

RAM LAL
v
STATE OF RAJASTHAN

NOVEMBER 1, 2000

[K.T. THOMAS AND R.P. SETHI, JJ.]

Criminal Law:

Prevention of Food Adulteration Act, 1954:

Section 2(v)—Food—Camel's milk—Human consumption—Fitness for—Held: Camel's milk is rich and nutritious—It contains fatty acid and its protein content is the same as in cow's milk—Hence camel's milk is fit for human consumption.

Section 10—food article—Sample—Taking of—Food Inspector—Power of—Held: Food Inspector has no power to take sample if the article is not food article.

Section 16(1)(a)(i)—Camel's milk—Adding water—Held: Is prohibited under R.44—Hence is an offence—Prevention of Food Adulteration Rules, R.44.

Section 16(1) First proviso—Sentence—Minimum sentence—Adequate and special reasons—Existence of—Held: If there are adequate and special reasons minimum sentence may be imposed—Young age of accused can be regarded as a special reason—On facts, minimum sentence of 3 months' imprisonment and fine of Rs. 500 imposed, as against 6 months' imprisonment and fine of Rs. 1000 imposed by the High Court.

Prevention of Food Adulteration Rules:

Rule 5 Part III—Articles of Food—Definition and standard of quality—Camel's milk—Held: The definition does not differentiate between milk of different animals—Hence camel's milk is also covered by the definition.

Item A.11.01.01 Appendix B—Camel's milk—Standard of—Held: No specific standard has been fixed for camel's milk—Standard for buffalo's milk is, therefore, not scientifically relevant for camel's milk—Hence, Central Government may consider fixation of standard for camel's milk.

A *Words and Phrases:*

“Food”—Meaning of—In the context of S.2(v) of the Prevention of Food Adulteration Act, 1954.

B The appellant-accused was prosecuted under the Prevention of Food Adulteration Act, 1954 for selling sub-standard camel’s milk and adding water thereto. The trial court acquitted the appellant on the premise that no standard had been fixed under the Act for such milk. But the High Court held that camel’s milk could not be sold for human consumption; convicted the appellant under Section 16(1) of the Act and sentenced the appellant to rigorous imprisonment for 6 months and to pay a fine of Rs. 1,000. Hence this appeal.

C Disposing of the appeal, the Court

D HELD : 1.1. Milk is defined in Item A.11.01.01 of Appendix B of Rule 5 of Part III of the Prevention of Food Adulteration Rules. But the definition does not differentiate between milk of different animals. Hence, it is clear that camel’s milk also would fall within the amplitude of the said definition. [325-C]

E 1.2. Camel’s milk can be consumed by human beings as a food article, for, if it were not so, the Food Inspector had no power to take a sample therefrom. Section 10 of the Prevention of Food Adulteration Act, 1954 confers power on the Food Inspector to take a sample of “any article of food”. “Food” is defined in Section 2(v) of the Act and an article, which is food does not lose its character as food by the fact that it was also used or sold for other purposes. [325-D-E]

F *Encyclopedia Americana* Vol. 5 p. 163, *G.S. Rathore* : “*Camels and their Management*”. Ch. 17 and “*Paper on agricultural research by ‘CIRAD’ a French Scientific Organisation*”, referred to.

G 2.1. The milk of camel is rich and nutritious. For people who live deep in the deserts, camels are almost the only source of transportation, food, clothing, and shelter. They drink camel’s milk and also make cheese from it. Camel’s milk contains fatty acid and the total protein is of the same order as in cow’s milk. [325-G; 326-A, G]

H 2.2. Even if the people outside the camel rearing regions did not think of using milk of that mammal for human consumption, that is no reason to

de-recognize the practice of the people in those regions consuming milk of camel in the same manner as other classes of edible milk consumed by people elsewhere. In some States in India, particularly in Rajasthan, camel's milk is extensively used as edible article. It is, therefore, not possible to agree with the finding of the High Court that camel milk is not fit for human consumption. [327-F, G] A

3.1. The offence committed by the appellant is not merely that he sold sub-standard camel's milk but he sold the milk by adding water thereto. Rule 44 of the Rules prohibits the sale of "milk which contains any added water." Hence, the offence to be found against the appellant is under Section 16(1)(a)(i) of the Act. [328-F] B

