

Durga Vs. Emperor

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Court : Allahabad

Decided On : Feb-21-1920

Reported in : AIR1920All180; 58Ind.Cas.246

Judge : Piggott, J.

Appellant : Durga

Respondent : Emperor

Judgement :

1. This is one of those cases, always somewhat difficult to deal with in revision, in which the trial Court and the Appellate Court have taken widely divergent views as to the effect of the evidence produced, although they have concurred in convicting one, at least, of the persons accused. The broad facts are that an Excise Inspector, along with Police Officers and witnesses, raided a certain house and searched it on suspicion that illicit cocaine would be found there. The result of the search was the discovery of a small phial containing adulterated cocaine and the prosecution of four persons as owners or occupiers of the house for an offense against the excise laws. The case was actually dealt with by the trial Court under Section 60A of the United Provinces Excise Act, 1910, as amended by the United Provinces Excise (Amendment) Act (No. IV of 1919). The defense on the merits was that the phial in question had been planted on the accused persons, that is to say, that some member of the raiding party brought it with him in order to make certain, in any event, of a conviction. Both the Courts below have rejected this

defence. The question is not really one which, according to the practice of this Court, is open to reconsideration in revision, and, as a matter of fact, I see no good reason for reconsidering it. It follows that an offence against the excise laws was being committed by some person or other in respect of this phial of cocaine in the house in question. The learned Sessions Judge has taken a view of the operation of the section under which the conviction was recorded which would make it very nearly impossible in practice to secure a conviction under that section at all. He has in effect inserted the word 'habitually' before the word 'use?,' as it appears in the section in question. I feel bound to note my disagreement from the principle of law thus laid down. The provisions of the section in question are no doubt of an exceptionally stringent nature but they are intended to be so in order to enable the Excise Authorities to deal effectively with the illicit traffic in opium. As the section stands, the owner or occupier of a house who knowingly keeps an illicit supply of cocaine on the premises renders himself liable to punishment under this section, and no burden is laid on the prosecution of proving that the said illicit supply had been kept there for any length of time, or that the premises had been used for this purpose on previous occasions. No doubt the facts of each particular case require to be carefully scrutinised before provisions of this kind are applied, more particularly so in the case of an owner who does not occupy or personally reside in the place in respect of which the offence is alleged to have been committed. If the learned Sessions Judge means that the mere discovery of a phial of illicit cocaine on certain premises affords only a slender basis for the inference that the owner of such premises, not himself residing there, knew or had reason to believe that the resident or residents of the house were breaking the law in this matter, he is no doubt right. The question in this particular case really is, whether guilty knowledge on the part of all the four persons found on the premises at the time of the Excise Inspector's raid could not be inferred, as the trying Magistrate inferred it, from their conduct at the time of the raid and from the general circumstances of the case. However, the learned Sessions Judge declined to draw any inference of such guilty knowledge or complicity against three out of the four accused persons, and their cases are not now before me. The question is, whether the remaining accused, Durga, has or has not been rightly convicted on the evidence of having been found to be personally in

possession of this phial of cocaine. The facts are that he was asked in the course of the search to open out, in the presence of the Police Officer, a certain roll of bedding which was found in a verandah room where, the said accused had been sitting in the company of a woman, at the moment when the Police raided the houses. Durga's own case is that he came upon this phial of cocaine somewhere in that roll of bedding and his defence, as I have already pointed out, was that it had been planted there by some member of the search party. The evidence as to what precisely took place at the moment when Durga either found, or professed to find, the phial in the bedding if, as might be expected, somewhat conflicting. The witnesses to the search were disposed, in examination in chief, to speak in general terms to the discovery of the phial in the bundle of bedding. When they were pressed to say at what precise moment each of them personally saw the phial they returned, as might be expected, somewhat divergent answers. The witness Chunni Lal, for instance, admitted that the first he actually saw of the phial was that the accused Durga had it in his hands. He went on, however, to repeat his assertion that Durga took it from the bundle, but this is obviously a matter of inference on the part of the witness rather than actual observation. I am obliged, under the circumstances, to examine the evidence for myself and to form some sort of opinion of my own as to the general effect of that evidence. I certainly think there was evidence on the record on which a Jury might lawfully have found Durga guilty of the offence of which he has been convicted, namely, the illicit possession of this phial of cocaine. I am not sure that it is necessary for me to say more than this in a case which is before this Court only in revision; but I may add that the opinion I have myself formed, on a review of the entire evidence, is that Durga might well have been convicted on the charge as framed by the Magistrate, and that, in any case, it seems a fair matter of inference from the evidence that he was at least in joint possession, if not as the learned Sessions Judge thinks in sole possession, of this phial of cocaine. If the case were before me in the exercise of the appellate jurisdiction of this Court, the utmost that I should feel disposed to do would be to record a conviction, in the alternative, of illicit possession or of abetment of the offence of illicit possession. This being my view of the case, I do not think I am called upon to interfere in revision. A point is taken as to the severity of the sentence, but I see no valid ground for interference on that score. I

dismiss this application. Durga must surrender to his bail and undergo the unexpired portion of the sentence.

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