

**The State Vs. Chauthmal Gandhi**

**The State Vs. Chauthmal Gandhi**

**SooperKanoon Citation :** [sooperkanoon.com/526519](http://sooperkanoon.com/526519)

**Court :** Orissa

**Decided On :** Jan-07-1960

**Reported in :** AIR1960Ori139; 26(1960)CLT463; 1960CriLJ1126

**Judge :** R.L. Narasimham, C.J. and ;S. Barman, J.

**Acts :** [Opium Act, 1878](#) - Sections 9; Code of Criminal Procedure (CrPC) - Sections 342; General Clauses Act - Sections 3(26) and 4(1)

**Appeal No. :** Criminal Revn. No. 220 of 1959

**Appellant :** The State

**Respondent :** Chauthmal Gandhi

**Advocate for Def. :** G.K. Misra, Adv.

**Advocate for Pet/Ap. :** Standing Counsel

**Judgement :**

Narasimham, C.J.

1. This is a revision petition by the State of Orissa for enhancement of the sentence passed on the opposite party by a First Class Magistrate of Sambalpur, for an offence under Section 9(a) of Opium Act. The learned Magistrate held the opposite party guilty of unauthorised possession of 184 tolas of opium and sentenced him to rigorous imprisonment for one day and also to a fine of Rs. 150/-

in default to R. I. for 15 days more. Learned Standing Counsel for the State of Orissa urged that by virtue of the amendment made to the Opium Act by Act 52 of 1957, a sentence of imprisonment was made mandatory for offences under that Act and in view of the large quantity of opium found in possession of the opposite party in this case a substantive sentence of imprisonment should have been imposed instead of a nominal sentence of one day's rigorous imprisonment. We have no doubt that the sentence is too lenient and should be enhanced if the conviction can be otherwise justified.

2. As this is a case for enhancement of sentence the opposite party was given an adequate opportunity to show cause against his conviction also. Sri G.K. Misra, on behalf of the opposite party urged that the entire evidence of the prosecution, if believed, would not establish conclusively that the opposite party was in possession of the aforesaid quantity of opium.

3. The facts which are practically admitted are as follows: On 16-1-1953 the Inspector of Excise, Sambalpur (P. W. 1) went to the General Post Office Sambalpur at about 3 p. m. and searched the opposite party who was then coming out of the post office with a registered parcel tied to the carrier of his bicycle. The Inspector seized the parcel (bearing No. 102) and, on opening the same, found it to be a cylindrical tin (Nestles Milk Powder Tin). The lid was fixed so tightly that the tin had to be opened by cutting open the bottom. The tin was found to contain opium weighing about 184 tolas. Though the exact value of the opium has not been brought on the record as evidence, it was stated by learned Standing Counsel appearing on behalf of the State that the total value was Rs. 1800/- at Rs. 10/- per tola as fixed by the Board of Revenue (vide page 2 of the Instructions for De-addiction opium and issue of medicinal preparation of opium from the 1st April 1959). Mr. G.K. Misra, appearing for the opposite party did not challenge this estimate of the value of the contents of the tin seized from the opposite party.

It is further clear that the said quantity of opium was sent to the opposite party by one Mataddin H. No. 1742, care of Kuchappali Ram, Bazar Sitaram, Delhi. It was received in the General Post Office at Sambalpur and intimation of its receipt was also given to the opposite party who went to that post office and took delivery of

the same. His house was subsequently searched by the Excise party and a telegram sent to the opposite party by one Gur Bachan Singh of Delhi to the following effect was also seized: 'Medicine ready. Wire if required.' That telegram was dated 10-1-1958. No other paper was found in the possession of the opposite party to show any previous transactions between him and the aforesaid Gur Bachan Singh, or between him and the sender of the parcel namely Mataddin. Nor is there any evidence to show whether Mataddin and Gur Bachan Singh are the same persons or else whether they are employees of the same firm.

4. In this state of the evidence the main question for consideration is whether the knowledge of the contents of the parcel admittedly seized from the custody of the opposite party was established beyond reasonable doubt. In his statement under Section 342 Cr. P. C. he took the plea that he took delivery of the postal parcel under the impression that it contained medicine for himself and members of his family. The question is whether this explanation might possibly be true, or whether it is so highly improbable as to be rejected.

5. There are certain circumstances in the case which lead to the reasonable inference that the opposite party must have been aware of the contents of the parcel. He is a wholesale dealer in Sambalpur town for another excisable commodity namely ganja. He received intimation from the General Post Office at Sambalpur, about the arrival of the parcel from Delhi and then he went there and took delivery of the same. There is no evidence to show that the said sender of the parcel namely Mataddin, was unknown to him.

