyst concerned applied the B. R. reading test and the Bellier's test and the B. B. reading of each sample was 58 at 40'C. and the turbidity point of one sample was 26.e'C. and of the other sample 23.6'C.

There the Analyst based his conclusion on the authority of Boyd Stewart according to whom the B, B. reading of rape oil ranges from 58.8 to 59.2 and the turbidity point of rape oil which according to the prosecution in that case was identical with mustard oil was 22.5'C. In that case the point in controversy between the parties was whether or not rape oil and mustard oil were identical in quality and it was found from the authorities placed before me in that case that though rape oil and mustard oil are derived from seeds belonging to the same botanical family, they were not identical in quality and therefore the basic assumption of the Public Analyst was not correct. On that basis it was found in that case that the data did not justify the conclusion.

In this case the Public Analyst does not openly take the stand that rape oil and mustard oil are the same, but as I shall have occasion to point out, the basic assumption behind his opinion is the same as in the case of Model Electric Mills (B). Yet, the data which the analysis of the samples by the Public Analyst, P.W. 2, and the Director of Health Services yielded in the present case are very different from those available in that case and there is also a larger volume of relevant evidence in this case than in that. It would not, therefore, be right and proper for me to take into consideration anything that I may have said in that case, 'for every

case has to be tried on its own facts and the evidence adduced in it.

13. The Public Analyst has stated in his cross-examination that pure mustard oil produced turbidity on Bellier's test at 22.5°C and he cites Woodman's Food Analysis in support of this. At page 207 of Woodman's Food Analysis, however, 22.5°C appears to be the turbidity temperature of rape oil and not of mustard oil at all. Though, therefore, the Public Analyst clearly says that 23.5°C is the turbidity temperature of pure mustard oil, the authority he cites shows that to be turbidity temperature of pure rape oil. There is thus at work here the same assumption, though unprofessed and disguised, of the identity of rape oil and mustard oil which lay behind the opinion of the Public Analyst in the Model Electric Mills' case (B). That this assumption was there in the mind of the Public Analyst in this case also becomes clear beyond doubt from his negative answer to the defence suggestion that rape oil and mustard oil are two different kinds of oil with different values.

Thus, as far as this Public Analyst is concerned, there is no room for doubt that the judgment in Model Electric Mills case was completely lost upon him either because it was never brought to his notice or because of some other reason. Mr. Banerjee, however, on behalf of the Corporation sought to argue from the materials on record that the Corporation in this case did not take its stand on the identity between the two oils though authorities had been discovered since the judgment in the Model Electric Mills case to support the view that the turbidity temperature of the two oils on Bellier's qualitative test is the same. Unfortunately, however, Mr. Banerjee did not cite before me any such authority as alleged to have been since discovered.

14. It is, therefore, to be considered in the first Place what really is the turbidity temperature of mustard oil on the application of the Bellier's qualitative test first, according to the rest of the evidence on the record, and secondly, on the authorities cited. On the side of the prosecution only two witnesses were examined, namely, the Food Inspector Dr. Bagui and the Public Analyst, Asit Ranjan Sen, On behalf of the defence, however, there were as many as nine witnesses examined and the Chemist who actually analysed the sample sent to the Director of public Health Services was examined as a Court witness. As I have

already dealt with the evidence of the Public Analyst on the question of the turbidity point of pure mustard oil, it only remains to consider whether any light was thrown on of by the defence evidence and the evidence of the Court witnesses.

15. Before, however, I proceed to consider the evidence it is necessary to dispose of one contention put forward on behalf of the appellants against the admissibility of the evidence of the Court-witnesses and the Deputy Director of Health Services and the report of analysis, Ext. G submitted by the Director of Health Services. The proviso to 8 480 (2) of the Calcutta Municipal Act empowers the Court to cause either of its own motion or at the instance Of either of the parties any article of food or drug to be sent for analysis to the Director of Health Services, West Bengal or any other officer whom the State Government may appoint in this behalf who shall thereupon analyse the same and report the result Of such analysis to the said Court and the said .report shall be admissible in evidence in such Court.

