

State of Orissa Vs. Basudeb Das

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Court : Orissa

Decided On : Nov-26-1964

Reported in : 1966CriLJ832

Judge : S. Barman, J.

Appellant : State of Orissa

Respondent : Basudeb Das

Judgement :

S. Barman, J.

1. The accused respondent was acquitted on a charge of wrongful possession of 50 grams of alleged contraband opium near Jharsuguda Railway Station, The ground on which the learned Magistrate acquitted the accused respondent is that the prosecution has not successfully proved the contents of the packet seized (M.O.I) to be opium within the meaning of the Act. In support of the order of acquittal he relied on a decision of the Andhra Pradesh High Court In Re, Ramapuram Ayyanna, : AIR 1963 AP334 where it was held that a conviction under Section 9(a) of the Opium Act by the Magistrate based solely on his identification of the substance as opium depending on his own observations and sense of smell and without sending it to chemical examiner or calling for an opium expert is illegal since the Magistrate is not competent to decide the composition of morphine or the content if any of the other drug referred to in Section 2 of the Dangerous Drugs

Act, 1930.

2. Under Section 3 of the Opium Act, 'opium' means:

(i) The capsules of the poppy (*Papaver somniferum* L.) whether in their original form or cut, crushed or powdered, and whether or not juice has been extracted - therefrom.

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport, and

(iii) any mixture, with or without neutral materials of any of the above forms of opium, but does not include any preparation containing not more than 0.2 per cent of morphine, or a manufactured drug as defined in Section 2 of the Dangerous Drugs Act.

It is thus clear from the definition that if it is not more than 0.2 per cent of morphine then it is not opium within the meaning of the Act.

3. What is the prosecution point in this case? It is argued that it is a case of crude raw opium: it is not a case of medical preparation or drug where the question of percentage is material; in such a case it is not necessary to call an expert.

4. What is the argument on behalf of the accused respondent? It must be proved that it is opium. Whenever there is doubt it must be sent to an expert competent to determine the composition of the contents.

5. What view then an appellate court can take on such rival contentions? In my opinion there can be no hard and fast rule where it should be sent to an expert or where it is not necessary to send it for determination by an expert. It all depends on the facts of each particular case. The Andhra Pradesh High Court does not say that in each and every case the substance should be sent to an expert. In that particular case the learned Magistrate based his conviction solely on his own identification of the substance as opium depending on his own observations and sense of smell. In other words, the Magistrate placed himself in the position of an

expert witness. Thus that particular case was decided on the particular facts and circumstances and does not purport to lay down any general rule that in each and every case the substance should be sent to an expert competent to determine the composition of the contents.

6. In the present case, when a Magistrate took a view that the prosecution had not successfully proved the contents of the packet and when such a view does not appear to be erroneous, I am of opinion that such a finding should not be disturbed. In view of the doubt which the learned Magistrate held in this particular case he felt that it should have been sent to an expert competent to determine its composition. I must make it clear that this decision is not to be understood to mean that in every case the seized substance has to be sent to an expert for determination of its composition, There can be no such general rule. It all depends on the facts and circumstances of each particular case.

7. So, the order of acquittal passed by the learned Magistrate is upheld. The Government appeal is dismissed.

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