

Hukum Chand Vs. the State

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Court : Allahabad

Decided On : Apr-24-1957

Reported in : AIR1957All705; 1957CriLJ1191

Judge : Beg, J.

Acts : [Poisons Act, 1919](#) - Sections 6 and 6(2); Poisons Rules - Rule 3; [Evidence Act, 1872](#) - Sections 114; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342 and 439

Appeal No. : Criminal Revn. No. 1456 of 1955

Appellant : Hukum Chand

Respondent : The State

Advocate for Def. : B.G.A. Asst. Govt. Adv.

Advocate for Pet/Ap. : G.P. Bhargava, Adv.

Disposition : Application allowed

Judgement :

ORDER

Beg, J.

1. This is a revision by one Hukum Chand who was prosecuted under Section 6 of the poisons Act (Act No. XII of 1919) for being in possession of a number of poisons without any licence for the same as required under Rule 3 of the rules framed under Section 2 of the Poisons Act.

2. The applicant was convicted by the trial court and sentenced to a fine of Rs. 50/- or, in default to undergo three weeks simple imprisonment. The trial court further ordered that the poisons recovered should be confiscated and disposed of to some other licensee under the orders of the District Magistrate. The applicant filed a revision application before the learned Additional Sessions Judge. Aligarh. This revision application having been dismissed, the applicant has filed the present revision application in this court.

3. It appears that the applicant's brother Sughan Chand possessed a licence entitling him to sell certain poisons. He died on the 27th August 1949. At the time of his death, there was in his possession a number of poisons viz., Sankhya 2 Tolas. Singya 8 1/4 Tolas, Kuchla 44 Tolas, Ras Kapoor 16 1/2 Tolas, Mansal 4 1/2 Tolas Dai Chikna 9-6/16 Tolas and Hartal 61-14/16. Tolas. He possessed them as a duly authorised licensee for sale.

4. After his death, the applicant, who resided in the same house came into possession of the aforementioned persons. As the said poisons were found in his possession, a report was made on the 12th of September 1951 for his prosecution. He was accordingly prosecuted for being in possession of the aforesaid poisons between the 27th of August 1949 and 12th of September 1951 with out any licence.

5. The applicant pleaded not guilty. He admitted the possession of the aforementioned substances and stated that they were left by his brother at the time of his death. His case in defence was that he had presented an application on 31st of December 1949 for renewal of licence of his brother in his own name. A licence was, accordingly delivered to him, but, by the mistake of the authorities the licence was issued in the name of his deceased brother Sughan Cnand instead of in the applicant's name.

He had accordingly, returned this licence to the licencing authorities on the 21st March 1950 for the correction of the mistake and the licensing authorities had not returned the same after correction. He was in bona fide possession of the said substances. His prosecution was launched at the instance of the office clerk against whom he had been complaining and whose demands he could not comply with.

6. The main argument of the learned counsel for the applicant in this court is that the prosecution has failed to prove the ingredients of the offence for which the accused was prosecuted, Under Section 2 of the Poisons Act (Act No. XII of 1919), the Provincial Government is authorised to frame rules to regulate possession for sale and sale of any poison. The Provincial Government did frame rules under the aforesaid provision. These rules are given on page 244 of the U. P. Gazette February 19, 1921 Part I. The rule relevant for the purpose of this case is Rule 3. It runs as follows :--

'No person not exempted under the provisions of the Act shall sell or possess for sale any poison specified in the schedule, except under a licence granted in that behalf of the District Magistrate'.

7. It is argued that the above rule provides for punishment in two cases. (1) sale of a poisonous substance specified in the schedule without licence and (2) possession for sale of the poisons specified in the same schedule. In the present case, it is conceded that the accused was not prosecuted for selling any poisonous substance without a licence. The accused could, therefore, only be convicted if it was proved that he was in possession of the said substance 'for sale'.

The case of the prosecution against the accused merely was that he had the poisonous substance in question in his possession. The accused could not be convicted merely for the possession of the poisonous substances specified in the schedule unless it was further proved by the prosecution that the said possession was for sale'. It is strenuously argued on behalf of the applicant that, in the present case, neither it was the prosecution case that the alleged poisons were in possession of the accused 'for sale' nor have the prosecution succeeded in

proving it.

8. Having heard the learned counsel for the applicant, I am of opinion that the contention advanced by his learned counsel has force. The prosecution have, in the present case, produced only one witness in support of their case This, witness is Mahender Saran (D. W. 7). He is the Arms Clerk at the Collectorate Aligarh. He has stated that the accused was in possession of Sankhya. Singya, Knchla, Ras Kapoor, Mansal, Dal Chikna and Hartal which were poisonous substances under the Poisons Act without any licence,

He has not stated anything in his evidence to indicate that the intention of the accused was to sell any of the aforesaid articles. It is no doubt true that it is difficult for any person to give evidence about the intention of the accused. The intention of the accused can, however, be gathered from the circumstances of the case. It has been argued on behalf of the State that the fact that the accused was found in possession of a number of poisonous substances would itself raise e. presumption against him to the effect that his possession of the same was for sale.

