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**Court :** Allahabad

**Decided On :** Sep-15-1950

**Reported in :** AIR1952All118

**Judge :** Kidwai and ;Chandaramini, JJ.

**Acts :** [Opium Act, 1878](#) - Sections 3 and 9; [Evidence Act, 1872](#) - Sections 45

**Appeal No. :** Criminal Appeal No. 90 of 1950

**Appellant :** The State

**Respondent :** Kaptan Singh

**Advocate for Def. :** H.K. Ghose, Adv.

**Advocate for Pet/Ap. :** Govt. Adv.

**Disposition :** Appeal allowed

**Judgement :**

1. This is an appeal filed by the State against the acquittal of Kaptan Singh by the learned Civil and Sessions Judge of Sitapur on appeal. It appears that the Excise Inspector Jagat Narain P. W. 3 of Sitapur had information that the accused Kaptan Singh was in the habit of smuggling opium and he would be passing through Sitapur. Accordingly on 25-5-1949, a watch was kept on the trains and buses coming from Shahjehanpur but he did not come. On the 26th May the accused

was seen getting off from the Shahjehanpur train at Sitapur railway station at about 9 a.m. and settling down under a nim-tree on one side of the platform. On receiving information of this from his excise peons the Excise Inspector immediately went to the spot with the Station Master and some other witnesses. Kaptan Singh was found lying down with a small bundle under his head as a pillow. After giving their personal search Kaptan Singh was searched. The bundle on being opened contained in a piece of cloth a dibia inside which was found crude opium and this on being weighed in the Station Master's office was found to be 4 1/2 pounds. The accused Kaptan Singh denied the recovery of the opium and pleaded not guilty. In defence he produced one witness Raghubar Singh who stated that the bundle from which the opium was recovered was not with the accused. This evidence was disbelieved and the evidence of the prosecution was believed and accordingly the trying Court convicted Kaptan Singh and sentenced him to a fine and a period of imprisonment.

2. Kaptan Singh went up in appeal and the learned lower appellate Court agreed with the trial Court that the thing alleged to be opium was found in possession of the applicant Kaptan Singh. It was, however, of the opinion that the mere opinion of the Excise Inspector, who is an expert, without giving his reasons, that the thing recovered was opium is not sufficient to prove that it is opium and accordingly acquitted him. It has been urged in appeal on behalf of the State that it is clearly proved that opium was recovered from Kaptan Singh. We have heard the learned counsel at considerable length and are satisfied that the appeal must be allowed.

3. The prosecution had to prove that what was recovered was opium and that it was recovered from the possession of Kaptan Singh. Under Section 3, Opium Act, opium means

'(i) the capsules of the poppy (*Papaver Somniferum*l.);

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport ;

(iii) any mixture, with or without natural materials, of any of the above forms of opium, but does not include any preparation containing not more than 2 per cent. of morphine, or a manufactured drug as defined in Section 2, Dangerous Drugs Act, 1930.'

4. The prosecution case is that the thing recovered was crude opium as stated by the Excise Inspector, Shri Jagat Narain P.W. 3, Baijnath P. W. 2, and the Station Master Rama Shankar Sharma P. W. 1. Opium in the form of coagulated juice is so well known in this country being widely used for medicinal and other purposes that any one can identify it and it is unnecessary to call in an expert to establish its identity. The testimony of the Excise Inspector cannot be looked upon in this case as merely an opinion of an expert as he did not claim to be one nor did he give any testimony as an expert. The question therefore of giving reasons for his opinion did not naturally arise and so the rule laid down in *Mt. Titli v. Alfred Robert Jones* A.I.R. (21) 1984 ALL. 273 does not apply. The learned Judge in the Court below, therefore, went wrong in treating the Excise Inspector as an expert in this case. The learned Judge relied upon *Bamkaran Singh v. Emperor* A.I.R. (22) 1985 Nag. 18, where it was held that if an Excise Inspector says that a certain excisable article is illicit liquor, it is a mere expression of opinion and unless reasons are given for the opinion it is of little weight as evidence. In such a case obviously special knowledge of the expert is required for the percentage of alcohol has to be determined by scientific methods. The authority relied upon is not applicable in the present case. We are satisfied from the evidence on the record that crude opium was recovered.

5. On the question of possession, we see no good reason why the two concurrent findings of the Courts below should not be accepted. It is true that the applicant was arrested in a public place on a station platform at a time when there were lots of people there, but the fact nevertheless remains that Kaptan Singh was lying with the bundle containing opium right under his head and there was nobody else making use of that bundle as a pillow. It was said at the trial that the accused had no bundle with him, but the three eyewitnesses cannot possibly be disbelieved. The accused also attempted to prove that he had no bundle by producing Raghubar Singh, but he has been rightly disbelieved by both the Courts below. We

agree, therefore, with both the Courts below, that the applicant Kaptan Singh was found in possession of crude opium.

6. In these circumstances Kaptan Singh is clearly guilty of an offence under Section 9 (a), Opium Act. We think that in the circumstances of this case a sentence of fine only would be sufficient. Accordingly as sentence him to a fine of Rs. 200 or in default simple imprisonment for one month. One month's time is given to the applicant to pay the fine and till then he shall remain on bail as hitherto.

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