

EMILIOS KIRZIS,

Appellant,

v.

THE MEDICAL DEPARTMENT OF FAMAGUSTA,

Respondent.

EMILIOS
KIRZIS
v.
THE MEDICAL
DEPARTMENT
OF FAMAGUSTA

(Criminal Appeal No. 3106).

Sale of Food and Drugs Law, Cap. 261—Charge for selling vinegar containing “artificial vinegar”—Section 4(1) and (2) of the Law and regulation 3 of the Sale of Food and Drugs Regulations—Conviction—Appeal—Issue to be decided was merely whether or not the vinegar sold by the appellant contained “artificial vinegar”—And not whether or not what the appellant sold was “vinegar” as defined in the regulations—Conviction quashed—Appeal allowed.

Criminal Procedure—Appeal—Grounds of appeal should be framed in accordance with the terminology used in the relevant provisions of the Criminal Procedure Law, Cap. 155, particularly sections 137 and 145—Ground of appeal that the conviction “was against the weight of evidence” improperly framed—A proper framing would be that the conviction was “unreasonable or..... cannot be supported having regard to the evidence”.

Allowing the appeal and quashing the conviction the Court :—

Held, (1)—(a). The appellant was charged with selling to A. vinegar which was not of the nature and quality demanded by the said A., in that the said vinegar contained artificial vinegar.

(b) It follows that the case against the appellant was not that he did not sell vinegar but that he sold vinegar containing artificial vinegar something which is prohibited by regulation 3 of the Sale of Food and Drugs Regulations made under the Law (viz. Cap. 261 supra).

(c) The trial Judge appears to have decided the case by examining whether or not what the appellant sold as vinegar was “vinegar” as defined in the regulations ; and he decided against the appellant on this point.

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(2) This was an erroneous approach. On the other hand what clearly emerges from the evidence was not sufficient to establish with the certainty required in criminal proceedings that the vinegar sold by the appellant contained artificial vinegar as charged. For these reasons the conviction must be quashed.

*Appeal allowed. Conviction
quashed.*

Per curiam : One of the grounds of appeal is that the appellant's conviction "is contrary to the weight of evidence". Such a ground is not envisaged by our law which is much the same in this respect as English law. Appellants should always take care to frame their grounds in accordance with the terminology used in the relevant provisions in our law, particularly sections 137 and 145 of the Criminal Procedure Law, Cap. 155. The correct ground would be that the conviction "is unreasonable or cannot be supported having regard to the evidence".

Cases referred to :

Aladesuru and Others v. R. 39 Cr. App. R. 184 (P. C.).

Appeal against conviction and sentence.

Appeal against conviction and sentence by Emilios Kirzis who was convicted on the 9th June, 1969, at the District Court of Famagusta (Criminal Case No. 10740/68) on two counts of the offence of selling vinegar contrary to section 4(1) and (2) of the Food and Drugs Law, Cap. 261 and regulation 3 of the Food and Drugs Regulations and was sentenced by S. Demetriou, D.J., to pay a fine of £5 on both counts and £12.950 mils costs.

Ch. Mylonas, for the appellant.

A. Frangos, Senior Counsel of the Republic, for the respondent.

VASSILIADES, P. : The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J. : In this case the appellant appeals against his conviction by the District Court of Famagusta, in criminal case 10740/68, in respect of two counts charging

him with selling—contrary to section 4 of the Sale of Food and Drugs Law, Cap. 261, and regulation 3 of the Sale of Food and Drugs Regulations—vinegar to the prejudice of a purchaser, Andreas Pavlou, a health inspector, of Famagusta, which was not of the nature and quality demanded, in that the said vinegar contained “artificial vinegar”.

Each of the two counts related to a bottle of vinegar which was bought by the health inspector, on the 18th November, 1968, from the vinegar factory of the appellant in Famagusta, presumably for the purpose of testing the vinegar produced and placed in the market by the appellant.

One of the grounds on which the appellant has based his appeal is that his conviction “is contrary to the weight of evidence”. We should pause here, for a moment, and observe that such a ground is not one envisaged, as such, by our law, which is much the same in this respect as English law.

In this connection useful reference may be made to the case of *Aladesuru and Others v. R.* (39 Cr. App. R. 184) in which the Privy Council stated that the expression “against the weight of evidence” is inaccurate and it cannot properly be substituted for the ground “unreasonable or which cannot be supported having regard to the evidence”; it may be added, however, that the Privy Council went on to say that in a proper case it would not refuse to review the evidence if a *prima facie* case was shown that the verdict appealed from was one at which no reasonable tribunal could have arrived.

In any case, appellants should always take care to frame their grounds of appeal, in criminal appeals, in accordance with the terminology used in the relevant provisions in our law, and particularly sections 137 and 145 of the Criminal Procedure Law (Cap. 155).

In examining the validity of the conviction of the appellant it is important to bear in mind the true nature of the charges filed against him: He was charged with selling to the health inspector vinegar which was not of the nature and quality demanded by him, *in that the said vinegar contained artificial vinegar*.

It follows that the case against the appellant was not that he did not sell “vinegar”—and we must take it that the word “vinegar” was used in the said charges as defined

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in the relevant regulations—but that he sold vinegar containing artificial vinegar ; something which is prohibited by regulation 3 of the afore-mentioned regulations, when read together with item 21, in the Appendix to such regulations, which reads that “ Vinegar shall not contain..... artificial vinegar ”.

The learned trial Judge appears to have decided the case by examining whether or not what the appellant sold as vinegar was “ vinegar ” as defined in the relevant regulations ; and he decided against the appellant on this point.

This was, with respect, an erroneous approach : It clearly emerges from what has already been stated in this judgment that the issue to be determined was, and still is, whether or not the vinegar sold by the appellant—being vinegar in the sense of the law—contained artificial vinegar.

In this connection we have considered all the evidence on record (given by expert and other witnesses) in the light of the arguments advanced by learned counsel on both sides.

The situation that clearly emerges is that the appellant may have used, for the purpose of producing vinegar, wine containing more than the normal percentage of alcohol. It seems that such wine was strengthened wine, as regards its alcoholic content, either by addition of grape alcohol (that is alcohol of the same origin as that already found in the wine) or by the removal from the wine of some of the water it contained ; either method results in increasing the percentage of alcohol in the wine.

This, however, was not sufficient to establish that the vinegar produced by the appellant contained artificial vinegar, *viz.* vinegar produced not by fermentation of wine, but by some other method, such as the dilution of acetic acid extracted from wood ; nor is there any evidence that the alcohol added to the wine was alcohol produced from any material other than grapes.

For these reasons we find that the charges brought against the appellant have not been established with the certainty required in a criminal proceeding and, therefore, this appeal should succeed ; and in the result the conviction of the appellant on the said charges is set aside.

Appeal allowed.