

ANDHRA PRADESH HIGH COURT

Public Prosecutor

Vs.

Pasala Rama Rao

Criminal Appeal No. 140 of 1964. from order of Addl. in C.C. No. 338 of 1963

(Mohammad Mirza, J.)

08.09.1965

JUDGMENT

Mohammad Mirza, J.

1. The State has filed this appeal against an order passed by the Additional District Munsiff Magistrate, Rajahmundry acquitting the respondent from a charge under the Prevention of Food Adulteration Act.

2. The case of the prosecution was that on 16-6-1963 at about 9-50 A.M. when the Food Inspector (P. W. 1) saw the respondent at Gokavaram Bus stand at Rajahmundry opposite to the tea stall, the respondent was found in possession of three brass bindis containing milk and one aluminium vessel containing milk along with one half seer measure. The respondent had placed the brass and aluminium vessels on the ground in front of the tea stall of K. Appalaswamy. P. W. 1 asked the respondent about the contents of the vessels and it is said that the respondent told him that they contained mixture of cow and buffalo milk meant for sale at the rate of Rs. 0.45 nP. per seer. P. W. 1 then asked Appalaswamy who has been examined as P. W. 2 to act as a mediator and two other persons who were at the bus stand. But those persons refused to figure as mediators. Then in the presence of Appalaswamy and another Sanitary Inspector who has been examined as P. W. 3, P. W. 1 purchased 3/4th seer of milk from the accused paying Re. 0.33 nP. and obtained a receipt (Ex. P-1). This receipt was signed by the respondent. Then the Inspector issued a Form VI notice under Ex. P-2 to the accused intimating him that the milk purchased was meant for analysis. The respondent refused to sign on Ex. P-2. But, according to procedure, the milk taken from the respondent under Ex. P-1 was divided into three equal parts and was put into three separate bottles adding 16 drops of formal in to each of the bottles. Then the bottles were corked, sealed and labeled. One of the bottles was given to the respondent, one was sent to the Magistrate and the third was sent to the Public Analyst. It appears that P. W. 1 also seized the vessel from which the sample was taken and he wanted to give a receipt under Ex. P-3 to the

respondent but he refused to acknowledge it. The Public Analyst under his report (Ex. P-5) stated that the sample of milk sent to him contained 32 per cent of added water and, therefore, it was adulterated.

3. The plea of the accused has been that he was standing at a killi shop for the purpose of purchasing cigarettes. The milk or the vessels that were kept at the bus stand did not belong to him. P. W. 1, the Food Inspector, had called him to the spot where the vessels were and asked him about the vessels and their contents. He replied that they did not belong to him. Then P. W. 1 took his signature in Ex. P-1 stating that he need not be afraid because his signature was only meant to be taken as a witness but, when he came to know the purpose of taking his signature, he refused to sign the other documents. He also examined a witness in his defense who stated that four or five brass bindis and one aluminium tapela containing milk were kept at the bus stand. One Bayya Satyam came near the vessels and behind him was P. W. 1. The Food Inspector asked Bayya Satyam to whom the milk in the vessels belonged. At this moment, the respondent was at the killi shop. Bayya Satyam told the Inspector that the milk belonged to P. Rama Rao and asked the Food Inspector to put up a case against him. Thereafter the Inspector took the aluminium vessel containing milk to the killi shop where the respondent was standing and told the respondent that the milk belonged to him. On his refusal, the Food Inspector said something to the respondent and obtained his signature on a paper. The accused then got this read to him and then refused to sign the other papers. The story that has been given out by P. W. 1 was never stated by the respondent in his examination under Section 342, Criminal Procedure Code. Actually, the name of Bayya Satyam has not at all been mentioned, by the respondent. It was surprising that the respondent had so much confidence in the good faith of the Food Inspector that, without any protest, he signed in Ex. P-1. If he was so careful, he could have got the contents of Ex. P-1 read over to him before signing the paper as he did with regard to the other documents. I think the plea of the respondent is not based on truth. D. W. 1 also has come in the witness-box simply with the purpose to help the respondent. I think his evidence is false.

4. But I have to see whether the prosecution has discharged its onus. The learned Magistrate has taken a view that the brass bindis and the aluminium vessels that were kept on the ground at the bus stand did not belong to the respondent. P. W. 2, who had acted as a mediator and had a tea stall in the compound of the bus stand, turned hostile to the prosecution and was cross-examined. He has signed all the three documents, Ex. P-1, Ex. P-2 and Ex. P-3. He has also admitted that the respondent is a hawker of milk and now and then he himself purchases milk from the respondent. Although he has turned hostile but from his evidence it does appear that the respondent is a milk hawker. P. W. 1 and P. W. 3 are the Food Inspectors employed under the Rajahmundry Municipality. The learned Magistrate has treated the evidence of these witnesses as interested.

5. Being concerned with the investigation and prosecution of the offenders under the Prevention of Food Adulteration Act which are their essential duties, are not in my view excluded from the

category of competent witnesses. Their evidence has to be judged like the evidence of any other witness and if it appears that they departed from the path of rectitude in that case there is some ground to suspect their conduct. In the present case, I do not find that anything has been elicited in the cross-examination of P. W. 1 or 3 or there is any material otherwise to hold that they are not witnesses of truth. Only being interested in the prosecution does not entitle their evidence to be overlooked. Applying this test, I think the evidence of P. Ws. 1 and 3 proves that the respondent was the person to whom the bindis and aluminium vessels belonged and he had kept the bindis there solely with the purpose of selling the milk.

6. The other grounds for acquitting the accused given by the learned Magistrate are that the prosecution did not comply with the provisions of Section 10 (3) of the Act and Rules 20 and 22 of the Rules made under the Prevention of Food Adulteration Act. I have observed in a number of cases, which have come to me against the order of this learned Magistrate, that the Rules are only directory in nature. Section 10 (3) says that, when any sample is taken under Clause (a) of Sub-Section (1) or Sub-Section (2), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken. Rule 20 says the proportion of formalin to be mixed with the sample. Rule 29 lays down that the quantity of milk to be sent to the Public Analyst would be 220 Millilitres for purposes of analysis. The intention of these Rules is that a sufficient quantity should be sent to the Public Analyst to facilitate the analysis of the sample sent and formalin has to be added to preserve the original condition of the sample taken. The Public Analyst has not made a grievance that the quantity was insufficient for purposes of analysis; nor has he stated that the quality of the sample sent to him had deteriorated.

7. From the foregoing discussion, it would appear that the prosecution has proved its case that the milk that was kept at the bus stand belonged to the respondent and that it was meant for sale. The learned Magistrate has taken a wholly erroneous and perverse view of the evidence.

8. I, therefore, allow this appeal, set aside the order of acquittal and convict the respondent under Rule 44-B of the Prevention of Food Adulteration Rules, 1955 and Section 2 (1) (a) (1), Section 7 and Section 16 (1) of the Prevention of Food Adulteration Act and sentence him to pay a fine of Rs. 100 (one hundred only) and in default to undergo simple imprisonment for four weeks. Time for payment one month from the date of receipt of the order in the trial Court.
Appeal allowed.