The contention of Mr. Basu is that as the article according to the terms of this section has to be analysed by the Director himself and as he did not himself do it, there was no compliance with the provision of the section and hence the report and evidence of the Deputy Director and of the Court witnesses are inadmissible. By Notification No. 174TFH dated the 25th June; 1927 published in the Calcutta Gazette of 1929 which still holds good the Director of Public Health was appointed to be the officer to whom articles of food may be sent by Courts under the corresponding section of the earlier Calcutta Municipal Act. The notification, therefore, does not add anything to the section.

It is undoubtedly true that as S, 480 (2) of the Calcutta Municipal Act stands, it means that the Director of Health Services or any other officer whom the State Government may appoint for that purpose must carry out that analysis personally and if that be so, only the report of -the Director or any other officer appointed for the purpose when he himself carries out the analysis would be admissible in evidence. So far Mr. Basu appears to be on pretty firm ground, but then it will not do for him to forget that the Deputy Director of Health Services is one of the witnesses for the defence and Ext, G is a piece of evidence which the defence itself brought on the record. Mr. Basu's answer to this of course is that it does not

matter that he called the Deputy Director of Health Services and proved Ext. G, if the evidence is legally inadmissible. The question then, is whether it is really inadmissible. Section 480 (2) is merely an enabling section which in no way takes away the ordinary powers of the Courts and if the requirements of Section 480(2) are satisfied, the report of analysis would be admissible in evidence even without the examination of the officer concerned whose report it purports to be. But there is S, 45 of the Evidence Act under which the opinion of an expert on any point of science is always admissible and the Deputy Director of Health Services and the Chemist Dulal Chandra De who was examined as Court witnesses are experts and Ext, G which is the record of their opinion on the scientific point involved would be admissible when the persons concerned were themselves examined as witnesses. The contention, therefore, of Mr. Basu on this point, ingenious as it certainly is, cannot be held to be tenable.

16. I may in this connection point out that this evidence would be admissible in the same manner as the report, Ext. S(2) and the evidence of Dr. S. N, Mitra, D.W. 7 are and neither party has questioned in any way the admissibility of Ext. S(2) or of the opinion of Dr S. N. Mitra, D.W. 7. Dr. Mahendra Gupta, D.W. I, who is the Manager cum Chemist of the appellant Firm seeks to negative the view that the turbidity point of the sample at 28'C is conclusive proof of its adulteration with ground nut oil. His evidence does not inspire confidence, not merely because he is the appellant firm's employee and as such is bound to look to its interest, but also because he instructed the lawyers for the defence throughout and was even allowed to cross-examine the second witness for the prosecution on the last date.

A witness who could identify himself to such an extent with the appellant firm, it is impossible to rely on. Defence witness No 2 is Dr. S. K. Chatterjee Duputy Director of Health Services in whose presence and under whose supervision Dulal Chandra De, the Chemist analysed the sample. The report of the analysis, Ext. G is signed by Dr. Chatterjee. He says that the turbidity temperature for pure mustered oil should be below 23.5'C and if it is 24'C it raises some doubt and if it crosses 24'C he would suspect the presence of ground nut oil and if it reaches 27'C he concludes the presence of ground nut oil. This witness though called by the defence was allowed to be cross-examined by the defence and in cross-

examination on behalf of the defence he admits that he is not a laboratory man and during the analysis of the sample in the laboratory he was not in the laboratory.

Dulal Chandra De, the Court witness who is the Chemist of course says that the Deputy Director was present in the laboratory on the three days when the sample was being examined. This, however, can hardly be accepted in the face of Dr. Chatterjee's own admission. Then, Dr. Chatterjee says that he could not cite any authority for the view that the turbidity temperature for pure mustard oil was below 23.5°C. It is, therefore, pretty obvious that Dr. Chatterjee is not much of an expert in this line and little reliance can safely be placed on what he stated in his examination-in-chief. D.W. 3, Mahendra Nath Goswami who obtained his doctorate on hydrogenation and de-hydrogenation and claims to have done research work in oil Chemistry, oil analysis etc. cannot, apart from having contributed a general article on detection of adulteration in edible substances in a West Bengal Police Journal, recall if he ever contributed any article on the adulteration of edible oils or on the detection of ground nut oil in mustard oil in any scientific journal.

