

State of Rajasthan Vs. Anandi Lal

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Court : Rajasthan

Decided On : May-09-1967

Reported in : 1968CriLJ275

Judge : D.M. Bhandari and; L.S. Mehta, JJ.

Appellant : State of Rajasthan

Respondent : Anandi Lal

Judgement :

D.M. Bhandari, J.

1. A party consisting of Shri Peshawarilal, District Opium Officer, Ratlam, P.W. 2, Shri Ram Prasad, Preventive Inspector, Narcotics Department, Neemach, P.W. 1, Shri Manaklal, Sub-Inspector, Narcotics Department P.W. 4, and Shri Abdul Latif, Head Constable, Gangapur Police Station, P.W. 9 searched a. house in the town of Gangapur, Bilwara District on 26.6.1960, and seized from a room in the ground floor from the house 7 bags containing opium weighing 3 maunds 31 seers and 1 Chattank (Bengal weight). Anandilal, respondent, and his brother Kanhaiyalal and Smt. Dhapu wife of Anandilal were challaned before the Munsiff Magistrate, Gangapur, District Bhilwara under Section 9-A of the Opium Act, 1878. It may be mentioned that at the time of the search both Anandilal and Kanhaiyalal were not present and the room from which the bags of opium were-recovered was found to be locked. The key to the lock was handed over by Smt. Dhapu wife of Anandilal

to the search party and after opening the lock the bags of opium were found in the room and they were seized. The learned Magistrate examined the accused under Section 251A. Criminal P.C. Both Anandilal and Kanhaiyalal denied that any opium was recovered from their house. Shri R.P. Agarwal, Advocate, was examined on behalf of Smt. Dhapu and he stated that opium was not recovered from the possession of Smt. Dhapu. He further stated that the husband of Smt. Dhapu was alive and he looked after everything. Smt. Dhapu only looked after the domestic affairs and did not know in what business her husband engaged himself, and that the house in which she resided was that of Anandilal.

The learned Magistrate took the view that Smt. Dhapu, as stated by her, looked after domestic matters and that in Rajasthan, women-folk,, who are illiterate and old, do not ordinarily know in what business their husbands engaged themselves. He, therefore, discharged Smt. Dhapu relying on Wazir v. Emperor AIR 1985 Pesh 68 and Nga Shwe Tee v. Emperor AIR 1987 Bang 484. Charges were framed against the other two accused and they were tried by the said Magistrate. The prosecution produced 10 witnesses but the Chemical Examiner, who had examined the samples taken from the bags seized, was not produced. Both the accused were examined under Section 342, Criminal P.C., and they denied that any opium was recovered from their house. As many as 7 witnesses were examined in defence.

The learned Magistrate held that the room from which the opium was recovered was locked at the time of search by the search party. The key of the lock was taken by the search party from Manoharlal son of Anandilal and the wife of Anandilal Brat. Dhapu Bai and then the lock was opened and 7 bags were recovered, and these bags contained opium, as established by the evidence of the prosecution witnesses. He took the view that Smt. Dhapu was in possession of the room on behalf of her husband Anandilal, who, had gone temporarily to the market and be Anandilal must be held to be in possession of the said opium. He was, therefore, convicted under Section 9A of the Opium Act, 1878, and sentenced to two years' rigorous imprisonment and a fine of Rs. 2000, in default of payment of fine to under go further rigorous imprisonment for 6 months. Kanhaiyalal accused was, however, acquitted on the ground that Kanhaiyalal lived separately from his

brother Anandilal in the same house, and could not be said to be in possession of the room from which the opium was recovered.

2. Anandilal filed an appeal before the Sessions Judge, Bhilwara. It was contended by the accused that the report of the Chemical Analyser, 'Government Opium Factory, Neemach, had not been proved in this case and that even the opium which was recovered was not brought to the Court. The learned Sessions Judge' ordered the State to produce additional evidence and also to produce the 7 bags of the opium seized. The prosecution then examined 2 witnesses in the Court of Session. Anandilal accused was again examined under Section 342, Criminal P.C. He admitted that the house which was searched was owned by him, but stated that the room from which the opium was recovered was not in his possession and it was in possession of Bhim Singh, One defence witness was, however further examined. The learned Sessions Judge heard the arguments afresh. Only two points were urged before him. One was that the prosecution had failed to prove conscious possession of the accused Anandilal over the opium which was recovered, and the other was that the room from which the opium was recovered was in the possession of Bhim Singh and not in the possession of Anandilal accused.

