

The State Vs. Gunchu Majhi

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Court : Orissa

Decided On : Feb-24-1989

Reported in : 1989CriLJ1838

Judge : S.C. Mohapatra, J.

Appellant : The State

Respondent : Gunchu Majhi

Judgement :

S.C. Mohapatra, J.

1. Acquittal of the respondent in respect of his prosecution under Section 47(b) of the Bihar and Orissa Excise Act, 1915 (hereinafter referred to as 'the Act') is the subject matter of this appeal by the State under Section 378 Cr. P.C.

2. Prosecution case, in short, is that the respondent was cultivating the hemp plants in his ban. On 10-9-1979 P.W. 4 and his staff went to the village on getting information and on search found 2375 hemp plants in the bari of the respondent which had grown to a height of about 5'.3'. The same were uprooted and were seized. Plea of the defence is one of complete denial.

3. Four witnesses were examined on behalf of the prosecution. Seizure list was exhibited as Ext. I and a sample of the hemp plants seized was produced as a

material object since by an earlier order of the Court the other hemp plants which were gradually decomposing were destroyed. Trial court disbelieved. P.Ws. 1 and 2 being outsiders to the village and deputed them as chance witnesses. Seizure of the hemp plants from the bari of the accused was disbelieved on account of discrepancy with regard to time. Non-examination of the villagers was given weight to disbelieve the prosecution case. Trial court observed as follows:

The prosecution has examined P.Ws. 1 and 2 who are outsiders and chance witnesses. They are unable to say actually who were possessing the alleged land. The entire story of the prosecution revolves around the possession of the alleged land. But the possession of the land has not been properly proved by the prosecution. It would have been better had the prosecution examined some villagers as witnesses. It is very difficult to rely on the evidences of two outsiders such as P.Ws. 1 and 2. The villagers who have been examined as defence witnesses have denied their knowledge about the occurrence. Hence it is not possible to come to the conclusion that actually what was the occurrence and; even if there was occurrence who was in cultivating possession of the alleged land. The prosecution has miserably failed to prove the case beyond all reasonable doubts against the accused. Hence the accused is entitled to a benefit of doubts.

4. This being an appeal against acquittal, I am not to interfere with the findings of fact unless I have come to the conclusion that the findings are either unreasonable or have been arrived at without taking into consideration the materials and circumstances available on record.

5. In the present case, it is to be examined (a) whether there was any seizure on 10-9-1979, (b) whether the plants if Seized were hemp plants and (c) whether the respondent cultivated the same. P.Ws. 1 to 4 are the witnesses to prove seizure on 10-9-1979. D.W. 1 has stated that P.W. 4 booked many other detected cases against them in the village on the same day. P.W. 4 has stated that altogether he detected 17 cases involving 33211 Ganja plants in the village. P.W. 1 proved the seizure list and has signed the same. P.W. 2 also signed the same. D.W. 2 stated that he was present in the village on 10-9-1979 and had given his left thumb

impression in the seizure list. He stated that at the instance of P.W. 4 he gave his LT.1. when D.W. 1 was present. D.W. 1 does not corroborate D.W. 2 with regard to the giving of LT.I. at the behest of P.W. 4. No suggestion was made to P.W. 4 that at his instance D.W. 2 had put his left thumb impression although he was not present. D.W. 1 has stated that P.W. 4 booked many other detected cases against them in the village on the same day whereas D.W. 2 stated that on 10-9-1979 P.W. 4 and his staff had not gone to the village. From the aforesaid evidence it is clear that P.W. 4 with his staff went to the village and had seized the plants as alleged.

6. The next question for consideration is whether the plants seized were hemp plants. P.Ws. 1, 2 and 3 stated that the hemp plants were seized. No question was put to them with regard to their knowledge if the plants were hemp plants. To a question to P.W. 4 as to why he did not send the plants for examination by any expert. He stated that being an expert himself he did not send the same. This statement of P.W. 4 has not been challenged by further cross-examination to disprove that P.W. 4 is not an Expert for identifying the hemp plants. Rather, in cross-examination he stated that the hemp plants have got particular type of leaf and odour which no other plants have. On a consideration of the aforesaid evidence. I am satisfied that in the present case the plants seized were hemp plants.