He says that in his experiments and opinion the turbidity temperature of pure mustard oil ranges from 20° to 27.5°C on Bellier's test, but he cannot cite any authority for the view that it goes up to 27.5°C. He adds, however, that he found this in S. K. Das Gupta's Journal of Science and Culture and Dr. Kane's Oil and Oil Seeds Journal. That this gentleman also is far from dependable appears clear from the fact that he is in the habit of visiting Municipal Magistrate's Courts. His explanation of course of this habit is that he wanted to observe the shrewdness and intelligence of the lawyers.

It is obvious that if the object of these visits to the Court was only to observe the shrewdness and intelligence of the lawyers, he could not possibly have selected Municipal Magistrate's Courts where are tried only particular types of cases that do not call for any special feats of shrewdness and intelligence on the part of the lawyers. That this evidently false explanation should have been offered by him for his visits to the Municipal Magistrate's Courts inclines me to a rather uncharitable

view as to his real objects in visiting these Courts. In any event, a witness who claims to have contributed many articles, but cannot recall if he contributed any article on edible oils in any scientific journal nor even the name of the edible oil on which he contributed an article in the West Bengal Police Journal and who visits the Municipal Magistrate's Courts but gives an evidently false explanation of such visits can hardly be depended upon.

17. The only other witness examined by the defence is Dr. S. N. Mitra, D, w 7, who is the Public Analyst of Food and Water, Public Health Laboratory of the Government of West Bengal. He was called as a witness by the defence because the sample which the defence witness No. 9 K. D. Ganguly, Sub-Inspector of the Enforcement Branch took from tank wagon No. 75612 on the 3rd January 1955 was sent to him for analysis by the Deputy Commissioner of the Enforcement Branch and he found its saponification value to be 173.3 and iodine value to be 105.0 and was of the opinion that it approximated to the standard of genuine mustard oil.

18. There is hardly any reason why Dr. S. N. Mitra should be disbelieved, there being nothing in his evidence to suggest that he was trying to smile or frown upon any party while in the witness box. I have no hesitation therefore in accepting his opinion on the sample sent to him for examination by the Enforcement Branch. If, therefore the sample he examined could be reasonably identified with the sample which the defence witness took from tank wagon No. 75612 on the 3rd January 1955 in the presence of Dr. Bagui, the question at least of the benefit of a reasonable doubt in favour of the appellants could have arisen, but on the evidence on the record it is impossible to say that what was sent to the Public Health Laboratory was really the sample that had been taken by defence witness No. 9 on the 3rd January 1955 from tank wagon No. 75612.

Sub-Inspector Kalidas Ganguli, defence witness No. 9 who took the sample says towards the end of his deposition that before the Corporation seal was affixed to the sample taken by him, he handed over a memorandum (slip) to the peons of the Food Inspector and that that memo, (slip) is affixed to the sample as made over to the Sub-Inspector Sunil Kumar Dutta. It is worthy of note that his statement

is not that the slip was actually attached to the sample, but that it is affixed to the sample. In other words, as the evidence stands it can mean only this that the memo, (slip) is normally affixed to the sample S. I. Sunil Kumar Dutta is D. W. 4. His evidence is that S. I. G. C Basu and S. I. Kalidas Ganguly accompanied the Food Inspector of the Corporation of Calcutta on the 3rd January 1955 to help him in drawing samples from tank wagons including tank wagon No, 75612 and other officers on their return handed over to him four samples one of which related to tank wagon No. 75612.

This sample, namely, one relating to the tank wagon No. 75612 was sent to the Public Analyst, Food and Water, Government of West Bengal under the direction of the Deputy Commissioner, Enforcement Branch. Curiously enough, he does not say anything at all to indicate how the sample taken from tank wagon No. 75612 was distinguished from the other three samples which he received from S. I. Kalidas Ganguly and S. I. G. O. Basu on the 3rd January 1955. The Corporation seals must have been affixed to all the four and unless there is some evidence to indicate that the sample from that particular wagon had a distinctive identifying mark, it is hardly possible to say that what was sent by S. I. Sunil Dutta to the Public Analyst, Food, and Water, Government of West Bengal was in reality the sample taken by S. I. Kalidas Ganguly from tank wagon No. 75612.