This is a presumption which, according to the counsel for State, would in every case arise under Section 114 of the Indian Evidence Act. I am Unable to accept this argument. In the absence of any explicit provision of law directing that such a presumption should be made in every case, I find it difficult to hold that such a presumption must necessarily and invariably be made in all cases.

This argument appears to me to be misconceived. Whether a presumption of this nature should arise under Section 114 of the Indian Evidence Act or not should, to my mind, depend upon the circumstances of each case. If for example, the accused's brother had not been a licence-holder and the accused had been found in possession of the aforesaid poisons for the first time without being in possession of any licence and had been unable to account for his possession of the same it, might have been open to the learned counsel for the state to argue that , some such inference might be drawn.

In the present case, it is established that the poiscnous substances belonged to accused's brother Sughan Chand, that Sughan Chand died leaving the said

substances and that the same were not acquired by the accused by adopting any illicit or improper means. If the argument of the learned counsel for the State is accepted, then in every case where licence-holder dies leaving poisonous substances, a presumption of guilt might arise against every member of his family living in his house that he is guilty.

Such a presumption would be in contravention of the well known principle that every one is presumed to be innocent unless proved to be guilty. Under the circumstances, I find it difficult in the present case to raise any incriminating inference against the accused to the effect that he possessed these articles for the purpose of selling them. There are other circumstances also which indicate that the accused had no intention of selling them without a licence.

It appears that the accused had applied for licence to sell poisonous substances, that a licence was issued in his favour, and that the said licence was erroneously issued in the name of his deceased brother instead of in his own name. After the licence was delivered to the applicant, he returned it to the proper authorities for correction of the same, and for insertion of his own name in place of the name of his brother.

This would indicate that the accused did not want to sell the poisons without first obtaining a licence. Further, the very fact that the accused's brother had died over two years ago, and throughout this long period the accused never sold nor attempted to sell any of the poisonous substances, and was continuously trying to secure a licence for the same negates any such presumption, and shows that he had no intention to sell the poisons without a licence.

It is also to be noted that he never concealed his possession of the said poisons. He disclosed the same to the authorities after the death of his brother and he frankly admitted possession of the poisons in this case from the very inception. His conduct throughout has been honest, straightforward and innocent. There can, therefore, be no doubt about his bona fides.

9. On behalf of the State, it is argued that the word for sale in the rule does not mean immediate sale. The intention to sell might be in future. This argument

further presumes that the accused had at that time the intention of selling. I am of opinion that the intention required under Rule 3. is intention of soiling without licence, and not the intention of selling with licence. An intension not to sell without licence is not the same thing as an intention to sell.

The mental condition of a person who intends to sell only if he gets the licence, and not to sell if he does not get it is both a negative as well as a positive one with the result that the position is neutralised. On the other hand, a oerson who intends to sell in any cass adopts an attitude that is positive. The distinction between the two though fine, is a clear one, and must be recognised by a criminal court in the case of an offence which makes a special type of mens rea a necessary ingredient of the criminal wrong.

Moreover, the case being a criminal one, in order to bring a person within the clutches of the penal law, the offence has got to be strictly proved. This matter can be looked at from another aspect also. Where the intention to sell is conditional upon obtaining a licence, such a man cannot be convicted, because if he is prosecuted before he has obtained licence, then he can say that his intention was not to sell before obtaining the licence, and the condition for converting his negative intention into positive intention not having been fulfilled, - he can only be fastened with a negative intention and is not guilty.

If he is prosecuted after a licence has been obtained no doubt the negative intention has been converted into a positive intention from the moment the condition is fulfilled, but the licence having been obtained, the positive intention hag ceased to be criminal. He cannot thus be con. victed either of the two cotitigencies. In the present case, the licence not having teen obtained, the necessary condition imposed by him in his mind as the condition precedent to his entertaining the intention to sell was not fulfilled.

His intention therefore at that stage was clearly not to sell. He cannot, therefore, be held to be guilty of entertaining the criminal intention to sell at that stage. In the present case, . it appears that the accused had no intenticn ofselling the poisonous substances without licence. In my opinion, therefore, he cannot be held to bo guilty.

10. Apart from the above objection, the proceedings in the present case are open to criticism on the score of Section 342 of the Code of Criminal Procedure. Nowhere the accused was informed that he was being prosecuted for being in possession of the poisonous substances 'for sale'. The question put to the accused was as follows :

'Did you between the 27th of August 1949 upto 12th of September 1951 keep in your possession Sankhya 2 Tolas Singya 8 1/4 Tolas, Kuchla 44 Tolas, Ras Kapocr 16 1/2 Tolas, Mansal 4 1/2 Tolas, Dal Chikna 9 6/16 and Hartal 61 14/16 Tolas without any licence and thereby committed an offence under Section 6 of the Poisons Act read with Rule 3 framed thereunder.'