The learned Sessions Judge rejected the second argument after discussing the evidence on record and held that the room from which the opium was recovered was part of the premises belonging to the appellant. The learned Sessions Judge, however, accepted the first argument of the accused. In his opinion, though the room was part of the premises of Anandilal, yet it was the wife of the appellant who possessed the key of the room, and who had handed over the key to the search party and, it was quite possible that she herself might be carrying on business in contraband opium and she might have used the room for carrying such business without the knowledge of her husband. The learned Sessions Judge referred to *Lachchu v. Emperor* AIR 1914 Oudh 171; *Narendra Nath v. The State* : AIR1951 Cal140 ; *Ram Narain v. The State* 1955 Raj LW 267; *The State of Himachal Pradesh v. Buti Nath* ; *Pratap Singh v. State* AIR 1959 J & K 134 and *Dharma Singh Mangal Singh v. State* , in support of this view and acquitted the accused Anandilal. He, however, upheld the order of the trial Court confiscating

the opium.

3. Against this order of acquittal, this appeal has been filed of behalf of the State. Learned Deputy Government Advocate has contended that on the facts and in circumstances of the case and on the finding of the Sessions Judge, the only inference that could be drawn is that Anandilal, respondent, was in possession of 7 bags of opium which were found lying in a room, the key of which was with the wife of the respondent. Learned Counsel for the respondent has urged that it was the duty of the prosecution to show that the bags of opium recovered were in the conscious possession of the respondent and that such an inference cannot be drawn merely because it was the wife of the respondent who had handed over the key to the search party. He has also contended that the learned Sessions Judge has acquitted the respondent as he was not satisfied on this point and the order of acquittal should not be interfered with in appeal, as there were no substantial reasons to do so.

4. Section 9-A of the Opium Act lays down that any person who, in contravention of any provision of the Act or of the rules made and notified under Section 5 or Section 8, possesses opium shall be punishable with imprisonment for a term which may extend to 8 years with or without fine. It must be conceded that 'possession' under Section 9(a) means conscious possession, i.e., the knowledge of the person that he was in possession of the opium. Cases have arisen in which such a knowledge could not be imputed to a person and the person was acquitted in spite of the fact that such person held possession of the place from where the contraband opium was recovered. Such may be a case of taxi-driver, who possessed the key of the luggage goods, which had a luggage box containing opium and there was no evidence that the driver had the knowledge that luggage box contained opium.

5. The learned Sessions Judge has observed that none of the prosecution witnesses has deposed that the appellant brought the opium or stored it in the room and that there was no evidence to connect the respondent with the opium except that it was recovered from a room, which formed part of the premises which belonged to the appellant.

6. There is no direct evidence showing that the respondent had at any time handled the opium, but the question is whether the circum. stances that have been brought on record in this case are sufficient to hold that it was Anandilal, respondent, who was in possession of the opium. This is a matter which could as much be proved by 'circumstantial evidence as by direct evidence. The learned Sessions Judge has taken the view that in this case the principle enunciated in Section 27 of the Indian Penal Code cannot be invoked. This section lays down that when a property is in possession of a person's wife, clerk or servant on account of that person, it is in that person's possession within the meaning of the Indian Penal Code. It is true that Section 27 is not applicable in its terms to an offence committed under any other law except the Indian Penal Code. It is also true that under Section 27 of the Indian Penal Code in order that a husband's possession be his conscious possession, it is necessary that the wife possessed the property on account of her husband. This means that if the wife is possessing a particular property on account of her husband, the latter shall be held to be in possession of the property.

Section 27, Indian Penal Code, may be utilised for the purpose of convicting a person, who is not directly in possession of the property, but is in possession of the property through his wife, clerk or servant, but very often, this section has been utilised for the purpose of acquitting wife, clerk, and servant inasmuch as it is taken that if these persons have possession of a property on account of some other person, they cannot be held liable under the Indian Penal Code for having committed any offence of holding possession of any such property. The reason may be that the wife clerk or servant have to obey the husband or the master and cannot refuse to have possession of the property, if directed to do so by him. As they are practically under a compulsion, they should not be held criminally liable. Such are the cases of *Wazir v. Emperor* AIR 1985 Pesh 68, *Fernando v. Emperor* AIR 1931 Mad 490 (2), *Queen Empress v. Sangam Lal* (1893) ILR 15 All 129 and *D. Weston v. Peary Mohan Das* (1918) ILR 40 Cal 898. The learned Magistrate while discharging 8mt. Dhapu wife of Anandilal, respondent, took this view of the matter and there is no controversy in this appsa.1 that this view was incorrect.

7. Learned Advocate for the respondent has however, argued that simply because this view was taken with regard to the wife, it cannot be held that the husband must be deemed to be in possession. It is urged that in criminal cases, husband and wife are two separate entities and they cannot be mixed up and treated as one entity as has been done in English law with regard to certain civil liabilities of the wife. This contention is correct. Before holding a man guilty, the court of law should come to the conclusion either from the direct evidence or the circumstantial evidence that the person, whom it is going to convict committed the offence and simply because wife is found in possession of certain articles, the husband cannot be convicted for such possession. Such was the case of this Court in 1955 Raj. L.W. 267. In that case the house from which the stolen property was recovered belonged to the accused and was in his occupation along with his wife. It was held that a reasonable possibility of the stolen articles being introduced by the wife could not be lost sight of.

