

**Rokun Ali Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/881016](http://sooperkanoon.com/881016)

**Court :** Kolkata

**Decided On :** Dec-13-1917

**Reported in :** 45Ind.Cas.284

**Judge :** Chitty and ;Smither, JJ.

**Appellant :** Rokun Ali

**Respondent :** Emperor

**Judgement :**

**Chitty, J.**

1. The appellant Rokun Ali was convicted by the 4th Presidency Magistrate of an offence under Section 9 of Act I of 1878, that is to say, of being in possession of opium without a license, and was sentenced to nine months' rigorous imprisonment and a fine of Rs. 300. The case for the prosecution depended on the evidence of the Excise Officers--Inspector Dinesh Chandrasen Gupta, Sub-Inspector, Kiran Chandra Gnha and Mojjum Hossain. There is also the evidence of Abdul Aziz the diver, who recovered a bundle of opium from the river, and of Tookal Ali Guasi, a Jamadar. On the second day of hearing Rai Sahib S.K. Raha, the Superintendent of Excise, was also called and he spoke to an admission made by the appellant, in which he confessed to being in possession of the opium and explained that he was taking it for shipment on a steamer on account of a Chinaman, whom he suggested the Superintendent should endeavour to arrest.

The appellant called on his behalf a number of Customs Officers--three of whom deposed, directly contrary to the story for the prosecution, that the appellant had been arrested not in the boat, as alleged by the Excise Officers, but on the shore, and that no opium was in fact found in the boat. The learned Presidency Magistrate disbelieved the evidence of these witnesses, pointing out a number of discrepancies in their statements and also finding that they had come forward to give false evidence in consequence of their jealousy and chagrin at having been deprived of the case by the Excise Officers. The only question before us is whether the evidence of the Excise Officers is to be preferred to the statements of the appellant and his witnesses.

2. A question, however, of law arose with regard to the admissibility of two pieces of evidence with which it will be convenient first to deal. Mr. Fitzgerald, the Inspector of Customs, was called and was asked to corroborate the statements from the posting register in order to show that the Preventive Officers were in fact at or near Prinsep's Ghat on the night in question, i.e., 22nd and 23rd August. This was disallowed. The recollection of the learned Counsel and Pleader on either side is not the same with regard to what took place in the Police Court; but it appears from Mr. Fitzgerald's statement that he declined to put in the book as it was a confidential book. The defence now say that this plea of privilege was put forward by him at the instance of the prosecution. However that may be, it is obvious that no question of privilege could arise in respect of this posting register. There might be entries in that book which were privileged and could not be disclosed, but the entry in question is merely a note of the times when particular Preventive Officers were ordered to be at their stations. It is, obvious, therefore, that it did not refer to masters of State which could be excluded from disclosure under Section 128 or 162, of the Evidence Act. The other question was; also one of privilege in regard to Mr. Boyd's evidence. Mr. Boyd, the Superintendent of the Customs Preventive Service, was called and the defence wished to find out from him whether or not Inspector Dinesh Chandra Sen Gupta had made a particular admission on the morning of the 24th, when admittedly Mr. Boyd and Mr. Raha had a conference and the witnesses Dinesh Chandra Sen Gupta, Thomson and Fitzgerald were present. Mr Boyd appears to have stated that he treated what took place at that interview as confidential; in other words, he claimed privilege under

Section 124 of the Evidence Act. As to this, again, there can be no question of privilege. What took place between Mr. Raha and Mr. Boyd might possibly be privileged under that section, but that one of the subordinate officers had made a statement regarding the events of that particular night in the hearing of the various people at that conference could not possibly be withheld from the Court under that section. We accordingly intimated that we would record the evidence of these two witnesses on the two points referred to. They were called before us on Tuesday last and further examined. Their examination did not carry the case any further as neither of them remembered what had taken place, nor could they say definitely that Dinesh Chandra Sen Gupta had, in fact, made any such statement. The posting register was produced and put in. That, too, does not carry the case very much further, as it only shows orders that particular officers should be at particular places at particular times. There seems to be no reason to suppose that these Customs Officers were not at or near Prinsep's Ghat sometime or another on the night in question. They obviously interfered to some extent in the proceedings, but that does not mean that they were there precisely at the point of time, i.e., 9 P.M. or just before, when the appellant was arrested by the Inspector of Excise.

3. The evidence of the prosecution witnesses shows that, acting on the information of an informer, the Inspector of Excise came up from Babu Ghat in a boat to Prinsep's Ghat arriving there just before 9 p.M. Just off the Prinsep's Ghat he came alongside the boat in which were the appellant and two other Mohammadans. The other two Mohammadans at once jumped into the river and swam away. The appellant is said to have taken up a bundle in the boat and thrown it into the water. He was then arrested by the Inspector and another bundle containing opium was found in the boat. He was then put under arrest and brought to the shore. On the shore another man was certainly arrested but he was let go for want of anything to incriminate him. The appellant was detained at the Ghat, to which the Inspector's taxi had come, for some hours, while the Excise Officers sent for divers and endeavoured to recover the bundle which was thrown into the river. It was not recovered that night and the appellant was accordingly removed in custody. Early the next morning the divers, after long operations, were successful and the second bundle was recovered and was found to contain a large quantity of opium. The amount of opium seized altogether amounted to between 50 and 60

seers.

