
(1963) 07 MP CK 0009
In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

Nanda Dhanna Teli and Others

RESPONDENT

Date of Decision : 25-07-1963

Acts Referred:

Opium Act, 1878 — Section 9

Citation : (1964) CriLJ 453 : (1963) JLJ 878 : (1963) MPLJ 835

Hon'ble Judges : V.R. Newaskar, J;P.K. Tare, J

Bench : Division Bench

Judgement

V.R. Newaskar, J.

This is an appeal u/s 4r7, Criminal Procedure Code preferred by the State against the order of acquittal recorded by the First Class Magistrate Ratlam in Criminal Case No. 284 of 1959-

In that case three persons Nanda, Narayan and Verda were prosecuted for an offence u/s 9 a of the Opium Act. The- learned Magistrate found that the Arti-ie called Kachhi Afeem weighing four pounds was recovered from the possession of the three accused persons but the prosecution had failed to prove that the article which was thus called "Afeem" in evidence was opium as denned u/s 3 of the Indian Opium Act of 1878. The learned Magistrate in this connection relied upon the decision of Razzaque, J. in Criminal Revn. No. 269 of 1961, Kalian v. Stats of Madhya Pradesh decided on 22-11-1961.

We have just now delivered judgment in State of Madhya Pradesh Vs. Kanhaiyalal Bhuwanilal, , in which a similar view taken by the learned Magistrate on the basis of the afore-said decision was considered? by us and it was held that it is not necessary in all cases for the prosecution to subject the article seized to examination and analysis by a chemist and to produce him as a witness for proving that the same is opium and that the evidence either of a police officer accustomed to see the article and test it by smell and of other persons similarly accustomed could in a particular case be considered as sufficient. On the view

taken by us in that case the decision of the learned Magistrate would be unsustainable if his finding regarding the possession of the article by the accused is taken to be correct. But in this case it is contended by Mr. Javar learned Counsel for the respondents, that the said finding is erroneous and deserves to be set aside and notwithstanding the fact that a different view on the first point is taken the order of acquittal ought not to be interfered with.

In order to appreciate this contention of the learned Counsel it will be necessary to examine the evidence led by the prosecution upon this point.

Principal witnesses in this case are Ramnarain Verma opium surveyor, Panch witnesses Abdul Kayum ana Mohammad Siddique, Preventive Jiledar Manaklal Verma and Sohanlal Tiwari. TnV raid was arranged at the instance of Ram-narain Vernja, who, it is said, had received information through an informer that Verada sold illicit opium. Ramnarain is alleged to have settled the deal for purchasing opium through that informer and arranged for a raid. Ramnarain met Abdul Quayum and Mohammad Siddique on the road. They had been to Pached on their the business. The former used to mend umbrellas while the latter was a bangles-vendor. They were asked by Ramnarain to accompany him as contraband opium was to be seized. When they reached a place near the well known as Hazariwala they waited in concealment in a Maize field. There were besides them, the Station Officer Tiwari and Preventive Jiledar Manaklal Verma who too were seen waiting in concealment in that very field. Ramnarayan had gone forward to the Dagla. It was previously arranged that Ramnarain. at the right moment would flash a torch light when the raiding party, keeping itself concealed in the Maize field, would come out and go to the Dagala where Ramnarain had gone. Accordingly on receiving the signal of torch light the raiding party approached the Dagala. There they found three accused Nanda, Narayan and Varda at the Dagala with a mat lying there upon which was placed opium. A brass vessel was also placed nearby and a lamp was burning closeby. On seeing the raiding party, it is said, Nanda tried to run but when he had hardly gone 5 or 6 paces when he was stopped. Besides these three there was one more person in white dress. But his identity could not be ascertained. Implements for weighment were also placed there. The opium thus found was seized, weighed and Panchanama of seizure and weighment was made. The opium was found to weigh 3 seers. These facts are deposed to by Ramnarain, Manaklal, S. I. P. Sohanlal Tiwari and the Panch witnesses. The principal witness, who had figured as a decoy witness was Ramnarain, who was the opium Girdavar. His evidence was attacked by Mr. Jhavar. It is contended that on his own showing he knew the accused persons as they used to come to secure licences for opium cultivation. If he knew them it is highly probable, it is said, that they too knew him and in that case they could not have opened up negotiations for sale with him through Varda nor could they have brought opium for sale on seeing him. It is further contended that Ramnarain had admitted that although it had been agreed to sell opium at the well of Hazari after 10 P.M. actual opium was not brought till 2 or 2-30 P.M. The reason given by Ramnarain was that they had entertained doubt about the possible advent of

a raiding party then. It is urged that if any of these facts be true namely that the accused knew Ramnarain to be an opium officer or that they had entertained doubt about the raiding party being near about they could neither have any talk about the sale of opium with Ramnarain nor could they have brought the opium on the spot. It is also pointed out that whereas the Panch witnesses suggest the time when the raid was made and the opium was seized at 10 P. M. according to Government officials participating in the raid it took place at 2 p.m. Such a vast difference in time easily be dismissed as a minor discrepancy.

We think that even if Ramnarain might have known them as persons belonging to Pached because they had to come to his office for securing license it does not follow that they knew him as an official connected with opium department. The accused don't say so. It is therefore not improbable that he had a talk for the sale of opium through Varada. As regards the time statement of Tiwari, Earnnaraix Verma and Manaklal Verma are corroborated by the, Panchnama Ex./I which mentions time of making panchanaraa as i P.M. The attention of the Panch witnesses was not drawn to the statement as to the time in Ex. P-I although they wedge signatories to it. Opium was worth Rs. 900/4 and it could not have been procured by the opiuni officials from their own possession. The evidence of Sohanlal Tiwari and the Panch with-nesses clearly indicated that the opium was seized at the Daggale from over a mat where it was lying and the three accused were around, one of them actually trying to escape. At the dead of night it could not have been there unless it was brought by one o, fore agree other of the accused. We would therewith the finding of the trial Court that the opium was brought there for sale to Ramnarain.

Next question is whether all the accused can be said to be in possession of it. As observed by Coldstpm, J. in AIR 1938 Lah 320, Kartara v. Emperjor, there can be a joint criminal possession of an excisable article. Whether in a given case such; joint possession should be inferred or not depends, according to r the learned Judge on the circuinstances of each case and no uniform rule can be laid down that it does or does not. The learned Judge relied upon the decisions in AIR 1933 Lah 148 Emperor v. Diwan Singh and Emperor Vs. Sikhdar, , in this connection. We share the afore-said view. In the present case all the three accused were present at the well at the dead of night. Varada had the initial talk and he was present on the spot. Nanda and Narayan came together with the receptacle containing opium at the dead of night as also with I the implements for regiment. Nanda and Narain tried to run when they saw the raiding party approached. Thus circumstances attending the incident in the course of which the contraband opium weighing two seers was seized justify us to hold that there was joint criminal possession of all the accused. We consequently would endorse the findint of the trial Magistrate on the question of possession.

Ajs we have held that the learned Magistrate erroneously took the view that in the absence of evidence as to chemical analysis an article seized could not be found to be opium the order of acquittal does not deserve to stand.

That order is therefore set aside and the respondents Nanda, Narain and Varada are each found guilty u/s (a) of the Opium Act, and j are sentenced to undergo rigorous imprisonment for six months and fine Rs. 200/- each. In default of payment of fine they shall be liable to undergo further term of imprisonment for one month.