Dr. S. N. Mitra does not mention any identifying mark of the sample either in his report or in his evidence. Ext. Z (10), the letter with which the sample in question is alleged to have been sent to the Public Health Laboratory, Food and Water, Government of West Bengal is still more remarkable. It does not speak of any particular sample taken from any particular tank wagon at all. It speaks of samples having been taken by the Food Inspector of the Calcutta Corporation in co-operation with the officers of the Enforcement Branch in the course of a general drive against adulterated food and drugs in the city from the Burra Bazar area and although it mentions that the following items were seized, there is no list at all of any item in the letter nor is even the date when the samples were seized mentioned.

Then, the letter goes on to say that the Enforcement Police who took part in the raid, also took samples of food products, and the letter finally concludes with the request for examination of the sample of mustard oil marked S. D, (1). Clearly then, Ext. Z (10), remarkable for its omission to give any particulars about the samples sent for analysis indicates that in all probability what was sent with this letter was not the sample taken by S. J. Kalldas Ganguly on the 3rd January 1955 from tank wagon No. 75612. Then, there is a categorical statement of Dr. S. N. Mitra that the sample he examined is different from the mustard oil, the report of analysis of a sample of which is Ext. G.

In this connection, I must point out once again that the Enforcement Branch in this matter played a role which, well intentioned as it might have been, was thoroughly ineffective partly because the necessary precautions which must be taken to see that different samples from different wagons on the same or different dates do not get mixed up do not appear to have been taken. In these circumstances, the conclusion becomes inescapable that what was sent to the Public Analyst, Food and Water, Public Health Laboratory on the 10th January 1955 could not possibly have been the sample taken by Kalidas Ganguly from tank wagon No. 75612 on the 3rd January 1955 though S. I. Sunil Dutta would have one believe that that was the sample sent. The favourable opinion, therefore of Dr. S. N. Mitra about the sample analysed by him does not really help the appellants in this case.

19. Dr. S. N. Mitra does not appear to have been questioned as to the turbidity temperature of pure mustard oil on Bellier's collective test. What he does say is that it will not be correct to say that Bellier's turbidity temperature is useless in detecting ground nut oil in mustard oil and he agrees with the conclusion reached by the Deputy Director of Health Services, Government of West Bengal from the data furnished in his report, Ext G. This portion of his evidence is clearly against the defence and Mr. Basu on behalf of the appellant tried to neutralise this by referring to his own article on detection of ground nut oil in mustard oil at pages 158-159 of Current Science, June 1951.

What Dr. S. N. Mitra said in this article as I shall have occasion to show later on, does not really clash with this part of his evidence. It will suffice here to say that if

the defence wanted to contradict this part of Dr. S. N. Mitra's evidence with what he stated in' the article in Question, the defence should have in all fairness to him put that question to him so as to enable him to explain the conflict between the two, if any and as this was not done, it is hardly a legitimate use of the article to try to discount Dr. S. N. Mitra's evidence in the light of certain observations of his in that article.

20. Finally, there is the evidence of the Court witness Dulal Chandra De who analysed the sample sent to the Director of Health Services. After proving Ext, G which is really his report though signed by Dr. Chatterjee, he goes on to say that the Bellier's qualitative or turbidity temperature test is a specific test for detection of ground nut oil in mustard oil and he reaffirms the correctness of his conclusions on the data embodied in Ext, G. He further states that he cannot say that mustard oil is pure if in the sample of mustard oil the turbidity temperature is between 27. and 28.C and the B. E. reading at 40.C is 60.4 and the sample in question is adulterated with ground nut and some other oil or oils. According to him the B. B. reading in the sample analysed by him did not correspond to the iodine value which is expected to be 108, but as he found it to be lower, he expected double adulteration, as for example, ground nut oil and either linseed or niger seed oil.

He then applied Bellier's test as modified by Evers and hexa bromide test and found it to be adulterated with ground nut oil and a small quantity of linseed oil. He denies the suggestion that Evers' Modification makes it compulsory to apply the quantitative test. He finally says that turbidity is not the only criterion that arachis or ground nut oil is present because the temperature is the real determining factor and that sa-ponification value, iodine value tests and B. B. reading are necessary for confirming opinion on the question of adulteration.

