Dineshchandra Jamnadas Gandhi

Vs

State of Gujarat and Another

Criminal Appeal No. 26 of 1989

(Rangath Misra, M. N. Vankatachaliah JJ)

17.01.1989

JUDGMENT

VENKATACHALIAH, J. –

1. By this petition for grant of special leave under Article 136 of the constitution, coming after notice to the State of Gujarat, the applicant seeks leave to appeal to this Court from the judgment of the High Court of Gujarat in Criminal Appeal No. 1097 of 1980 restoring the conviction and sentence passed by the Chief Judicial Magistrate, Valsad, against the petitioner in criminal case No. 48 of 1979 for an offense under the Prevention of Food Adulteration Act, 1954 ('Act' for short)

2. Special leave is granted and the appeal is taken up for final hearing heard and disposed of by this judgment.

3. Appellant was charged before the Chief Judicial Magistrate, Valsad, by the Food Inspector, Navsari Municipality, with the offense of selling "kesari coloured sweet supari sali" alleged to have been adulterated with "Yellow basic coal-tar dye". The learned Magistrate found the appellant guilty of the offense and imposed a sentence of an year's simple imprisonment and a fine of Rs. 2000, both of which were the statutorily compulsory minimum sentences under Section 16(1)(A)(i) of the Act.

4. Leaned Sessions Judge, Valsad, by his Judgment, dated March 14; 1980, in criminal Appeal No. 32 of 1979 preferred by the appellant, however, set aside the conviction and sentence and acquitted the appellant of the charge.

5. On further appeal by the State against the said acquittal, the High Court of Gujarat allowed the state's appeal and, in reversal of the judgment of acquittal of the learned Sessions Judge, restored the conviction and sentence passed by the learned Chief Judicial Magistrate.

6. Appellant is a tradesman carrying on business within the limits if Navsari Municipality. On December 7, 1978, respondent 2, the Food Inspector of Navsari Municipality, purchased from the appellant 600 gms. of "kesari coloured sweet supari sali" and after complying with the procedural formalities packed and sealed the "supari" into three separate packages of 200 gms. each and one of them was sent to the Public Analyst who by his report dated December 20, 1978 (Ex. 12) affirmed that the sample contained a "yellow basic coal-tar dye" and that it did not conform to the standard laid down under the Rules. On January 19, 1979, the Food Inspector with the prior sanction of the District Health Officer, Valsad, (Ex. 14), filed a complaint in the Court of the Chief Judicial Magistrate, Valsad. The prosecution culminated, as aforesaid, in the conviction and sentence imposed by the learned Chief Judicial Magistrate, and later restored by the High Court. Appellant

now seeks to assail the legality of the conviction.

7. We have heard Sri V. B. Ganatra, learned counsel for the appellant and Sri Girish Chandra and Sri M. V. Goswami, learned counsel for respondents 1 and 2, respectively. Though a number of grounds are taken in the memorandum of the petition for special leave, however, at the hearing Sri Ganatra confined his submission only to one aspect of the matter which, if accepted as correct, would go to the root of the case for the prosecution. Apparently, this contention in the form in which it is presented here was not placed before the High Court as we find no reference to it in the judgment.

8. Appellant's learned counsel contended that "supari" or "betel nut" is basically and essentially an yield of the Area Palm and must, therefore, be held to fall under "fruit products" within the meaning of Rule 29(f) of the prevention of Food Adulteration Rules, 1955, ('Rules' for short) and, accordingly, the use of permitted coal-tar food colours in it is not prohibited by law. It was further urged that the Public Analyst had not held that the "Yellow basic coal-tar dye", found in the sample, was not one of those food colours prohibited under Rule 28 and that, therefore, its use in "supari" which was a "fruit product" cannot be said to be prohibited. Alternatively, Sri Ganatra contended that the "supari" in this case was a "flavoring agent" within the meaning of Rule 29(m) in which case also the use of permitted coal-tar food colours, was not prohibited.

