

Sadlu Vs. Emperor

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Court : Allahabad

Decided On : Dec-05-1933

Reported in : AIR1934All374; 155Ind.Cas.406

Judge : Niamat-Ullah, J.

Appellant : Sadlu

Respondent : Emperor

Judgement :

Niamatullah, J.

1. This is an application for revision by one Sadlu, who was convicted by a, Magistrate let Class, Benares, of an offence under Section 14, Dangerous Drugs Act (No. 2 of 1930), and sentenced to rigorous imprisonment for 18 months and a fine of Rs. 200. His appeal to the Sessions Judge, Benares, was dismissed. It has been found by both the Courts below that the applicant, who was once convicted of a similar offence and sentenced to six months' Rule I. in 1932, was in possession of two packets of a substance which has been declared by the Chemical Examiner to be cocaine. The circumstances which led to the discovery were described by the officer in charge of the Benares Kotwali. In consequence of an information received he proceeded to search the premises of the accused. There is a room on the second storey of the applicant's house, which was found to be locked. The Sub-Inspector asked the accused to furnish the key for opening

that room. The applicant produced a key from his person, with which the lock was opened. On search being made two packets were found concealed under the bed on a 'charpoy.' These facts, except as regards the manner in which the accused handed over the key to the Sub-Inspector, are not disputed.

2. The accused stated in his defence that the room in which the two packets were found did not belong to him but to his brother Mangru, who actually occupied it. He also alleged that the key which he had handed over to the sub-inspector was not on his person but had been sent for by him from his brother, who was at his shop. There can be no doubt that, unless the accused's statement that the room was in the actual occupation of his brother, who was in possession of the key, be accepted, the offence has been brought home to him. He produced two witnesses, who were considered by the trying Magistrate as respectable. They deposed to the room in question being the property of his brother Mangru, to whom it had been allotted at a partition a few years ago. The witnesses however, being outsiders could not say as to whether his brother Mangru actually occupied the room. It is easily conceivable that the room, though allotted on partition to Mangru, continued to remain in the occupation of his brother, the applicant. It is not disputed that the families of both the brothers live in the same premises, and all that was determined at the partition of the joint property was the proprietary title.

3. The learned advocate for the applicant has strongly criticized the action of the police in not taking respectable persons residing in the neighbourhood as search witnesses. The trying Magistrate made the following observation on the part of the case:

The learned Counsel for the accused attacked the evidence of Monnu and Gopal, the two search witnesses. They have, no doubt, appeared as witnesses in criminal cases before and they are not of proper character to be selected for this purpose. The statement of the Sub-Inspector that he did not select witnesses from the locality as most of the neighbours of the accused are ex-convicts of modak and cocaine offences is preposterous. Evidence has been given to show that many respectable persons live in the immediate neighbourhood of the accused, and it would have been better if the Sub-Inspector had not taken with him persons of

doubtful character to witness the search.

4. It is not an uncommon practice for police officers to disregard the provisions of Section 103 of the Criminal Procedure Code. This Court has had occasions to emphasize the necessity of the due compliance with that section. Where respectable persons can be found in the neighbourhood, and the police officer making a search takes with him persons whose respectability is questionable or who come from a distant locality inference is that he was prompted by a desire to have such witnesses as I would be easily persuaded to support any story which he might put forward. In this case nothing turned on the facts stated by the search witnesses; otherwise the Court would have been justified in disregarding their evidence on the point in controversy. The case can be, and was decided by the two courts below, without reference to the evidence given by the search witnesses, except so far as they deposed to the recovery of the two packets of cocaine, a fact which is not in dispute.

5. Both the courts below have rejected the accused's version that the key was in possession of his brother, from whom he got it before handing it over to the Sub-Inspector. The latter's evidence corroborated by the probabilities of the case, was considered to justify the inference that the accused carried the key on his person. Stress has been laid by both the court below on the fact that Mangru was not produced. Though it is possible to urge that Mangru would not have admitted that the room was in his occupation in view of the police having found two packets of cocaine on search I think there was enough justification for the court below to hold that Mangru was not in possession of the room. It is in evidence that the accused did not mention this fact to the Sub-Inspector when the latter proceeded to search the house. If Mangru had, in fact, been in possession of the room, the accused would most naturally have said that he had nothing whatever to do with that room and that if the Sub-Inspector desired to search it, he should send for his brother, who was in possession of the key. The fact that he took upon himself to produce the key, as if he were the owner of the room, strongly suggests that his defence on this point was an afterthought. Probably he thought that the police would break open the lock if he did not hand over the key and relied on the chance of the police not being able to discover the packets of cocaine, which he knew were concealed

under the bed.

6. The learned advocate for the applicant has contended that Section 14 of the Dangerous Drugs Act does not in terms apply, as that section makes possession of 'manufactured drug' punishable, and as the cocaine found in the packets has not been shown to be 'manufactured drug'; that the expression 'manufactured drug' is not exhaustively defined in the Act; Section 2(g) merely provides as to what 'manufactured drug' includes. Among other things it includes 'all coca derivatives', which expression is defined in Section 2(b)(iii) as

cocaine, that is methyl-honzoyl laevo-ecgonine having the chemical formula C-17, H-21, No. 4 and its salts.

7. It is argued that there is no evidence on the record to show that the cocaine found in those packets contained the ingredients mentioned in the formula given in the definition. This question was not raised at the trial otherwise more light could have been thrown on this aspect of the case. The expression 'Coca derivatives' also includes 'crude cocaine' see Section 2(b)(i). The Chemical Examiner's report is as follows:

More than 3 per cent of cocaine admixed with novocaine was detected in the contents of each of the two puryas marked Exs. 3 and 4. The cocaine being impure in each case was unfit for medicinal use.

8. Section 2(b)(iii) makes mention of cocaine; and to distinguish it from 'crude cocaine' the usual chemical formula has been stated. I have no doubt that the word 'cocaine' occurring in the Chemical Examiner's report, implies the substance prepared according to that formula, which is well known to chemists. I do not think that anything is lacking in this case to make out an offense under Section 14 of the Dangerous Drugs Act. The applicant was rightly convicted.

9. The learned advocate for the applicant has strongly pressed for the reduction of sentence. As already stated, the applicant has once before been convicted of a similar offence. I do not think that the sentence of 18 months' Rule I., is too severe. I would however remit the fine, maintaining 18 months' Rule I., as the only

sentence. The order of the trying Magistrate as regards sentence is modified to that extent. In other respects the revision is dismissed.

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