

Shankar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-05-1985

Reported in : 1985WLN(UC)291

Judge : Shyam Sunder Byas, J.

Appeal No. : S.B. Criminal Revision No. 370 of 1978

Appellant : Shankar

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shyam Sunder Byas, J.

1. Accused Shankar was convicted under Section 4(2) of the Rajasthan Prohibition Act, 1969 and was sentenced to seven months' rigorous imprisonment with a fine of Rs. 500/-in default of the payment of fine to further undergo one month's simple imprisonment by the learned Munsif and Judicial Magistrate, Jalore by his judgment dated December 29, 1976. The accused went in appeal. His appeal was dismissed and his conviction and sentence were maintained by the learned Sessions Judge, Jalore, vide his judgment dated December 15, 1978. The accused has, come-up in revision.

2. In brief, the case set-up by the prosecution is that on October 14, 1970, a search of the accused's house was taken by the Excise Inspector Mr. Ganga Shanker (PW 6). Six gunny bags containing 133 bottles of liquid-contents were found in his house. Two gunny bags had twenty bottles each, three gunny bags had 25 bottles each while in one, there were eighteen bottles. In the gunny bag which had 18 bottles, eight were alleged to be the plain wine while ten of the rose brand. From this gunny bag, which contained eighteen bottles, one bottle of plain wine and one bottle of rose-brand were sealed to be sent to the Chief Public Analyst for chemical examination. The remaining 131 bottles were also sealed. The seizure memo Ex. P 1 was prepared in the presence of the Motbirs. The Public Analyst, vide his report Ex. P 6 found the liquid of both the bottles sent to him to be of liquor. The accused was thereafter prosecuted, convicted and sentenced, as mentioned above.

3. Learned counsel for the accused did not challenge the finding of the Courts below that a search of the accused's house was taken on October 14, 1970 and 133 bottles of liquid contents were found in six gunny bags. In challenging the conviction, the contention raised by the learned counsel is that the Courts below crept into an error in arriving at conclusion that all the 133 bottles found in the house of the accused were of liquor. It was argued that only two bottles sent to the Chief Public Analyst should be taken to contain the liquor. The remaining 131 bottles of liquid contents should not be taken to contain the liquor. It was further argued that it was incumbent on the Excise Inspector either to send all the 133 bottles for chemical examination to the Chief Public Analyst or sample should have been taken from all these bottles and these samples should have been sent for chemical examination, to the Chief Public Analyst. Since the Excise Inspector failed to do so, the logical inference should be that only two bottles, which were sent to the Chief Public Analyst contained liquor. In support of the contention, reliance was placed on *Parma Lal v. State of Rajasthan* 1984 WLN (UC) 168. In reply, it was contended by the learned Public Prosecutor that since all the 133 bottles containing liquid-contents were of the same pattern and size, it was not at all necessary for the Excise Inspector to get the contents of all these bottles chemically examined. I have taken the respective contentions into consideration.

4. There is no dispute that out of six gunny bags two contained twenty bottles each, three contained 25 bottles each and one contained 18 bottles were found in the house of the accused, of which he was in possession. There is no dispute that only two bottles found in the bag containing 18 bottles of liquid, were sent for chemical examination, to the Chief Public Analyst. The remaining 131 bottles were not sent for chemical examination nor samples were taken from these 131 bottles for chemical examination. In these circumstances, the inference drawn by both the courts below that all the 133 bottles found in possession of the accused contained liquor cannot be maintained. The finding of the Courts below that since two of these bottles contained liquor, the remaining 131 also contained liquor, is based purely on surmises and conjectures. Such an approach cannot be appreciated and up-held.

5. In Panna Lal's case, eleven gunny bags, each containing twenty bottles of liquid were found in possession of the accused. Sample from one bottle out of twenty bottles found in each gunny bag was taken and sent for chemical examination. The samples of the liquid of the remaining 209 bottles were not taken. Since the samples from the remaining 209 were not taken, it was held that it cannot be said that the liquid found in these 209 bottles was liquor. It was held by me in Panna Lal's case that in view of these circumstances, what could be said was that only eleven bottles of liquor were found in possession of the accused. The facts of the instant case are exactly the same which were there in Panna Lal's case.

6. Since only two bottles containing the liquid were sent for chemical examination to the Chief Public Analyst, and on chemical examination they were found to contain the liquor, what can be held is that only bottles of liquor were found in possession of the accused. It cannot be positively said that the remaining 131 bottles containing liquid, found in possession of the accused were of liquor.

7. The next submission made by the learned counsel is that the accused has served out a part of sentence from December 15, 1978 to January 3, 1979. The offence was committed in 1971 i.e. nearly 14 years ago. In these circumstances, it was prayed that it would not be proper to re-send the accused to jail for serving out the sentence. The submission deserves consideration. In my opinion, the

sentence of accused should be reduced to that already undergone by him. He has served out twenty days of imprisonment. It may be mentioned that the Rajasthan Prohibition Act, 1969 has been repealed and is no more on statutory body. It is a dead law now.

8. In the result, the appeal of accused Shanker is partly allowed. His conviction under Section 4(2) of the Rajasthan Prohibition Act, 1969 is maintained but the sentence of seven months' rigorous imprisonment awarded to him is reduced to the period of imprisonment already undergone by him. The sentence of fine is set-aside.

9. The appeal shall accordingly stand disposed of.

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