3.2. If there are adequate and special reasons the sentence could be brought down to imprisonment for a term of 3 months and a fine of Rs. 500. This case falls within the ambit of clause (i) of the proviso to Section 16(1). The appellant was only 19 years old when he sold camel's milk to the Food Inspector. There is no doubt that it can be regarded as a special reason. Yet another reason is that the appellant was put to notice by the prosecution in the High Court that the offence committed was that he sold an article, which was not edible. The appellant was not given any opportunity to say anything regarding the sentence. Of course, there was no need for the trial court to do so since that court acquitted the appellant. But when the High Court had chosen to reverse the acquittal and convicted him he should have been heard on the sentence. Therefore, the sentence is reduced to imprisonment for 3 months and a fine of Rs. 500, default in payment of which the appellant will undergo imprisonment for a period of 15 days. [328-H; 329-A-D] C

4. No standard has been specifically fixed for camel's milk in the Rules. However, different standards have been fixed for different classes and designations of milk. Therefore, it is for the prosecution to show how the minimum requirements fixed for buffalo's milk would become scientifically relevant as for camel's milk. This is an area where the attention of the Central Government must be focused for considering whether there should be re-fixation of the components as for the standard in respect of camel's milk. [327-H; 328-E] D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1271 of 1999. E

From the Judgment and Order dated 13.5.99 of the Rajasthan High Court F

A in S.B. CrI. A. No. 248 of 1982.

Doongar Singh and V.J. Francis for the Appellant.

Sushil Kumar Jain and A.P. Dhamija for the Respondent.

B The Judgment of the Court was delivered by

THOMAS, J. Appellant claimed that since the milk he sold was that of a she-camel he cannot be prosecuted and convicted under the provisions of the Prevention of Food Adulteration Act, 1954, (for short 'the Act'). The trial court accepted his claim and acquitted him on the premise that no standard has been fixed under the Act for such milk. But the High Court, after holding that camel's milk could not be sold for human consumption, further held that the milk sold was not shown to be camel's milk at all. Nonetheless, learned single judge of the High Court, on the appeal preferred by the State, convicted the appellant under Section 16(1) of the Act and sentenced him to rigorous imprisonment for 6 months and to pay a fine of Rs. 1,000.

D Shri Doongar Singh, learned counsel for the appellant seemed to be more concerned with that part of the judgment by which the High Court declared that camel's milk cannot be sold for human consumption. Learned counsel expressed the apprehension that the above view of the High Court would affect the people of the State of Rajasthan by and large as many of them habitually consume camel's milk.

E Now it is a 22-year old story as the Food Inspector had purchased milk from the appellant on 9.10.1978. He took sample therewith on the spot. One part of the sample was sent to the Public Analyst for examination. The report of the Public Analyst showed that the sample was examined and found to contain 25% of added water and that the milk fat was 4.1% and the milk solid non-fat was 6.74%. After the prosecution evidence was completed in the trial court appellant offered himself to be examined as a witness. In his evidence he did not dispute the fact that Food Inspector purchased milk from him nor the stand of the Food Inspector that sampling was done in his presence. However, appellant took the stand that it was milk of camel which was edible and that he did not add water to it. His defence was that no standard was fixed for camel's milk and hence he is not liable to be convicted on the strength of the report of the Public Analyst.

H It is an unnecessary exercise to discuss whether the milk sold by the

appellant was camel's milk or any other class of milk. In this case the prosecution did not suggest what class of milk had been sold to the Food Inspector. Hence we have to proceed on the assumption that the milk sold by the appellant was camel's milk. Appellant opted to give defence evidence on the impression that the charge which he was called upon to face was that he sold milk which was not usable for human consumption.