11. The accused admitted that he was in possession of the said substances and stated that he had applied for a licence for the same. The licence was erroneously issued in the name of his brother, and subsequently he had made an application for correction of the mistake. He further stated that the poisonous substances belonged to his brother, who possessed a licence for the same and he got them after his death.

Thus in putting the prosecution case to the accused in court it made absolutely no mention of the fact that the accused was being prosecuted for being in possession of any of the poisonous substances 'for sale'. All that the accused was asked was whether he was in possession of the articles for a certain period without licence, and the accused admitted his possession of the same. No question was put to the accused as to whether he was in possession of the same for sale.

It is no doubt true that an omission to question the accused on certain point under Section 342 of the Code of Criminal Procedure is not fatal to the trial. Before the omission can be said to vitiate the trial, it should be shown that the accused was prejudiced. It has, however to be remembered that the present case was a summons case. No charge was framed and the only materials from which the accused could ascertain the prosecution case against him were the questions put to him or the report made or the evidence adduced against him.

None of these gave him any intimation of any such case. The question which Was put to him related to possession, and he had frankly admitted it. The sole point' of controversy between the parties is not possession but the intention behind possession. The prosecution now argues that the intention was 'to sell' and yet this necessary Ingredient of the offence was not put to the accused nor was he given an opportunity to meet and explain it.

Whatever may be said about the omission to put pieces of evidence in the case to the accused the omission to put a necessary ingredient of offence to the accused is a matter that cannot be lightly treated or brushed aside by the court especially when the ingredient in question is the only ingredient on which the conviction of the accused is said to hang. The point is, of much greater importance when it is remembered that the omission related to a matter which was peculiarly within the knowledge of the accused and he himself was in the best know of it.

The position is further aggravated in the present case when we find that no such allegation was contained either in the report or in the evidence led to by the prosecution. Further, in seeking to secure the conviction of the accused in the present case, the prosecution is trying to invoke all kinds of presumption and resort to all kinds of surmises in support of a case which was neither alleged nor stated by the prosecution at any stage, nor put to the accused at any time.

12. On behalf of the State, it is argued that the fact that in the question put to the accused the court had mentioned Section 6(a) read with Rule 3 of the rules framed under the Poisons Act would indicate that the court did put a question to the accused on this point. The question itself is a question of a circumlocutory type. It combines within itself a string of questions.

Rule 3 deals with two matters (1) sale (2) possession for sale. The question does not clarify which one of the two cases is set up against the accused. This mode of questioning is calculated to defeat the very purpose of Section 342, Cr. P. Code. Such a question is more likely to confuse than to clarify the position.

13. Moreover, the above argument ignores the fact that what has been put to the accused is that he was guilty of contravening Rule 3 as he was in possession of

poisonous substances. The sole foundation for action against the accused is said to be neither 'sale' nor possession for sale' but mere possession. I have no doubt that a question of this kind is not this type of question sanctioned by Section 342, Cr. P. Code or contemplated by it.

The provisions of Section 342, Cr. P. Code were meant to be for the benefit of the accused. They were not meant to confound, the accused. Nor were they intended to operate as a trap for the recovery. The compliance with the salutary provisions of Section 342, Cr. P. Code was never meant to be merely formal. The compliance therewith was intended to be real, genuine and substantial, so that the court should be able to pronounce that the prosecution has, on the whole, been just, proper and fair, and the accused has not been prejudiced, damaged or misled in any way.

This cannot be said in the present case. For the above reasons, on this ground also, I would hold that the accused is entitled to have the conviction set aside. The circumstances of the case do not warrant a retrial. The offence is alleged to have been committed about eight years ago, and there is no reason why the prosecution should be allowed to protract the trial because of the laches and defaults on its own part.

14. The Magistrate has also passed an order of confiscation of the poisonous substances. This order of confiscation was passed under Section 6 Sub-section (2) which lays down as follows:

'Any poison in respect of which an offence has been committed under this section, together with the vessels, packages or coverings in which the same is found, shall be liable to confiscation.'

15. The condition precedent for an order of confiscation under Section 6, Sub-section (2) is that the accused should have been found guilty of having committed an offence in respect of such a poison. As the accused is being acquitted in respect of it, I do not see how it is possible to sustain the order of confiscation. No other provision of law authorising the present order of confiscation is pointed out on behalf of the State. I would, therefore, allow this revision, set aside the

conviction of the accused and quash the order of confiscation. The fine, if paid, shall be refunded.

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