The cases of AIR 1935 Pesh 68 and Bishna v. Emperor AIR 1920 Lah 210 were distinguished on facts. The last case was of the recovery of liquor and apparatus of its manufacture, which were found in the house of the husband, who was living with his wife in the premises. This case was distinguished on the ground that such articles should not have been obviously found in the house without the knowledge and sanction of the husband, who was held responsible for keeping them. In an unreported case, the State of Rajasthan v. Chandla Criminal Appeal No. 525 of 1968, decided on 9.12.1966 (Raj) by the Division Bench of this court, of which one of us was a member, the Excise Inspector raided the house of the accused in his absence and at the instance of the wife of the accused recovered 6 bottles containing illicit liquor as well as Borne other implements for distilling liquor. The view taken was that as the house belonged to the husband, and the wife lived along with the husband in that house and the articles recovered were numerous and of such dimensions that they must be taken to have been kept in the house within the knowledge of the husband, the wife must be taken to be in possession of these articles on account of her husband during his temporary absence.

Ram Narain's case 1955 Raj LW 267 only laid down the law that when a house is in possession of person along with an other, who was equally capable of storing

the stolen article there, it would be difficult to draw a presumption against a person solely because he is the owner of the house or the head of the family, unless some other circumstantial evidence connecting the accused with the stolen articles is found to exist. This case cannot be said to be laying down the law that there must always be some direct evidence connecting the accused with the articles recovered from the house. Circumstances, if they are strong enough, may be pressed into service for holding that the owner of the house or the head of the family must be presumed to be in possession of the articles recovered from his house. The circumstances must be of such probative value as to lead to the inference of guilt and to wipe out the presumption of the innocence of the accused. A person being the owner of the house or the head of the family, is one of the circumstances which is to be taken into consideration, and Earn Narain's case 1955 Raj LW 267 lays down that this circumstance, alone by itself may not be sufficient, when there is reasonable possibility of some other person introducing such other articles in a house in the occupation of that person without his knowledge. We are of the view that circumstances should be of such a nature as to reasonably exclude every hypothesis but that the accused was in conscious possession of the article recovered either alone or jointly with others.

8. Now let us examine what are the circumstances that are proved in this case? They may be summarised as follows:

1. that Anandilal, respondent, was the owner of the room in which 7 bags of opium were recovered;

(2) that his case that Bhim Singh was in possession of that room is false; on the other hand, it is proved that the key of the room was in possession of his wife;

(3) that the husband was merely temporarily absent from his house. The prosecution case is that Manoharlal and Mst. Dhapu had informed the search party that Anandilal had gone to the market Gangapur to purchase vegetables while accused Anandilal tried to establish by defence evidence that he had gone to village Sanwar to pay homage to a religious preacher;

(4) that there is no suggestion that Anandilal respondent was not on good terms with his wife and under the normal circumstances, the key of the room of the house which he occupied must have been left by him with his wife;

(5) that as much as 3 maunds 81 seers and 1 Chattank opium was recovered contained in 7 bags and so much quantity of opium could not ordinarily have been put in that room without the knowledge of the respondent;

(6) that Anandilal, respondent, absconded and was arrested on 2.7.1960,

(7) that Anandilal, respondent, had furnished no reasonable explanation as to how it happened that 7 bags of opium were recovered from the zoom owned and possessed by him.

9. In our opinion, these circumstances lead to no other conclusion, except that Anandilal, respondent, knew that 7 bags of opium were lying in his room and was thus in possession thereof within the meaning of Section 9(a) of the Opium Act. In this connection we may refer to AIR 1982 Mad 490 (2). In our view, the learned Sessions Judge failed to consider these important circumstances that have been brought on the record, which clearly point out the guilt of Anandilal, respondent.

10. Learned Counsel for Anandilal, respondent, has urged that Anandilal was about 56 years of age, and sending him to jail would be very harsh, as observed by their Lordships of the Supreme Court in Puranmal Agarwalla v. State of Orissa : 1958 CriLJ1432 . Offences against Opium Act are very serious. A large quantity of opium was recovered from the possession of the accused. We do not think any leniency is called for in this case.

11. The result is that the order of acquittal dated March 23, 1968, passed by the learned Sessions Judge, Bhilwara, is set aside and the order dated September 27, 1962, of the Munsiff. Magistrate, Gangapur, convicting the accused under Section 9.A of the Opium Act and sentencing him to two years' rigorous imprisonment and to pay a fine of Rs. 2000, or in default to undergo further rigorous imprisonment for six months, is restored. The District Magistrate, Bhilwara, is directed to arrest Anandilal, respondent, and send him to jail to undergo the sentence awarded to

him. Learned Counsel for the respondent prays for leave to appeal to the Supreme Court. We do not think that this is such a case for granting leave. The prayer is refused.

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