21. Questioned as regards the difference in reports, Ext. 3 and Ext. G, though both could be claimed to be reports of analysis of the same oil he says:

If the same oil is analysed at different places by different chemists, then values may not be exactly the same, as for example, in the case of capon flatiron value one may be added or one may be subtracted and in the case of iodine value the same will happen and this will be due to the personal factor and if the difference in

any one value be of 4 per cent, the samples cannot be of the same stuff.

22. Thus, as far as the evidence of the court-witness goes, it supports the opinion of the Public Analyst, witness No, 2 for the prosecution and on the data supplied in Ext G Dr. S. N. Mitra, D. W. 7 also agrees with the opinion that the sample was adulterated. Much has been made of the fact that though Ext, 3 said that the test for linseed oil was negative, the Public Analyst, P. W 2 in his evidence says that there was a negligible quantity, It is obvious that P.W. 2 was in this matter trying to improve on his report, Ext. 3, in the light of the findings in Ext. G which was available long before he deposed. Evidently then, P.W. 2 failed to detect linseed oil in the sample examined by him while the court witness did detect it in the sample examined by him.

The evidence of the court witness must be preferred in this matter to that of witness No. 2 for the prosecution, first, because his report, Ext. G, which, as pointed out already, is really the report of the court witness, is much more detailed than Ext. 3 which is the report of witness No. 2 for the prosecution, and secondly, because witness No, 2 for the prosecution himself in his evidence accepts the finding embodied in Ext, G as to the presence of linseed oil. In any event, if the conflict between Ext. 3 and Ext, G gives rise to any doubt at all, it is a doubt as to the presence of linseed oil in the samples examined by P.W. 2 and the court witness and as to nothing else.

As to the difference of I'C in the turbidity temperature between Ext. 3 and Ext. G none of the witnesses appears to have been specifically questioned and Dulal Chandra De's evidence goes to suggest that a certain allowance must be made even in this matter for personal factors. Then, there is the fact that Ext. 3 is the report of analysis made on the 4th December 1955, that is, only one day after the sample had been taken while Ext. G is the report of analysis made on the 11th May 1955, that is, more than four months after the sample had been taken.

The first analysis was in the cold weather shortly after the sample was taken and the second analysis in a summer month more than four months after the sample had been taken. How far these are likely to account for the difference of 1.0 is a question which should have been put to the witnesses, but it was not. The turbidity

temperature, therefore, must be taken to have been 27.C as stated in Ext. G because that is more favourable to the defence than 28.O, the turbidity temperature in Ext, 3, but even on that basis and on the supine friction and iodine value the opinion of the court witness and also of Dr. S. N. Mitra is that the sample was adulterated.

23. On behalf of the defence the report of an analysis by Om Prakash, Oil Expert to the U. P. Government was marked Ext. P. This is supposed to relate to the sample left, with Manglik. The defence prayed for the examination of Om Prakash on commission, but that prayer was turned down by the Magistrate on the ground that sufficient grounds for his examination on commission were not made out and it was open to the defence to examine him in court if they liked (Vide Order dated 4-8-55). Om Prakash was not ultimately examined. Ext. F, therefore, cannot in the absence of the Analyst from the witness box be admitted in evidence and on that ground alone it should be left out of consideration.

24. The only thing that now remains to be considered is whether on the scientific authorities cited before me the opinion of the Public Analyst, P.W. 2, and of the court witness Dulal Chandra De supported by the opinion of Dr. S. N. Mitra that the sample was adulterated can be held to be correct. As to the turbidity temperature on Bellier's test the authorities cited are (1) Woodrhan's Food Analysis, Pages 206-207, (2) K, A. William's Oil, Pats and Fatty Foods, pages 135-136, (3) Fryer and Weston's Technical Handbook of Oils, Fats and Waxes, page 140. None of these authorities deal with the question of arachidic or ground nut oil in mustard oil by Bellier's method. Woodman deals with the question of detection of ground nut oil in other oils by this method.

K. A. Williams gives turbidity temperature of pure rape seed oil but not of mustard oil. There is also nothing in Fryer and Weston also on the adulteration of mustard oil by ground nut oil. A certain number of other authorities was also cited but I could find nothing relevant therein. Apart from these there are two articles, one by Dr. S. N Mitra already referred to and the other by Mr S. K. Das Gupta at pages 73 and 74 of Science and Culture, August 1950. Both of these articles have a definite bearing on the question at issue. In the first Dr. S. N. Mitra begins by saying that

though Bellier's test as modified by Evers is adaptable for routine work for detection of ground nut oil in mustard oil, this test when it is applied in its entirety fails to yield concordant results with mustard and ground nut oils and he suggests a further modification of that test.

