In Re: Rajjah and ors.

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Court : Andhra Pradesh

Decided On : Apr-15-1958

Reported in : 1958CriLJ1294

Judge : Basi Reddi, J.

Appellant : In Re: Rajjah and ors.

Judgement :
ORDER

Basi Reddi, J.

1. The four petitioners were tried and convicted by the 7th Magistrate, City Criminal Court, Hyderabad City, for an offence under Section 9 read with Section 31 of the Hyderabad Abkari Act and each of them was sentenced to three month's rigorous imprisonment and to a fine of Rs. 50/-. On appeal, the convictions and sentences were confirmed by the Sessions Judge, Hyderabad and Secunderabad. Hence, these revisions.

2. The case of the prosecution as deposed to by P. 'W, 1, the Excise Inspector and the Panch witness P.W. 2, is as follows: On 5-9-1955 at about 9 P. M., P.W. 1 received information that illicit liquor was about to be transported in a motor car from Dhaolpet via Bhongir Road to Aliar, P.W. 1, with a police party was lying in wait at Thagi Jail. At about 1 A. M. a motor car was seen coming from the direction of Ghadarghat bridge. When it came near the waiting party, the car was stopped.

The car was being driven by Qadar Khan (A3) and inside the car were seated Rajiah (A. 2), Abdul Sattar (A. 4) Sattar Khan (A. 5) and Ibrahim (A.I), who is dead.

On a search of the car, from inside the car four motor tubes filled with illicit liquor were seized and from the dicky four more tubes full of liquor were recovered. The liquor in all the 8 tubes was measured and it came up to 65 gallons. The car in question belonged to one Veeraiah', who figured as accused 6 at the trial, but he has been acquitted. A 'panchnama' was prepared for the seizure of the contraband and it was attested by P.W. 2 and another. The panchnama is Ex. P-1.

3. The plea of the accused was a bare denial and four witnesses were examined on behalf of the defence. D. Ws. 1 and 2 stated that the accused Rajiah, Qadar Khan and Sattar Khan had come to take tea in D. W. l's hotel in Ghatkesar. They were sitting to a car. The Excise people came and searched their motor car but nothing was recovered. Then the Excise people took the accused to the Excise Office. D. Ws. 3 and 4 deposed that accused Ibrahim (since deceased) and Abdul Sattar were coming at about 1 A. M. on the night of the occurrence from the direction of the Chadarghat Bridge towards the clock-tower in Sultan Bazar and that the two witnesses were coming at that time from Prabhat talkies. A car was coming crossing the road at that; time. Rajiah then told them that while he was having tea at Ghatkesar, the Excise people had arrested him and he asked Ibrahim to inform his family about this. The Excise people saying that Ibrahim and Abdul Sattar were accomplices, took them by force in the motor car.

4. The two Courts below have, on an appreciation of the evidence adduced by the prosecution and the defence, accepted the prosecution case and rejected the defence. I have gone through the evidence of all the witnesses and I agree with the Courts below that the defence witnesses have given false evidence and that the evidence of P.Ws. 1 and 2 is worthy of acceptance.

5. Once this conclusion is reached, there is little difficulty in holding that the prosecution has succeeded in proving that the four petitioners are guilty of an offence under Section 9 read with Section 31 of the Hyderabad Abkari Act. Section 9 provides:

No person shall transport any liquor in excess of the quantity fixed by the Government or by any competent authority without obtaining a licence therefor under Section 15.

Section 31 prescribes the punishment for the contravention of Sections 8, 9, 10, 10-A(1), 11 or 12 of the Act.

6. Another section of the Hyderabad Abkari Act, which may be noticed, is Section 38, which raises a presumption as to the commission of certain offences under the Act. It is in the following terms: Section 38(1):

In prosecutions Under Sections 31, 34 and 34rA, it shall be presumed until the contrary is proved that the accused person has committed an offence punishable under that section in respect of:

a) any liquor or sendhi

X X X X Xfor the possession of which he is unable to account satisfactorily.

7. The Courts below have accepted the evidence of P.Ws. 1 and 2 and have relied on Section 38 in drawing a presumption against the accused. I agree with the Courts below both with regard to then- assessment of the testimony of P.Ws. 1 and 2 as also with regard to the presumption arising under Section 38. The evidence adduced on behalf of the prosecution proves beyond a shadow of doubt that the accused were transporting illicit liquor and that they have not satisfactorily accounted for their possession of the liquor.

8. The learned advocate for the petitioners contended that there is no proof of possession in this case to warrant the invocation of the presumption under Section 38. Possession is a matter of inference to be deduced from all the circumstances of a given ease and the circumstances in which the accused were caught transporting a large quantity of illicit liquor in motor tubes by a motor car at 1 A. M. in the night and the false plea put forward by them, are circumstances from which only one inference is possible, namely, that all the persons found seated in the car at the time the car was stopped and searched, were in possession of the contraband. The learned advocate for the petitioners relied on a decision of

Pandalai J. in Fernando v. Emperor A.I.R. 1931 Mad 490 (2) (A).

That ruling is in no way helpful to the petitioners. The facts of that case were that the two accused therein, husband and wife, had been convicted under Section 20 of the Opium Act for illicit possession of 17 tolas of opium. The evidence against them was that, at a search conducted by the Excise Assistant Inspector, a packet of 17 tolas of opium was recovered from gramophone box placed on a safe in the western room of the accused's house at Tuticorin.

The Courts below had rejected the plea of 'alibi' set up by the husband and had found that both the husband and the wife had been proved to have been in possession of the opium. Pandalai J., after a review of the case-law, held that possession implies both animus or .knowledge and control. Where the facts proved leave it uncertain whether the accused or any one else was the person who had the knowledge and control necessary to constitute possession of the articles seized, the prosecution has failed to prove its case and must fail. The inferences appropriate to facts arising in different cases are not necessarily valuable as guides in other cases.

The learned Judge on the facts of that case, held that, having regard to the fact that the husband was the master of the house and that his plea of 'alibi' was false, he must be held to be the person in control and possession of the contraband. But as against the wife the learned Judge was of the view that the wife could not be held to have been in joint possession of opium along with her husband. The learned Judge, therefore, while confirming the conviction of the husband, set aside the conviction of the wife.

9. It will thus be observed that the proper inference to be drawn depends on the facts and circumstances of each case. I have no hesitation in holding that on the facts and circumstances of the present case, all the petitioners must be held to have been in possession of the illicit liquor. The convictions are correct and the sentences cannot be said to be excessive. This appears to be an instance of large-scale boot-legging and must be stopped in the interests of public revenue. The convictions and sentences are confirmed, and these revision petitions are dismissed.