

T. Subbanna Vs. the State of A.P., Rep. by the Public Prosecutor

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Court : Andhra Pradesh

Decided On : Jan-06-2003

Reported in : 2003(1)ALD(Cri)805; 2003(2)ALT(Cri)190; 2003CriLJ2150

Judge : Dalava Subrahmanyam, J.

Acts : Andhra Pradesh Excise Act, 1968 - Sections 34 and 55; Code of Criminal Procedure (CrPC) - Sections 104(4)

Appeal No. : Criminal Revn. Case No. 35 of 2001

Appellant : T. Subbanna

Respondent : The State of A.P., Rep. by the Public Prosecutor

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : G. Srinivasulu Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Dalava Subrahmanyam, J.

1. The revision petitioner/accused filed this revision against the judgment of conviction and sentence passed in C.C. No. 1180 of 1996, D/- 30-12-1997 by the

Special Judicial First Class Magistrate for Prohibition and Excise offences, Proddatur, which was confirmed in Criminal Appeal No. 14 of 1998 by the I Additional Sessions Judge, Cuddapah.

2. The brief facts of the case are as follows :

On 17-5-1993, at about 5.00 p.m., the Excise Sub-Inspector, Mydukur, along with the District Squad Officials and Panchayatdars proceeded to Venkatapuram Village and found the accused in possession of and concealing five card board boxes with paddy hay in the hayrick yard by side of the house bearing No. 21/71 and concealed 48 nips of Roman Eagle Whisky. The contraband was seized consisting of 5 cardboard boxes containing each 48 nips of Spurious Indian Liquor. The samples were drawn in the presence of Panchayatdars. After investigation, charge sheet was laid against the accused.

3. The prosecution examined PWs 1 to 5 and marked Exs. P1 to P9 and Mos. 1 to 15.

4. The Special Judicial Magistrate of First Class for Prohibition and Excise, Cuddapah found that the prosecution proved the offence under Section 34(a) of the Andhra Pradesh Excise Act against the accused and he was convicted and sentenced to suffer Simple Imprisonment for six months and also pay a fine of Rs. 5,000/-, in default to suffer Simple Imprisonment for 3 months. When the accused filed an appeal, the same was dismissed confirming the judgment of conviction and sentence. Aggrieved against the judgment, the revision petitioner filed the revision contending that the Sessions Judge erred in confirming the conviction and sentence under Section 34(a) of the A. P. Exercise Act. The Sessions Judge erred in relying on the interest testimony of PWs 3 and 5. The learned Sessions Judge failed to appreciate that the prosecution failed to establish that the accused had constructive possession of hayrick yard while the contraband was seized. In the absence of any independent evidence, the evidence of PWs 3 and 5 cannot be relied. For the above said reasons, the Sessions Judge committed error in confirming the judgment of conviction and sentence passed by the trial Court.

5. Now the point for consideration is whether the Sessions Judge committed an error in coming to the conclusion that the Special Magistrate for Excise rightly convicted the accused for an offence under Section 34(a) of the A. P. Excise Act and if so the revision is liable to be allowed.

6. The revision petitioner/accused was convicted for an offence under Section 34(a) of the A.P. Excise Act.

7. The learned Advocate appearing for the revision petitioner contended that the prosecution has failed to prove that the accused was in constructive possession of hayrick yard when the contraband was seized. Further, the prosecution has not followed the mandatory provisions contained under Section 55 of the Andhra Pradesh Excise Act and under Section 104(4), Cr.P.C.

8. The learned Public Prosecutor contended that the trial Court and the Sessions Judge appreciated the entire evidence and rightly came to the conclusion and there is no error.

9. The evidence of PW 3 Excise Inspector as Special Duty District Squad. Cuddapah shows that on 17-5-1993, he along with the District Squad Inspector and other staff proceeded for raids in Mydukur Village and on information they proceeded to Venkatapurani Village, At 5 pm. when they went to the house bearing No. 21/71, they found the accused near his house concealing some card boards in a hayrick yard at a distance of 15 yards east to his house. They surrounded the accused and found five cardboard boxes in the said hayrick. They verified the cardboard boxes and found some bottles, each bottle containing 48 nips of Roman Eagle Whisky. Samples were drawn in two nip bottles from each box and contraband was seized in the presence of independent witnesses who were examined as PWs 1 and 2. Both the independent witnesses turned hostile and they did not support the case of the prosecution. The trial Court and the Sessions Court relying on the evidence of PWs 3 and 5 convicted the accused. The prosecution failed to prove that the accused was in constructive possession of the hayrick and that he concealed the contraband. PWs 3 and 5 stated that they did not examine any of the neighbours or the village officers about the ownership of the hayrick and about the said house. There is absolutely no evidence that the

accused had control over the hayrick yard and that he concealed the contraband in the hayrick yard. Therefore, there was absolutely no evidence that the accused concealed the contraband. Further, the prosecution failed to follow the mandatory provisions of Section 55 of the Excise Act and Section 104(4) of Cr. P.C. The premises was searched without search warrant. In such cases, special proceedings have to be drafted by the prosecution before search. Such a procedure was not followed by the Excise Officials while searching the premises.

10. The evidence of PWs. 3 and 5 discloses that the search was made in violation of mandatory provisions of Section 55 of the Andhra Pradesh Excise Act. Therefore, the entire search is illegal. Further, they did not follow the mandatory provisions of Section 100(4), Cr.P.C. No local residents were called and the so-called independent witnesses who were examined as PWs 1 and 2 turned hostile. Neither the Village Officers nor the neighbours of the locality were examined to prove the ownership of the hayrick.

11. For the above reasons, both the Courts below committed an error in coming to the conclusion that the prosecution proved the offence under Section 34(a) of the Andhra Pradesh Excise Act. Hence, the revision is liable to be allowed.

12. In the result, the revision is allowed. Conviction and sentence in C.C. No. 1180 of 1996 as confirmed in Criminal Appeal No. 14 of 1998 on the file of the Additional ' Sessions Judge, Cuddapah is set aside and the bail bonds of the accused shall be cancelled. The revision petitioner is entitled for the refund of the fine amount.