7. It is next to be considered whether the respondent cultivated the hemp plants. There is no evidence in the case that the respondent cultivated the hemp plants. P.Ws. 1, 2 and 4 state in their evidence that they know the respondent. P.W. 4 stated that he and his staff guarded the bari and the home of the accused before search. In cross-examination, it was stated by him that the bari was in possession by the respondent having a thorn fence in all sides. P.W.-3 stated that the backyard of the accused was fenced from all sides and was adjacent to the home of the accused and the accused was in possession of the same, P.W. 2 stated that the backyard was properly fenced having one way to the adjacent back yard door of the accused. P.W. 1 stated that the bari is adjacent to the home of the accused which had been properly fenced having the only way from the home of the accused. This clearly shows that the bari where from the hemp plants were seized

after being uprooted was in possession of the accused.

8. It is submitted by the learned Counsel for the respondent that the prosecution case is not believable since the villagers claimed to be present had not been examined and P.Ws. 1 and 2 are outsiders. If they are left out the only witnesses are P.Ws. 3 and 4, who are official witnesses. Trial court has disbelieved P.Ws. 1 and 2 on the ground that they are outsiders and chance witnesses and there is discrepancy in their evidence with regard to the time of seizure. When 17 cases were booked on the same day after search and seizure there is every possibility of discrepancy as regards time and the same cannot be a ground to disbelieve the seizure to prove by these two witnesses. They have clearly stated the reason for their coming to the village that day. This has not been the reasons stated by them have not been challenged in cross-examination. Accordingly, they ought not to have been termed as chance witnesses. When 17 persons were prosecuted from the same village in respect of the similar offence, non-examination of any villager would not be fatal specially when the evidence of P.Ws. 1 and 2, who are not official witnesses cannot be discarded. Thus, the reasons given by the trial court for disbelieving the evidence led by the prosecution are not reasonable and the same cannot be accepted.

9. As has been stated earlier, there is no evidence that the respondent cultivated the hemp plants. However, the hemp plants grown to a size of about 5'4" in the bari of the respondent which is well fenced from all sides having a backyard door from the house of the accused leads to the only irresistible conclusion that the accused was in possession of the hemp plants. Hemp plant is an intoxicant. When thousands of hemp plants were grown in the bari of the respondent in his possession, the irresistible conclusion would be that the hemp plants were in possession of the respondent. Accordingly, the presumption under Section 48 of the Act is attracted that the respondent is guilty of the offence under Section 47(b) of the Act although there is no evidence that he has cultivated the same. Specially when the respondent has not give any explanation with regard to such possession that he denied to have cultivated the same. Accordingly, there is no doubt that the respondent is guilty of the offence under Section 47(b) of the Act.

10. For cultivation of hemp plant the minimum sentence to be imposed for six months and the maximum is two years under Section 47 of the Act. In the said Section it is provided that the Court by reasons to be recorded has power to punish an accused to a sentence lesser than the minimum. When the respondent had been acquitted and about ten years from the date of seizure normally I would have thought of imposing a sentence less than the minimum. In the present case, however, thousands of hemp plants were cultivated by the respondent and no explanation has been given by him. It is not a case where one person has grown a small number of hemp plants. From the evidence of P. W. 4 as well P. W. 2, it is clear that a large number of villagers were cultivating hemp plants in the village. Unless a serious view is taken in the matter, the restriction in the Act would prove futile and persons with impunity would grow hemp plants. It is really astonishing how the Excise staff could not detect the same for a long period to allow such hemp plant to grow through a height of about 5' 4'. In case ten years would not have passed in the meantime I would have taken a serious view of the matter to impose a sentence which would be near about the maximum as provided under the Act. However, taking into consideration the lapse of time, I am inclined to hold that the ends of justice would be met in the present case in case the respondent is sentenced to undergo R.I. for six months which is the minimum provided under the Act.

11. In the result, the appeal is allowed. Unless the respondent surrenders to custody within a month from today, steps shall be taken for apprehending him to serve the sentence.