9. On the contentions urged at the hearing, the points that fall for consideration are, first whether the "supari" concerned in this case was a "fruit product" or, alternatively, a "flavouring agent" within the meaning of Rule 29(f) or (m) respectively and, accordingly, the use in it of permitted coaltar dyes or food colours was not prohibited and, secondly, whether, even if, after an elaborate enquiry, it was held that "supari" was not a "food product" appellant having acted bona fide on a possible and not an unreasonable view of the nature and classification of the goods, was, at all events, entitled to the benefit of the doubt.

10. It was not disputed that supari was an article of food. It was so held in Pyarali K. Tejani v. M. R. Dange ((1974) 1 SCC 167 : 1974 SCC (Cri) 87 : (1974) 2 SCR 154). It was also not disputed that if "supari" did not admit itself of being classified under "fruit products" or under "flavouring agents" under Rule 29(f) or 29(m) respectively, the, the use in "supari" of even a coal-tar food colours permitted under Rule 28 would amount to adulteration.

11. The argument that "supari" or "betel nut" is a "flavorting agent" has clearly no substance. The first contention, therefore, narrows itself down to whether "supari" in the form in which it was offered for sale though vegetative in origin and is derived from the usufruct of areca palm, can be said to be a "fruit product" in the sense in which that expression is used and is required to be understood in Rule 29(f).

12. To appreciate Sri Ganatra's contention, the scheme of the relevant rules, in particular Rules 23, 28 and 29, requires notice. Rule 23 prohibits the addition of any colouring matter to any article of food except as specifically permitted by the rules. Rule 28 provides that no coal-tar food colour or a mixture thereof, except the food colours specifically enumerated in Rule 28, shall be used in food. Item 2 of the list of food colours permitted under Rule 28 includes 'Sun-Set Yellow FCF'. We shall proceed on the premise that the basic yellow coal-tar dye found in the "supari" by the Public Analyst is amongst those enumerated food colours excepted from the prohibition under Rule 28 and is, therefore, permitted to be used. Then, Rule 29 prohibits the use of even the coal-tar food colours permitted under Rule 28 in or upon any food other than those enumerated in rule 29. "Fruit products" is one such item of food so enumerated under clause (f) of Rule 29. The result is that

permitted coal-tar food colours, i.e. food colours permitted by Rule 28, can be used if the food articles in question are 'fruit products' as understood in Rule 29 (f). But this exception from prohibition, in favour of "fruit products" is further subject to such exceptions or restrictions as are otherwise made in Appendix 'B'. Sri Ganatra's contention is that there having been no provision otherwise made in Appendix 'B' in respect of supari being includible in "fruit products", the use in it of permitted coal-tar food colours is prohibited. Sri Ganatra submits that the legislation being penal the expression "fruit products" in Rule 29(f) should receive a reasonably liberal construction and that, so construed, "supari" would reasonably admit of being considered such a "fruit product".

13. We have had our attention drawn by Sri Ganatra to certain passages in Common Trees of India by Dr. Santatau (at page 111); in wealth of India : Raw Materials Vol. I-A (pages 390, 402-03) and certain passages in the Dravya Guna Vignyan (parts II and III at page 672) in support of Sri Ganatra's contention that "supari" or "betel nut" being the usufruct of "areca" tree must be held to be a "fruit products". Sri Ganatra says that having regard to the accepted canons of construction appropriate to penal statutes, "supari" or "betel nut" which was derived from the usufruct of areca palm admits of being classified amongst "fruit products" in Rule 29(f). At all events, says learned counsel, such a construction being a plausible one, the appellant who had conducted his affairs on such a plausible meaning of the statute should be entitled to the benefit of the doubt.

