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The King Vs. Hari Baisakh

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Court : Orissa

Decided On : Aug-01-1949

Reported in : AIR1950Ori88

Judge : Jagannadha Das and ;Panigrahi, JJ.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 7 and 17; Code of Criminal Procedure (CrPC) , 1898 - Sections 243 and 255

Appeal No. : Govt. Appeal No. 2 of 1949

Appellant : The King

Respondent : Hari Baisakh

Advocate for Def. : A.N. Purohit, Adv.

Advocate for Pet/Ap. : Adv. General

Disposition : Appeal dismissed

Judgement :

Panigrahi, J.

1. This is an appeal against an order of acquittal passed by the Sessions Judge Outtack. The respondent Hari Baisakh was charged with an offence under Sections 7/17 of Act xxiv [24] of 1946. of having attempted to remove 42 lbs of

handloom cloth beyond the limits of the Orisaa Province on 7th August 1948. The accused was found boarding the 5 Dn. Train at Cuttack on 7th August 1943 earring 42 1bs handloom cloth. P. W. 1 the Anti-Smuggling S. I. ascertained that the accused had no permit to transport the cloth from Orisaa to Bengal. By a Notification No. 16100 ST dated 3rd June 1946 of the Government of Orissa the transport of handloom cloth without a permit from the Supply Department, beyond the limits of the province, is made punishable. The accused was therefore charged with having committed an offence in having contravened this Notification and was therefore punishable under Section 7 of Act XXIV of 1946. P. W. 1 and P. W. 2 merely prove that the accused had a ticket from Cuttack to Howrah and that he had also 42 lbs. of handloom cloth with him. On this evidence the accused was questioned as to whether he had attempted to remove the said cloth from Cuttack to Howrah, in the course of his examination under Section 342, Criminal P. C., and the accused replied 'Yes.' The accused also pleaded 'guilty' to the charge framed by the Magistrate who tried him. The Magistrate accordingly convicted him on the plea of 'guilty' recorded by him. The accused appealed to the Court of Session in criminal Appeal No. 580 of 1948 and the learned Sessions Judge held that that the act of the accused in boarding the train at Cuttack with the bundle of handloom cloth did not amount to an attempt to commit an of. fence Accordingly he set aside the conviction and sentence passed by the Magistrate. It is strange that Section 412, Criminal P. C., was lost eight of by the Public Prosecutor as well as by the Court and the appeal was heard on merits. The Government have filed this appeal against the order of acquittal passed by the Sessions Judge on 18th November 1948. The contention of the learned Advocate General for the Crown is that the purchase of a ticket by the accused to Howrah is sufficient to prove that the accused intended to proceed to Howrah. It is next urged that the carrying of the bundle of 42 lbs of handloom cloth in contravention of the Notification is indicative of the accused's intention to carry it to Howrah. I fail to appreciate the logic of this argument because it is just possible that the accused may have unburdened himself of his luggage at a wayside station. It does not follow that because he had a ticket to Howrah, the luggage that he was carrying at Cuttaok was also destined for Howrah. It should be noted that the luggage was not booked and there is nothing to indicate as to where the cloth was going to be transported. We are,

therefore, satisfied that there is no evidence on the side of the prosecution to connect the luggage with the destination.

2. The question that has, however, given us considerable trouble is whether the plea of guilty recorded by the Magistrate is not sufficient to base a convication upon, and whether it is open to us, in revision, to set aside the conviction on the ground that the plea of guilty is not sufficient to warrant a conviction in the absence of any evidence of the offence. Neither the Advocate-General nor Mr. Purobit appearing for the respondent--accused has been able to cite any authority which lays down that in revision our powers are restricted or are not such as to justify our interference with a conviction improperly obtained. There is authority for the position that although a plea of guilty is recorded the conviction can be bad if there is a lacuna in the evidence and if the offence has not been established by evidence. We are satisfied, on the evidence, that the conviction is bad and that the plea of guilty recorded by the Magistrate is not sufficient to justify the conviction.

3. In the result this appeal is dismissed and the order of the learned Sessions Judge is confirmed.

Das, J.

4. I agree.

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