

Emperor Vs. Hamid Ali

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Court : Kolkata

Decided On : Jul-23-1909

Reported in : (1910)ILR37Cal24

Judge : Lawrence H. Jenkins, C.J. and ;Caspersz, J.

Appellant : Emperor

Respondent : Hamid Ali

Disposition : Appeal allowed

Judgement :

Lawrence H. Jenkins, C.J. and Caspersz, J.

1. This is an appeal by the Government from the acquittal of three men, Hamid Ali, Serajuddin and Akkil Ali, who were charged under Section 9 of the Opium Act (I of 1878) with possessing opium. The charge of possession rests on the fact that it was in a boat, in which these three men and another were. For the purposes of an offence under Section 9, Clause (c), nothing is necessary beyond possession of the opium. There is no particular frame of mind required, so that what we have to consider is, first of all, whether these three accused or any one of them was in possession of the opium. As against two of the accused, that is to say, Hamid Ali and Akkil Ali, there is, I think, a complete failure on the part of the prosecution to show possession, for the evidence so far as it goes is that they were not owners of the boat, nor jointly interested with Serajuddin in any venture as an incident of

which we might attribute to them possession of the opium, but they were merely two of the crew. On the evidence before us we are unable to hold that these two accused were in possession of the opium.

2. With regard to Serajuddin, the case is different, for he was the owner of the boat, and I do not understand the learned Magistrate, by whom he has been acquitted, as suggesting that the opium was not actually found in the boat. On the evidence I hold as a fact that the opium was in the boat, and the boat being his, I hold in the circumstances of the case that he was in possession of the opium. Then we have to consider the terms of Section 10 of the Act which provides that 'in prosecutions under Section 9, It shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily, is opium in respect of which he has committed an offence under this Act.' The learned Magistrate seems to have thought that the accused person, that is to say, Serajuddin, had accounted satisfactorily. What he says is this: 'The accused admit that the articles seized by the Salt Officers were found in their boat. But they explained this fact by saying that the fourth man (Ainuddin) got into their boat at Hatia as a passenger with these articles, and that they did not know that there was opium among them.' There is no evidence of any witnesses to this effect, but some of the accused have at different times made statements suggesting this. On the other hand, we find that the immediate statement made by one of the accused is in direct conflict with it, because his version is this, 'We are four co-workers in the sampan. Two men, Serajuddin and Ainuddin, carry on business, sell articles;' and that is manifestly inconsistent with what commended itself to the Magistrate as satisfactorily accounting for the opium. But more than that, we have the very significant circumstance that when the boat was boarded, Serajuddin threw overboard a handi, which was recovered and in the process of recovering which, it is sworn, a piece of opium dropped out. Even if this be treated as problematical, it is established that when the handi was brought into the boat and examined, it was found that it contained a quantity of opium. This is very significant and goes to show that the account now given by Serajuddin is one which cannot be accepted. In the circumstances, I hold that it has been established by the prosecution that Serajuddin did possess opium, and he has been unable to account satisfactorily for his possession. Therefore, he must be convicted under Section 9 of the Opium

Act. It has been stated before us that he was convicted on another occasion, but there is no proof of that. We cannot act on that statement, although it may very well be, as the learned Counsel for the prosecution says, that the absence of proof is due to the fact of the acquittal by the Magistrate. In the circumstances, it certainly would not be worth while calling for evidence on this point. We, therefore, determine the amount of punishment irrespective of this allegation, We fine him a sum of Rs. 250, and in default he will undergo three months' rigorous imprisonment. We do not propose to direct confiscation of the conveyance, even if a boat is a conveyance,' as to which we express no opinion.

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