14. In Encyclopedia Britannica (Vol. 3, p. 551) with the reference to "betel nut" it is mentioned :

> The name betel is applied to two different plants which in the cast are very closely associated in the purposes to which they are applied. The betel nut is the fruit of the areca or betel palm (areca catechu) ....
>
> For chewing, the fruit are annually gathered between the months of August and November, before they are quite ripe, and deprived of their husks. They are prepared by boiling in water, cutting up into slices and drying in the sun, by which treatment the slices assume a dark brown or black colour ....
>
> .... Betel nuts are used as a source of inferior catechu (g.v.); its chief alkaloid is arecoline, to which anthelmintic properties are attributed. The drug finds some use in veterinary medicine as an anthelmintic.

There is no dispute that "supari" is derived from and prepared out of the usufruct of the areca palm. But the question is as to what is the context of the idea of "fruit products" in Rule 29(f).

15. The argument, no doubt, is somewhat attractively presented; but we are afraid, it is more attractive than sound. The fact that a particular article of food, as indeed most of the articles of food of vegetative origin are, was if plant origin did not render that article necessarily a "fruit product". Even products derived from, or associated in their origin with fruits need not ipso facto be "fruit products" for purposes and within the meaning of Rule 29(f). What was envisaged as "fruit product". In Rule 29(f), will be indicated by the array of items dealt with in Appendix 'B' under item 16 - "fruit products" - though the list was in the nature of an exception to Rule 29(f). Under the relevant head in Appendix 'B' items referred are : "Fruit Juice"; "Tomato Juice"; "Fruit Syrup"; "'Fruit Squash', Fruit Beverage' or 'Fruit Drinks'"; "Tomato Sauce"; "Tomato Ketchup"; "Tomato Relish", "Marmalade", "Fruit Chatni", "sauce" etc.

16. The object and the purpose of the Act are to eliminate the danger to human life from the sale of

unwholesome articles of food. The legislation is on the topic 'Adulteration of Food stuffs and other Goods' [entry 18 List III Seventh schedule]. It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defence. It is intended to suppress a social and economic mischief - an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well being of the community. The evil of adulteration of food and its effect on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence. In Municipal Corporation of Delhi v. Kacheroo Mal ((1976) 1 SCC 412 : 1976 SCC (Cri) 30 : (1976) 2 SCR 1, 4) Sarkaria, J. said : (SCC p. 415, para 5)

The act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure the sale of wholesome food to the people. It is well settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its objects, prevent its subtle evasion and foil its artful circumvention.

17. The construction appropriate to a social defence legislation is, therefore, one which would suppress the mischief aimed at by the legislation and advance the remedy.

18. The offences under the 'Act' are really acts prohibited by the police powers of the state in the interest of public health and well-being. The prohibition is backed by the sanction of a penalty. The offences are strict statutory offences. Intention or mental state is irrelevant. In Goodfellow v. Johnson ((1965) 1 All ER 941, 944) referring to the nature of offences under the Food and Drugs Act, 1955, it was said :

> As is well known, Section 2 of the Food and Drugs Act, 1955, constitutes an absolute offence. If a person sells to the prejudice of the purchaser any food, and that includes drink, which is not of the nature or not of the substance or not of the quality demanded by the purchaser he shall be quality of an offence. The forbidden act is the selling to the prejudice of the purchaser ....

19. Smedleys Ltd. v. Breed ((1974) 2 All ER 21) is a case, both interesting and illustrative. Smedleys Ltd. Were manufacturers of canned peas of repute. Out of the three and a half million tins of peas the company produced in the year 1971, only 4 complaint were received about the presence of extraneous matter in the tins. One of them had been purchased by a certain Mrs. Voss from a well known stores. On opening the tin, Mrs. Voss found a small larva of a moth in the tin. The commendable civil zeal of Mrs. Voss who reported the larva infestation of the peas to the local authority had the effect of arraigning Smedleys Ltd. before court on charge of violation of the Food and Drugs Act. 1955. Section 3(3) of the Act enabled a defence which the company raised that the extraneous matter was "an unavoidable consequence of the process of collection or preparation". The company, is would appear from the facts appearing in the report, had installed an elaborate system of spot checking of the peas by mechanical screening process before canning which eliminated extraneous matter of significantly higher or lower specific gravity than that of the peas. This process was also strengthened and supplemented by visual inspections by properly trained and experienced employees who worked for short periods to enable sustained concentration along the conveyer belt carrying the peas to the canning site. To the strange ill-luck and embarrassment of Smedleys the larva which had a specific gravity and size similar to that of the peas beat the screening machine and also managed, by virtue of its colour and shape, to escape the surveillance of the alert visual inspectors, who, it is said, were also paid a bonus if they detected and extracted any extraneous matter. The peas, incidentally, would be pressure-cooked for 20 minutes ant 250 degree