Part III of the Prevention of Food Adulteration Rules (for short 'the Rules') contains "Definitions and Standards of Quality" of various articles of food. Rule 5 which falls within the said Part says that "the standards of quality of various articles of food specified in Appendix B to these Rules are as defined in that appendix". Milk is defined in Item A.11.01.01 of Appendix B as "the normal mammary secretion derived from complete milking of healthy milch animal without either addition thereto or extraction therefrom". But it shall be free from colostrum." The above definition does not differentiate between milk of different animals. Hence it is clear that camel's milk also would fall within the amplitude of the said definition. The question whether the camel milk can be consumed by human beings as a food article need not vex us much, for, the Food Inspector in this case took the sample on the assumption that it was a food article. If it was not a food article, the Food Inspector had no power to take sample therefrom. Section 10 of the Act confers power on the Food Inspector to take sample of "any article of food". "Food" is defined in Section 2(v) as "any article used as food or drink for human consumption, other than drugs and water and includes" (As the items included thereby are not very relevant for the purpose of this case the remaining part of the definition is omitted). We may observe that an article which is food does not lose its character as food by the fact that it was also used or sold for other purposes.

After observing that camel's milk could not have been sold for human consumption learned single judge of the High Court proceeded to consider the evidence in the case to ascertain whether the sample was really that of camel's milk. The evidence tendered by the accused to the effect that the milk sold by him was camel's milk was simply sidelined by the learned single judge, but he did not reach any specific finding as to what class of milk had been sold to the Food Inspector. In our view, there is no room for dissenting from the defence version that it was camel's milk that was sold to the Food Inspector. We would, therefore, proceed on that premise.

In Encyclopaedia Americana (volume 5, page 263) it is mentioned that

A the milk of camel is nutritious. In the World Book Encyclopedia it is said that “millions of people who live in Africa and Asia depend on camels to supply most of their needs..... For people who live deep in the deserts, camels are almost the only source of transportation, food, clothing, and shelter..... They drink camel’s milk and also make cheese from it. The milk is so rich and thick that it forms hard lumps in tea or coffee.”

B

In the book authored by Mr. G.S. Rathore, Former Director Animal Husbandary Department, Government of Rajasthan, which was published by “Indian Council of Agricultural Research” (ICAR is its acronym) under the title “Camels and their Management” the following passage appears in Chapter

C 17:

“Composition of Milk

D

Milk does not occupy the same position in commerce as that of cows and buffaloes chiefly because of its limited availability. Besides, camels are not bred and reared as milch animals. However, camel’s milk is sold in some parts of the world and forms an important article of food for camel-rearers. She-camels are generally milked twice a day. They yield 2.5 to 5 kg a day, and some 15 kg a day. The location yield is reported to vary from 1300 to 3600 kg, depending on the extent of feeding and care. But a low yield is the rule.

E

Like the milk from other milch animals, she-camel’s milk is likely to vary in its gross composition with breed, individual animals, plan of nutrition, season and atmospheric temperature, age, stage of lactation, and the analytical techniques used. Most camel- rearers find the milk of camel sharp and saline in taste and hard to curdle or to prepare ghee from it by the usual methods. Much of the she-camel’s milk is consumed as liquid milk though some of it is used in preparing delicacies.”

F

G

The study made with camel’s milk by various countries reveals that it contains fatty acid and the total protein is of the same order as in cow’s milk. In the same publication it is mentioned that Russian workers have made extensive studies on the vitamin contents of camel’s milk.

H

A French Scientific Organisation called “CIRAD” has been specialising in agricultural research for the tropics and subtropics of the world. Recently the said organisation came out with a paper which is available in internet

(Website: <http://www.cirad.fr/publications/ouvrages/608/opening.html>). The following passage in it under the caption “The camel’s milk commodity systems, how to lay a bet on modernity, and traditional techniques”, can profitably be used for our purpose. A

“Some countries have already taken up the challenge of giving camels full productive animal status, an important factor in animal production economics. In most cases, the move was initiated by farsighted individuals who were ahead of their time and deserve recognition. The dairies set up here and there are an excellent, albeit isolated example, and the *Laitiere de Mauritanie* is a case in point. The private initiatives launched by farmers to sell milk in production zones or urban consumption areas is another striding example of the economic dynamism of these operations who have far too often been overlooked. This is currently the case in many animal production zones such as southern Morocco, more historically in Somalia, and on the ranches of northern areas where camels have been introduced alongside bovines and zebus, to quote just a few examples. In other areas, the move reflected a strong political commitment on the part of those in charge of the agricultural economy and their operational structures. This was the case in central Asia, where the camel’s milk commodity channels have entirely fulfilled the role assigned to them: feeding specific target populations in certain cities (for dietetic or therapeutic dietetic or therapeutic diets in hospitals), but also healthy populations for whom camel’s milk products have a high symbolic value rather than being seen as mere foods. This is still the case in Africa, particularly Mauritania, where the authorities appreciate the manifold and productive role the species can play in providing milk to urban areas”. B C D E