The alternative theory that some enemy of his might have sent the parcel to his address with a view to put him in trouble is rendered highly improbable in view of the large quantity of opium found inside the tin. It is difficult to accept the argument that somebody of the opposite party might have sent him opium valued at Rs. 1800/- and subsequently given information to the Excise Authorities so as to put him into trouble. Even assuming that such an enemy wanted to create trouble for the opposite party, he would surely have sent a much smaller quantity.

6. It was then urged that the burden of proving the prosecution case beyond reasonable doubt should not be shifted on the accused in a criminal case and the

prosecution must establish whether or not there was no previous transaction between the opposite party and Mataddin and whether or not the parcel was sent by Mataddin in pursuance of a request made by the opposite party. It would have been much better if the prosecution had made enquiries at Delhi and had some evidence to show who this Mataddin was and what connection he had with the sender of the telegram found in the house of the opposite party, namely Gur Bachan Singh. But even if such evidence was led by the prosecution the question will ultimately depend on whether, on reviewing the entire evidence (as a whole) and bearing in mind the explanation given by the petitioner in his examination under Section 342 Cr. P. C. It cannot be reasonably held that it was highly probable that the opposite party was aware of the contents of the parcel. It is no doubt true that mere physical possession of the parcel containing opium would not suffice to establish that the opposite party was in unlawful possession of that incriminating article and the necessary animus must also be established by the prosecution beyond reasonable doubt.

But this animus cannot be established by direct evidence and has to be proved only by a reasonable inference made from all the circumstances of the case. Bearing in mind this principle and after giving due weight to the conduct of the opposite party in receiving the parcel without any protest and also the large quantity of opium found inside the parcel, I think the lower Court was justified in holding that he was in unlawful possession of the same.

7. Mr. G.K. Misra drew our attention to two important cases namely Kashinath v. Emperor, 9 Cal WN 719 and C.C. Baker v. Emperor, AIR 1930 Cal 668, which are helpful in considering whether in cases of this type the animus can be ascribed to the person from whose physical custody the incriminating article was recovered. It should be noticed, however, that in these two cases the large quantity of excisable articles seized was given due weight as an important circumstance showing that it could have not been planted by any other person. In AIR 1930 Cal 668 some other circumstances were also brought on record to show that possession of the incriminating articles was with some other person and that the explanation given by the accused might possibly be true. He was, accordingly, given the benefit of doubt and acquitted. In 9 Cal WN 719 there were some other circumstances to

show that the explanation given by the accused could not be true and he was held guilty.

In the instant case, in the absence of any evidence to establish the connection between the sender of the parcel and the opposite party, we must hold that the explanation given by the opposite party in his statement under Section 342 Cr. P. C. could not possibly be true. We are not, in any way, shifting the burden on the accused in a criminal case, but we are only making a reasonable inference from the proved facts.

8. The sentence is undoubtedly very lenient and should be enhanced. The question is whether the imprisonment should be rigorous or simple. Section 9(a) of the Opium Act merely says that the offender is liable to imprisonment. But by virtue of Clause (26) of Section 3 of the General Clauses Act the expression 'imprisonment' if used in a Central Act must be construed to mean both rigorous and simple imprisonment. The Opium Act was passed in 1878 but the General Clauses Act was brought on the statute book in 1883 and has been repealed and re-enacted subsequently in modified forms -- the latest one being the General Clauses Act of 1897 (Act X of 1897). By virtue of Section 4(1) of that Act the aforesaid construction of the expression 'imprisonment' would apply to all Central Acts enacted after 3-1-1868. Hence, it is clear that the sentence of imprisonment passed under Section 9(a) of the Opium Act may be rigorous or simple.

9. Our attention was invited to a single judge decision of this Court in Govt. Appeal No. 7 of 1957 dated 31-7-1958 where an offender was convicted under Section 47(a) and (f) of the Bihar and Orissa Excise Act. The learned Judge held that as the expression used in that section was only 'imprisonment' a beneficial construction ought to be given to the same and it should be held that only a sentence of simple imprisonment could be passed for the offence. It is unfortunate that the learned Judge's attention was not drawn to the provisions of the Bihar and Orissa General Clauses Act (B. and O. Act of 1917) in which the expression 'imprisonment' has been defined in Section 4(28) as meaning 'imprisonment of either description as defined in the Indian Penal Code'. Hence, in the Bihar and Orissa Acts it is unnecessary to mention, in the penal sections, that the

imprisonment may be of either description. Doubtless, the Indian Penal Code expressly says, in all the penal sections, that the imprisonments may be of either description, but this is because the Code was passed long before the General Clauses Act came into force in 1868. We must, therefore, with respect, hold that the decision in the aforesaid Govt. Appeal No. 7 of 1957 (Orissa) regarding the construction of the expression 'imprisonment' is not correct.

10. For the aforesaid reasons, we allow this revision petition of the State, maintain the conviction of the opposite party under Section 9(a) of the Opium Act and enhance the sentence passed on him to three months rigorous imprisonment. The sentence of fine will also remain.

**Barman, J.**

11. I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**