F which, would render the larva harmless to human health even if consumed. The company contended that the existence of the lava was despite every possible precaution and was "an unavoidable consequence of the process of collection and preparation" within the meaning of Section 3(3) of the Act. The defence did not succeed. Smedleys as well as the seller were convicted. The House of Lords confirmed the conviction. Lord Hailsham said :

> This innocent insect, thus deprived of its natural destiny, was in fact entirely harmless, since, prior to its entry into the tin, it had been subjected to a cooking process of 20 minutes duration at 250 degree F, and, had she cared to so, Mrs. Voss could have consumed the caterpillar without injury to herself, and even perhaps, with benefit .... [p. 24]

Thereafter, the caterpillar achieved a sort of posthumous apotheosis. From local authority to the Dorchester magistrates, from the Dorchester magistrates to a Divisional Court presided over by the Lord Chief Justice of England, from the Lord Chief Justice to the House of Lords, the immolated insect has at length plodded its methodical way to the highest tribunal in the land. It now falls to me to deliver my opinion on its case. [p. 24]

20. Referring to the nature of the penalties under laws against food adulteration, Lord Chancellor said :

> My Lords, as has been pointed out by my noble and learned friend, Lord Diplock, the expression 'absolute offence' is imprecise' ... Clearly the offence contemplated in Section 2(1) of the Food and Drugs Act, 1955 is and absolute offence if all that is meant by that is an absence of mens rea. It is one of those offences described by Wright, J. in Sherras v. de Rutzen ((1895) 1 QB 918, 922 : (1895-99) All ER Rep 1167, 1169) which 'are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty'. [p. 26]

21. Confirming the conviction, Lord Chancellor held :

> .... sympathise as one may with a manufacturer with a reputation and record as excellent as that of the appellants, to construe the Food and Drugs Act, 1955 in a sense less strict than that which I have adopted would make a serious inroad on the legislation for consumer protection which Parliament has adopted and by successive Acts extended, over a period, now, of more than a century. [p. 29]

22. In Pyarali K. Tejani v. Mahadeo Ramchandra Dange ((1974) 1 SCC 167 : 1974 SCC (Cri) 87 : (1974) 2 SCR 154) this Court held that what constitutes the offence under the 'Act' is nothing more than the 'actus reus' and mens rea need not separately be established.

23. In Criminal Law by J. C. Smith & Brian Hogan, (5th edn.), referring to offences in their social context the authors say :

> The courts are greatly influenced in their construction of the statute by the degree of social danger which they believe to be involved in the offence in question. They take judicial notice of the problems with which more likely is the offence to be interpreted as one of strict liability. Inflation, drugs, road accidents and pollution are constantly brought to our attention as pressing evils; and in each case the judges have at times invoked strict liability as a protection for society. [p. 92]

24. We now come to the specific question whether "supari" is includible under "fruit products" under Rule 29(f). Sri Girish Chandra says that in arriving at the meaning of "fruit products", it is not the technical or scientific sense, but the sense as understood in common parlance that matters. That sense is one, Sri Girish Chandra says, which people conversant with the subject matter with which the statute is dealing would attribute to it. The words must be understood, says counsel, in their popular sense, in their common commercial understanding, "for the legislature does not suppose our merchant to be naturalist or botanists".

