

State Vs. Rama

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Court : Rajasthan

Decided On : Oct-22-1975

Reported in : 1975WLN(UC)452

Judge : M.L. Jain, J.

Appeal No. : S.B. Criminal Appeal No. 819/1971

Appellant : State

Respondent : Rama

Disposition : Appeal allowed

Judgement :

M.L. Jain, J.

1. This appeal is directed against the judgment of the learned Sub Divisional Magistrate. Bhinmal, dated 3-8-71 by which he acquitted respondent Rama of the offence under Section 9 of the Opium Act, 1878.

2. The Excise Inspector, Bhinmal Khanu Singh PW 6 raided the village Bhutal and intercepted accused Rama. Upon making a search of his person, 15 1/2 tolas of opium covered in a plastic paper was recovered from his pocket. This happened on 23-2-66. He took a sample of 2 1/2 tolas and then lodged a report with the police station Sachore. The investigation officer registered a case and forwarded

the sample through the Superintendent of Police Jalore for chemical examination and the case was simultaneously challaned in the Court of the said Magistrate.

3. The sample was received in the Central Public Health Laboratory Jaipur on 25-4-66 and the Chemical Examiner & Chief Public Analyst reported that the sample on examination was found to be of opium, its morphine content being 4.05% (calculated as anhydrous morphine) This report is Ex. P/7. The learned Magistrate examined eight witnesses in support of the prosecution and one witness in support of the defence.

4 The learned Magistrate thus, held that the witnesses of the search, namely, Chain Singh PW 1 and Bhikh Singh PW 2 did not support the prosecution. Chain Singh deposed that he did not see any opium being recovered from the person of the accused but he saw opium in a piece of cloth. The memo Ex. P/9 did bear his signature but the contents thereof were not read over to him. Bhik Singh PW 2 deposed that Khanu Singh had the opium in his hand and he said that he had recovered it from the person of accused Rama. On the basis of the evidence, the learned Magistrate accepted the theory of the defence as disclosed by the statement of Bagta DW 1. This witness had stated that one Mohabata was his real brother who is now dead. Rama accused had come to meet him and he was taking tea when four five persons of the checking party came to the house of Mohabata. They searched his house, Rama also came there. Ram3 requested the members of the checking party to let the poor Bishnoi go, Thereupon, they asked what business he had to intervene and arrested him along with Mohabata No opium was found on the person of Rama. The learned Magistrate argued hat the evidence of Bagta was reliable because no person will involve his own brother in the crime and the very fact that he was saying that the opium was found in the house of his brother, lent truth to his statement. The learned Magistrate then, concluded, that no case was made out against the accused Rama.

5. The learned Public Prosecutor challenged the findings of the learned Magistrate firstly on the ground that even if Chain Singh and Bhikh Singh did not support the prosecution, there was no reason to disbelieve the evidence of Khanu Singh PW 6 and Chela Ram PW 7 who have testified to the fact of recovery of opium from the

person of accused Rama. The two witnesses Chain Singh and Bhikh Singh have admitted at least this much that they had signed the recovery memo Ex. P/1 and that these was opium covered in a piece of paper or cloth which weighed 15 1/2 tolas. As regards the veracity of the defence witness Bagta, the learned Magistrate forgot to notice that Bagta DW 1 could easily afford to involve his brother Mohabata to protect his friend Rama was already deed The accused gave no explanation of any kind in his statement regarding the fact of recovery of opium from his pocket.

6. The learned Counsel for the respondent Rama however, submitted that no case of any kind was made out against the accused Besides the arguments which have been advanced by the learned Magistrate, the learned Counsel submitted that the acquittal could be supported on other grounds as well. He pointed out that no question was put to the accused in his examination under Section 342 Criminal P.C. regarding the result of the chemical examination. Thus a serious prejudice was caused to the accused and the trial was vitiated. The learned Counsel relied upon a judgment of this Court in Ratan Lal v. State 1966 RLW 451. My attention was drawn to paras 5 and 6 of this judgment. In that case the opium which was seized was six seers. The sample was taken by the SHO, Begun from the bedding belonging to the accused, was sealed by him and was sent to the Superintendent of Police, Chittorgarh, to be forwarded to Public Analyst for chemical examination. It was not mentionel in the report of the chemical examiner that the seals which were found on that sample were that of the S.H.O. Begun or that of the Superintendent of Police The possibility of the sample changing at the office of the Superintendent of Police. Chitiorgarh, by mistake of otherwise and different sample being sent under his seals was not ruled out. It the absence of any specific evidence to the effect that the sample of opium reached the public analyst in its original condition and that it was not tampered with during the process of transmission, the Court found it difficult to accept the contention of the prosecution that the report of the Public Analyst must be interpreted to mean that the seals of the S.H.O., Begun were found intact when the sample reached the Public Analyst. Basing his argument on this case the learned advocate accused has argued that if a question were put to the accused under Section 342, Criminal P.C. (which was not put) then he would have raised a plea that the report did not relate to the

sample which was taken by the S.H.O, Begun from his possession. The accused was prevented from raising such a plea in the absence of such a question having been put to him. I am unable to agree that simple because the question was not put to the accused with respect to the report, it should be held that there was a possibility of the sample of the opium changing during transit from the office of the Superintendent of Police to that of the Public Analyst.