By that modified test he finds the turbidity temperature of ground nut oil to be 40' to 41'C and of mustard oil to be 21' to 23'0 and says that for mustard oil adulterated with ground nut oil the turbidity temperature goes over to 24'C depending on the extent of adulteration. The presence of ground nut oil, he says, increases the saponification value and lowers both the iodine value and the refractive index. Finally, he says that it may be presumed that for mustard oil a turbidity temperature of over 24'C associated with a high saponification value, a low iodine number and a low refractive index gives sufficient indication of the presence of ground nut oil. The conclusion arrived at in Ext. G with which Dr. S. N, Mitra agrees has now to be examined in the light of what he lays down in the concluding passage of the article.

25. Ext. G puts the saponification value and the iodine value of the sample at 175.5 and 106.8 respectively. It does not give the refractive index. The third factor therefore, spoken of by Dr. S. N. Mitra for confirmation of the results of the Bellier's qualitative test is not available in this case but the saponification value or the iodine value the two other factors are available. The following table gives the ranges of saponification and iodine values of pure mustard oil and pure ground nut oil according to Woodman at Page 199.

Saponification	Iodine value	Mustard oil	171-176	94-113(average 173.5)
(average 103.5)	Ground nut oil	186-194	85-100(average 190)	(average 92.5)

The saponification value, therefore, of the sample was higher than the average saponification value of pure mustard oil and .5 less than the maximum of the range. The iodine value is not lower but higher than the average taut comparatively much lower than the maximum of the range. These two factors coupled with the turbidity temperature being 27'C thus justify the view of Dr. S. N. Mitra that on the data given in Ext, G his conclusion is correct.

26. The article of S. D. Das Gupta at pages 73 and 74 of Science and Culture, August 1950 would put the turbidity temperature of mustard oil from yellow and red seeds at 20.0 and that of black seeds at 25.0. Then, he goes on to say that experiments carried out in his laboratory go to show that the Bellier's process cannot be used for the estimation of arachis oil is not the same thing as the detection of its presence. He then refers to the figures obtained by Narainair which was 27.5 for black varieties and 24.5 for yellow varieties and he tries to explain the difference by saying that the difference is probably due to the fact that the oil used in this experiment had been obtained by expression whereas in Narainair's case it was obtained by extraction. I have not before me Narainair's article and I am not, therefore, in a position to say if there is anything in it to suggest that the oil used in his experiment had been obtained by extraction.

In any event, it is a pure piece or conjecture on the part of Mr. Das Gupta and the opinion he expressed in his article is only about the inadequacy of Bellier's test for the estimation of arachis oil in mustard oil and not for its detection. The importance of Mr. Das Gupta's article seems to me to lie only in the fact that he found the turbidity temperature of pure mustard oil to be 25.C when the oil is derived from black seed, but in the sample the turbidity temperature was 27.C. That together with saponification value and iodine value as given in Ext. G can leave no room for doubt that the sample 'is adulterated with ground nut oil as stated by the Public Analyst, P.W. 2, the court witness and Dr. S. N. Mitra, D. W. 7.

27. The conviction, therefore, of the appellants must be confirmed. Ordinarily, offences of this nature because of the harmful effect of adulterated food: on hundreds of consumers call for exemplary punishment and any reduction in the sentence which the Calcutta Municipal Act provides and which in the circumstances now prevailing is far from adequate cannot normally be justified, but here is a case where the storage for sale to the railway siding was in the first place for a short while only and in the second, for the purpose of enabling the Enforcement Branch and the Corporation to draw samples for analysis.

There is also the fact that but for materials which the defence somewhat indiscreetly placed before the Court, the result of the appeal might quite

conceivably have been different. In these circumstances, I am inclined to think that the ends of justice will be sufficiently met if the sentences of fine are reduced to a half. The fine imposed on each appellant accordingly is reduced to Rs 500/- only. The balance of the fines, if realised, should be refunded. Subject to this reduction in the sentences, the appeal is dismissed.

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