25. The standard of the test for ascertaining the meaning of words in common parlance or set by the Canadian case in planters Nut and Chocolate Co. Ltd. v. King ((1952) 1 WLR 385) :

> Would a householder when asked to bring home fruits or vegetables for the evening meal bring home salted peanuts, cashewnuts or nuts of any sort ? The answer is obviously 'No'.

This test has been referred to with approval by this Court. [See : Ramavatar Budhaiprasad v. Assistant STO (12 STC 286 : AIR 1961 SC 1325). Sri Girish Chandra says that in the context of the Indian householder we may, with justification, add betel nut to the list of salted peanuts, cashewnuts etc.

26. The distinction between literal and legal meaning of statutory language lies at the heart of the problem of interpretation of statutes. The court is not entitled to decline to determine the legal meaning of a statute on the principle 'non-liquet'. In the present case, a wider construction of "fruit products" in clause (f) which is in the nature of exception to Rule 29 results automatically in a corresponding narrower construction of the substantive provision in Rule 29. This is not a case of relieving provision excepting from the definition of an offence where the rule of construction against doubtful penalisation operates. The offence is really a violation of a prohibition imposed on a penalty as a social defence mechanism in a socio-economic legislation. No form of words have ever yet been framed, with regard to which some ingenious counsel could not suggest a difficulty. But in the context of the present statute, it would be a strain on the statutory language and the statutory scheme to include "supari" in the form in which it was sold, within "fruit products" as understood in clause (f) of Rule 29. The first contention has, accordingly, no substance.

27. The second contention is that petitioner had acted bona fide on a particular understanding of Rule 29(f) which could not be said to holly implausible and that, therefore, even if that understanding is found to be defective, he should be entitled to the benefit of the doubt. The question of what a word means in its context within the 'Act' is a question of legal interpretation and, therefore, one of law. The choice of the proper rule of construction to be applied to ascertain the meaning is again a matter of law. To countenance the contention of Sri Ganatra would be to "contradict one of the fundamental postulates of a legal order that rules of law enforce objective meanings to be ascertained by the courts" and to "substitute the opinion of the person charged with the breach of the law for the law itself". Otherwise, the consequence would be that whenever a defendant in a criminal case" thought that the law was thus and so, he is to be treated as though the law was thus and so, that is, the law actually is thus and so". [See Criminal Law, Smith & hogan, p. 70]. Justice Holmes in United States v. Wurzbach ((1930) 280 US 396, 399) said :

> Wherever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the

> criminal law to make him take the risk.

28. Referring to the principles that guide the matter, learned authors in Criminal Law (Smith & Hogan) say :

> .... for, in the great majority of cases, it is irrelevant whether he knows it or not. It must usually be proved that D intended to cause, or was reckless whether he caused, the event or state of affairs which, as a matter of fact, is forbidden by law; but it is quite immaterial to his conviction (though it may affect his punishment) whether he knew that the event or state of affairs was forbidden by law ... [p. 68]

It was held that a Frenchman might be guilty of murder in the course of duelling in England, even if he did not know that duelling was against English law .... [p. 68]

29. The plea in the last analysis reduces itself to one of ignorance of the law. This would be no justification. Ten thousand difficulties, it is said, do not make a doubt. As the learned authors (supra) put it : he law, sells goods at a price in "One who, being ignorant of the law, sells goods at a price in excess of the maximum fixed by the statute, could hardly be said to have been led astray by his conscience while the 'harm prescribed' lacks objective wrongness".

30. The statute we are concerned with prescribes a strict liability, without need to establish mens rea. The actus reus is itself the offence. There might be cases where some mental element might be a part of the actus reus itself. This is not one of those cases where anything more than the mere doing of the prescribed act requires to be proved. There is thus no merit in the second point either.