Even if the people outside camel rearing regions did not think of using milk of that mammal for human consumption, that is no reason to derecognise the practice of the people in those regions consuming milk of camel in the same manner as other classes of edible milk are consumed by people elsewhere. F

For all the above reasons we are unable to agree with the finding of the High Court that camel milk is not fit for human consumption. We do recognise the fact that in some States in India, particularly in Rajasthan, camel milk is extensively used as edible article. G

True, no standard has been specifically fixed for camel’s milk in the Rules. However, different standards have been fixed for different classes and H

A designations of milk. In the table provided below the Rules, under Item A.11.01.11 of Appendix-B, only three classes of milk are mentioned i.e. buffalo milk, cow milk and goat or sheep milk. But clause (i) of the Note added to the table states thus:

B “When milk is offered for sale without any distinction of class, the standards prescribed for buffalo milk shall apply.”

C For buffalo milk different standards are fixed as for different States. For the State of Rajasthan the minimum milk fat fixed for buffalo milk is 5% and the milk-solids-non-fat should be 9%. In the present case the Public Analyst found (as pointed out earlier) that the sample of milk contains only 4.1% of milk fat and 6.74% of milk-solids-non-fat. In spite of the Note added to the table provided under the aforesaid items we have difficulty to treat the two constituents of camel’s milk on a par with buffalo milk for more than one reason. In the Encyclopedia Americana (International Edn.) a table is given for “Average Composition of milk from different mammals”. For buffalo milk **D** the fat percentage is 7.73, and non-solids-fat percentage is 9.93 whereas for camel milk the average percentage of fat is 4.15 and solids-non-fat is only 8. Even in the publication made by the ICAR composition of camel’s milk is shown as fat 7.8 per cent and solids-non-fat 9.59 per cent.

E If the above is the study report of even the ICAR, it is for the prosecution to show how the minimum requirements fixed for buffalo milk would become scientifically relevant as for the camel’s milk. This is an area where the attention of the Central Government must be focussed for considering whether there should be re-fixation of the components as for the standard in respect of camel’s milk.

F Be that as it may, the offence committed by the appellant is not merely that he sold sub-standard camel’s milk but he sold the milk by adding water thereto. Rule 44 of the Rules prohibits the sale of “milk which contains any added water.” The Public Analyst who tested the sample in the laboratory has reported that it contained 25% of added water. Hence the offence to be found **G** against appellant is Section 16(1)(a)(I) of the Act.

We, therefore, uphold the conviction of the appellant though for different reasons which we have adverted to above. Now we have to decide the question of sentence.

H A plea was made before us to reduce the sentence to the minimum

permitted under the first proviso to Section 16(1) of the Act. It is not disputed that if there are adequate and special reasons the sentence could be brought down to imprisonment for a term of 3 months and a fine of Rs. 500, as this case falls within the ambit of clause (i) of the Proviso to Section 16(1).

Appellant was only 19 years old when he sold the milk to the Food Inspector. We have no doubt that it can be regarded as a special reason. Yet another reason is that appellant was put to notice by the prosecution in the High Court that the offence committed was that he sold an article which was not edible. We also take into account the fact that the appellant was not given any opportunity to say anything regarding the sentence. Of course, there was no need for the trial court to do so since appellant was acquitted by that court. But when the High Court had chosen to reverse the acquittal and convicted him he should have been heard on the sentence. Now it is too late in the day for us to send the case back to the High Court for that purpose alone. Any further delay in disposing of this matter would cause irreparable damage to him.

For all the above reasons we reduce the sentence to imprisonment for 3 months and a fine of Rs. 500, default in payment of which the appellant will undergo imprisonment for a further period of 15 days.

The appeal is disposed of accordingly.

V.S.S.

Appeal disposed of.