7. The learned Counsel then pointed out that the sample was recovered on 23-2-66 and it reached the Superintendent of Police on 14-3-66 and then it arrived at the office of the Public Analyst on 25-4-66 Prosecution led no evidence where the sample remained in between 14-3-66 & 25-4-66, No evidence was led to show that the sample was not tampered with in between. Achalsingh constable who carried the sample to the Public Analyst was not examined as prosecution witness. Curiously enough Ex. 27, the report of the Chemical Examiner does not contain a statement that the seals were compared with the specimen. It simply says that the sample arrived in a sealed condition, intact and unbroken. As matter of fact specimen of the seal was not at all sent to the Chemical Examiner. The learned Counsel in this connection drew my attention to para 7 again of the aforesaid judgment (1) in which it was stated that the prosecution should lead evidence that the seals remained intact from the time they were put and the time they reached the Chemical Examiner. Such evidence may appear to be formal but it has still to be led in a criminal case to discharge the burden which lay upon the prosecution.

8. The learned Counsel for the accused respondent next contended that according to the observations contained in Modi's book 'Medical Jurisprudence and Toxicology' 15th edition, page 640 and Taylor's book of 'Principles and Practice of Medical Jurisprudence' 9th edition, Vol. II, page 48, twenty five ingredients of alkaloids along with certain acids go to make the contents of opium Morphine test was tot a sure test and therefore, it cannot be said, in the absence of all the ingredients having been mentioned in the report that the sample was that of opium and opium alone.

9. Lastly, the learned Counsel invited my attention to the evidence of the prosecution. Chainsingh PW 1 was turned hostile to the prosecution. Bhiksingh

PW 2 was not relevant so far as the sending of the sample was concerned. Jaswantdan PW 3 who was the Sub-Inspector, Sanchore, has not said a word as to where he kept the opium from 23-2-66 when he received it from the Excise Inspector, upto the date he sent it on 14-3-66 to the Superintendent of Police through Achalsingh Sawar. Khanusingh PW 6 has said that he had forwarded the specimen seal to the S.H.O. but the S.H.O., does not say that he received such a specimen.

10. I have examined these arguments carefully. It appears to me that the argument as regards the result of examination of opium by the Chemical Examiner cannot be challenged simply because the other ingredients of the opium have not been mentioned. The reference in the aforesaid books is in relation to detection of poisoning by opium. I agree with the learned Public Prosecutor that if the accused doubted that the sample was of opium, he could have produced his own expert or could have summoned the Chemical Examiner to give evidence in this respect. It is true that there is a lack of evidence to show whether the specimen seal impressions were forwarded to the Chemical Examiner or not but the prosecution had produced Viraram constable PW 8 who had taken the sample from the office of the Superintendent of Police to the office of the Chemical Examiner. Thus, the link between the seizure by the Inspector of the opium and the arrival thereof at the office of the Public Analyst has been established. The opium was forwarded on 3-2-66, to Jaswant Dan Sub Inspector, Sanchore. On 14.3.66, he forwarded it to the Superintendent of Police, Jalore through Achalsingh and from there, it was taken by Viraram to the Chemical Examiner on 24-4-66. I am unable to hold that there was a chance of tampering with the sample in any of the office which happened to handle and keep the same in custody.

11. The argument that no question was put to the accused in his examination regarding Chemical Examination otherwise he would have raised the plea, that the sample has been changed during this interval and since there was no opportunity to raise such a plea, he was prejudiced in his defence. I agree that an examination under Section 342, Criminal P.C. is not a mere formality but even if a question were put to him regarding Chemical Examination, the result would not have been as is now argued that it would have been. A general question was put to the

accused whether he wanted to say anything more and he only said that he had no opium and the opium which was seized was not his but that of Mohabata. As a matter of fact, a question was put to him that Viraram deposed that he took the sealed packet of sample to Jaipur to the office of the Public Analyst and the accused simply replied that this was incorrect. Here was an opportunity available to the accused to say that the sample which Viraram took to the Public Analyst was not the same which was recovered from him. The argument of the learned Counsel for the respondent is therefore, merely conjectural.

12. There was no valid reason to reject the evidence of Khanu Singh and Chela Ram and it was further wrong to uphold the defence plea which was patently an after-thought and false.

13. Accordingly, I reject all the contentions advanced by the learned Counsel for the respondent and I find upon an examination of the record and the arguments that the judgment of the learned lower Court is perverse and the conclusions drawn by the learned Magistrate are erroneous.

14. I, therefore, accept this appeal set aside the judgment and acquittal of the accused Rama and convict him under Section 9 of the Opium Act for possession of opium. Since the quantity of opium is not much and the case has gone on for 9 1/2 years, it will not be proper at such a distance of time to send him to prison. I, therefore, consider it proper to give him the benefit of probation. As a matter of fact, when the opium was seized from the person of Rama, he was only 19 years of age as the memo of arrest Ex. P/5 shows. I see no reason to deny him this benefit. I therefore, do not like to prescribe any sentence and instead direct that he shall be released provided he furnishes personal bond in the amount of Rs. 500/- and surety in the like amount undertaking to appear and receive sentence when called upon to do so within a period of one year from the date he furnishes the bonds, and in the mean time to keep the peace and be of good behaviour. The bonds shall be furnished in the court of the Magistrate concerned within such period not exceeding one month, which the learned Magistrate may fix upon receipt of a copy of this judgment in his court.