4. The appellant's case, as stated in his plea to the Magistrate on 26th September, was that he had been arrested on the shore and that no opium was, in fact, found on the boat. To corroborate this plea the witnesses for the defence were called. The only question is whether they can possibly be believed.

5. The evidence for the prosecution is perfectly clear and it cannot be disputed that the opium was found on that night in the manner stated by them. The only question really is whether the appellant was the man who threw one of the bundles into the river and was arrested on the boat in possession of the other one. There seems to be no reason to disbelieve the statements of these witnesses who have given their evidence very fairly. It was argued that if there were discrepancies in the defence evidence there were equal discrepancies in that for the prosecution. The discrepancies, however, which the learned Counsel endeavoured to point out, seem to be really no discrepancies at all. They amount rather to a statement by one witness on a particular point and an admission to another witness that he did not see or had no knowledge of the fact deposed.

6. There is also the important evidence for the prosecution of the Superintendent of Excise. It was stated that the confession made by the accused to him on the 24th was inadmissible in evidence. There is, however, no suggestion of anything like inducement, threat or promise which would shut it out under Section 24 of the Evidence Act. Then it was argued that the evidence of that confession was produced at a very late stage. The first hearing of the case was on 26th September. On that day in the cross-examination of the Inspector Dinesh Chunder Sen Gupta it was elicited not only that the appellant had made an admission to him but also that he had made a further admission to Mr. Raha. Mr. Raha was not that day present in Court. He attended, however, at the next hearing, i.e., 3rd October and gave evidence with regard to this confession by the accused. There does not seem to have been such delay as would cast a doubt on the accuracy of the Superintendent's statement. There is no reason to suppose that he was called at the later stage to bolster up what might be a failing case, nor that he would deliberately come forward to perjure himself for the mere sake of obtaining a

conviction against the appellant.

7. Turning to the evidence of the defence, the learned Presidency Magistrate has pointed out a number of inconsistencies in their statements which are more serious. It is unnecessary for us to recapitulate them at this stage. It is sufficient to say that the view that the Magistrate has taken on this point appears to be quite correct.

8. The most important witness called for the defence is Mr. Thomson. I am sorry to have to say it, but it does appear to me that he has deliberately come to support what was a false case. The evidence which he gave is altogether improbable and incredible. At one time he says that the Excise Officer offered to give him the case and be a witness against the accused. At another time he says that he found no opium in the boat, that the accused was not arrested in the boat, that he was arrested on the shore, that there was really no case against the accused and there was, therefore no case for either the Excise Authorities or the Customs Authorities to take up. At the same time he says that he complained to Mr. Boyd that he had been done out of a big haul by the Excise Officers. If there was no such case, it does not appear how he could have been 'done out of a big haul.' Also he does not explain how or why, if there was a case against some man other than the appellant, the appellant should have been arrested and a false case preferred against him while the true culprit was let go. The reason for these Customs Officials coming forward is not far to seek. The Magistrate at once detected it and his opinion appears to be correct. They were disappointed that the Excise Officers should have made this capture and thus deprived the Customs Officers of a possible reward. We ascertained from Mr. Boyd that rewards are given in those cases, and that, while there is no fixed scale for rewards, the officers may reasonably expect to be rewarded, more or less, in proportion to the quantity of the opium or other article seized.

9. There is another witness to whom we should refer, viz., the taxi driver. It is to be regretted that the Inspector of Excise did not take the number of his taxi cab; but it does not appear that the witness Raham Ali was really the driver of the taxi which was at Prinsep's Ghat on that night. It would be very easy no doubt to get a taxi-

driver to come forward and give evidence to this effect. He does not verify his statements in any way. So also the defence witness No. 7, Jadu Nandan Boy, Constable, who states that the accused was made over into his custody. It is an extraordinary thing, if he was there at that time and had the accused in his charge, that he made no report of the circumstance, nor is it shown that he was in point of fact on duty at Prinsep's Ghat. He states that he really was on duty that night at Biba Ghat, that he came to Prinsep's Ghat and there saw the Inspector Dinesh Chundet Sen Gupta and the others.

10. On the whole evidence, there can be no doubt that the conviction of the accused is correct, and, under the circumstances, the punishment does not appear to be too severe. The appeal is accordingly dismissed. The accused must surrender to his bail and serve out the remainder of his sentence.

**Smither, J.**

11. I agree that the appeal should be dismissed.

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