

1924.

*Present : Schneider J.*NAIR v. MATHEW FERNANDO *et al.*458—*P. C. Hatton, 647.**Food—Sale in a state unfit for human consumption—Guilty knowledge—Penal Code, s. 266.*

A person cannot be convicted under section 266 of the Penal Code with having sold food in a state unfit for human consumption, except upon proof that he knew or had reason to believe that the food was unsound.

THE accused were charged and convicted with having sold half a pound of beef suet in a state unfit for food under section 266 of the Penal Code. The first accused, who was the employer of the second accused, was fined Rs. 30, the second being discharged with a warning. The evidence was to the effect that the suet was sold to a customer by the second accused who was the salesman and who had got the suet from one Mohideen a few days previously. The first accused appealed from the conviction, on the ground that he was not affected with knowledge that the suet sold was unsound.

H. J. C. Pereira, K.C. (with him *H. V. Perera*), for accused, appellants.

September 1, 1924. SCHNEIDER J.—

In this case two persons were charged and convicted with having sold "as food half a pound of beef suet in a state unfit for food, knowing or having reason to believe that it was noxious as food," and convicted under section 266 of the Penal Code. The first accused was fined Rs. 30, but the second accused was discharged with a warning. It seems to me that the learned Magistrate was not acting within the law in discharging the second accused whom he had found guilty of an offence. He should have imposed some sentence on him. But his case is not before me on this appeal. This appeal is by the first accused who admits that he is the employer of the second accused. The evidence is that the suet was sold to a customer from a dealer's shop. The second accused was the salesman who actually sold and delivered the suet to the customer. The second accused stated in his evidence that he got the suet from one Mohideen on the 13th and supplied it to the gentleman on the 17th of June. The evidence clearly proves that the suet was unfit for human consumption, as it was in an advanced state of

decomposition with maggots on it. The learned Magistrate appears to have thought that he was justified in convicting the first accused merely because he was the master of the second accused upon the authority of *Ibrahim v. Jamaldeen Bai*.¹ I think he has misunderstood that case. In that case a butcher was charged under section 266 of the Penal Code for exposing for sale beef unfit for food. Two defences were offered to this charge: (1) that the beef was sold not by the appellant, but by his servant; and (2) that the appellant did not know, and had no reason to believe, that the meat was unsound. Following the principle of the decision in *Coppen v. Moore*,² Lascelles A.C.J. held that the first defence was unsustainable, because the master must be regarded as the seller, although not the actual salesman. As regards the second defence, he held that there was no evidence showing that the appellant knew, or had reason to believe, that the meat was unsound. He therefore quashed the conviction. It would appear, therefore, that the very case cited by the Magistrate is in favour of the appellant's contention that he cannot be convicted under section 266 of the Penal Code unless there is proof that he knew, or had reason to believe, that this suet was unsound. The evidence in this case altogether fails to prove any such knowledge, or any ground for such belief on the part of the appellant. On the contrary the evidence of the second accused proves that the first accused, appellant, had nothing to do with the selling of the suet.

I would, therefore, set aside the conviction and acquit the accused.

Set aside.

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SCHEIDER
J.

*Nair v.
Mathew
Fernando*

¹ (1906) 9 N. L. R. 335.

² (1898) 2 Q. B. 306.