

State of Rajasthan Vs. Ram Nath

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Court : Rajasthan

Decided On : Aug-01-1986

Reported in : 1986WLN(UC)465

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Criminal Appeal No. 377 of 1978

Appellant : State of Rajasthan

Respondent : Ram Nath

Disposition : Appeal allowed

Judgement :

G.M. Lodha, Actg. C.J.

1. The State of Rajasthan has filed this appeal against accused Ramnath, as the State is aggrieved by the acquittal of Ramnath by the Munsif and Judicial Magistrate, Nagaur in Criminal Case No. 710/74, decided on February 7, 1978.

2. According to the prosecution, the Deputy Superintendent of Police Nagaur went for an inspection of Rol Police outpost on July 26, 1972 and he was secretly informed that the opium was lying in the house of accused Ramnath. On this information, the Deputy Superintendent of Police Shri Vasudeo accompanied by A.S.I. and Police Constables, went to the house of accused Ramnath. He called

motbirs Ghasi Ram and Motiram and gave search of the police officials and entered the house of accused Ramnath. Accused Ramnath was present in the house at the time of search. On search was found beneath the iron cage, two iron dibhies. One dibi contained 320 grams of opium and the other contained 65 grams of opium. Samples were taken and sent for chemical examination. A seizure memo was prepared on the spot. On examination, it was found that the articles of sample were opium.

3. A challan was filed and after trial as also after hearing arguments the learned Magistrate Nagaur acquitted the accused of the offence charged with.

4. I have carefully considered the submissions of the learned Public Prosecutor and the learned Counsel for the accused.

5. Learned Magistrate has given a finding that the opium was recovered from the possession of the accused but he acquitted the accused on the ground that the opium recovered from him was really not opium.

6 In my opinion, when samples were sent to the Chemical Analyst and the report of the Chemical Analyst was received having examined the sample of the opium, nothing more was required to be proved. The relevant part of the report Ex. P7 is as under:

On Chemical examination the samples contained in the packets marked A and B were found to be opium having 6.35 (six point three five percent) and 4.95% (four point nine five percent) respectively

Another ground given by the trial court is that the opium was not brought before the Court. Obviously there was no prayer of the accused that the sample of opium should be brought before the Court, and in the absence of that, neither the accused can claim acquittal nor can he say in that he has been prejudiced in any manner what so ever.

7. On thoughtful consideration of the arguments, I am convinced that there is ample proof that the sample taken was opium and that the sample was preserved and not tampered with.

8. Consequently, the appeal succeeds and is accepted.

9. Learned counsel submits that the accused is an old man of 77 years and the incident is of 1972. It is true that we are now in 1986 and the incident is of 1972. In view of these factors, it would meet the ends of justice if instead of sending the accused to jails now at this stage a fine of Rs. 2000/- is imposed.

10. The accused is allowed six months' time to deposit the fine of Rs. 2000/- from the date of the receipt of record from the trial court and in default of payment of fine, the accused shall undergo six months' rigorous imprisonment.

11. The appeal is allowed as indicated above.

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