31. The appeal would, therefore, require to fail. The sentence, which is the statutory minimum, cannot also be lightened by the court. But there is one poignant aspect on which learned counsel made an impassioned plea.

32. Sri Ganatra pointed out the hardship of small-time tradesmen who, as here, purchase the goods from big manufacturers and sell them in retail. Very often, the manufacturers or wholesalers are not touched, but the small fry are exposed to prosecution.

33. Indeed in Ganeshmal Jashraj v. Govt. of Gujarat ((1980) 1 SCC 363 : 1980 SCC (Cri) 239 : (1980) 1 SCR 1114) Bhagwati, J. had occasion to say : (SCR pp. 1117-19 : SCC pp. 366-67, para 6)

It is common knowledge that these small tradesmen purchase the food stuff sold by them from the wholesalers and sometimes even directly from the manufacturers and more often than not the adulteration is made either by the wholesalers or by the manufacturers. Ordinarily it is not the small retailers who adulterate the articles of food sold by them. Yet it is only the small retailers who are caught by the food inspectors and the investigative machinery of the food department does not for some curious and inexplicable reason turn its attention to the wholesalers and manufacturers. The small tradesmen who eke out a precarious existence living almost from hand to mouth are sent to jail for selling food stuff which is often enough not adulterated by them and the wholesalers and manufacturers who really adulterate the food stuff and fatten themselves on the misery of others escape the arm of the law .... The result is that a wrong impression is whereas in fact what is really happening is that it is only the small tradesmen who are quite often not themselves responsible for adulteration who caught and sent to jail while there is no effective enforcement of the law against the real adulterators. This is a failing which we notice in the implementation of many of our laws. It is only the smaller flies which get caught in the web of these laws while the bigger ones escape ....

The implementation of the law does create an impression that it is a law meant to be operative only against the smaller men and that the rich and the well-to-do are beyond its reach. Moreover the law operates very harshly against the small tradesmen because a minimum sentence is provided and the small tradesmen are liable to be sent to jail ...

34. Krishna lyer, J. in Inderjeet v. State of U. P. ((1979) 4 SCC 246 : 1979 SCC (Cri) 966 : (1980) 1 SCR 255) said : (SCR p. 257 : SCC p. 248, paras 6 and 7)

We are disturbed that it is possible that small men become the victims of harsh law when there is no executive policy which guides prosecution of offenders ....

.... Even otherwise, there is a general power in the executive to commute sentences and such power can be out into action on a principled basis when small men get caught by the law.

The present case, as Sri Ganatra rightly pointed out, is one where bigger offenders who manufactured the supari and who distributed them to the retailers have gone scot-free. Unfortunately, appellant did not, and perhaps could not, invoke the benevolent provisions of Section 19(2) of the Act. The offence was ten years ago and the appellate court had acquitted the appellant. The expression "fruit products" in the context of what the delegated legislative authority really meant and wanted to convey, was not a model of precision. The degree of precision should be such that not only those who read it in good faith understand but also that those who read it in bad faith do not misunderstand.

35. Indeed this somewhat imperfect definition of "fruit products" in Rule 29(f) has since been amended enumerating precisely the specific products in which the food colours permitted by Rule 28 could be used leaving no room for the possibility of any argument of the kind advanced in this case. This amendment which came into force with effect from November 15, 1984 deleted the expression "fruit products" and in its place specifically enumerated the items under Rules 29(f) in which the use of permitted coal-tar food colours was allowed.

36. It is for these reasons that we think we should hold that this is a fit case in which the appropriate government should exercise its executive powers of remission of the substantive sentence of imprisonment - though not of the fine - under Section 432 CrPC or under other law appropriate to the case. We, therefore, direct that the imposition of the substantive sentence of imprisonment shall be postponed till appellant's prayer for remission, which appellant shall make within a month from now before the appropriate government or authority, is considered and disposed of taking into account the observation made in this judgment.

37. Subject to these circumstances, the appeal is dismissed.

</html