

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JAI PUR BENCH, JAI PUR.

JUDGMENT

State of Raj. Vs. Gordhan Lal

S. B. Cr. Appeal No. 81 of 1990 Under Section 378(i) (iii) Cr. P. C. against the order dated 14.8.1989 passed by Additional Munsi f-cum Judicial Magistrate, Bhawani Mandi (Jhalawar) in Criminal Case No. 318/86 by which the accused respondent has been acquitted for the offence u/s 4/9 of the Opium Act.

DATE OF JUDGMENT :: November 28, 2008

P R E S E N T  
HON'BLE MR. JUSTICE MAHESH BHAGWATI

Mr. Deen Dayal Sharma, P. P. for the State.  
None present for the accused respondent.

BY THE COURT

Challenge in this appeal is to the judgment dated 14<sup>th</sup> August, 1989 rendered by Additional Munsi f-cum Judicial Magistrate, Bhawani Mandi (Jhalawar) whereby, the accused respondent Gordhan Lal was acquitted in the offence under Section 4 read with Section 9 of Opium Act.

2. The accused Gordhan Lal is alleged to have found in possession of 2.120 Kilograms opium. It is further alleged that on 15<sup>th</sup> of June 1979 at about 5.00 AM, PW/1 Shri Ram Karan accompanied with police personnel was on patrolling duty. When he reached at Railway Station Choumehla, he found the accused Gordhan coming with a bag in his hand. On having suspected the activities of the accused, Shri Ram Karan nabbed him and took the search of his plastic bag which contained 2.120 kilograms opium. Shri Ram Karan thereafter, took

two samples each of 30-30 grams opium and sealed them accordingly.

3. PW/1 Shri Ram Karan seized the said opium vide recovery memo Ex. P/1 whereupon, FIR Ex. P/8 was lodged and investigation commenced.

4. The investigating Officer recorded the statements of the witnesses under Section 161 of Cr. P. C, arrested the accused Gordhan Lal vide memo Ex. P/3, prepared site plan Ex. P/6, sent the sample of opium for chemical examination to FSL, Jaipur, drew necessary memos and after usual investigation filed a charge-sheet against the accused in the competent Court.

5. The accused was indicted for the offence under Section 4/9 of Opium Act who pleaded not guilty and claimed trial. The prosecution examined in all 9 witnesses to prove its case. In his explanation under Section 313 of Cr. P. C, the accused claimed innocence. On completion of trial, the learned Additional Judicial Magistrate acquitted the accused respondent as indicated hereinabove.

6. Since none is present for the accused respondent in the Court, only the arguments advanced by the learned Public Prosecutor appearing for the State were heard and the relevant material available on record was scanned.

7. The learned Public Prosecutor has contended that the learned trial Court has not properly appreciated the evidence of the prosecution witnesses and erroneously acquitted the accused on the basis of surmises and conjectures. He has further contended that PW/1 Ram Karan and PW/4 Laxmi Narayan have supported the prosecution case and there is no reason to disbelieve their testimony. The recovery of said

opium is proved beyond reasonable doubt from the possession of the accused, as such the impugned judgment may be set aside and the accused respondent be convicted in the offence under Section 4/9 of Opium Act.

8. Having reflected over the submissions and perused the prosecution evidence including the material documents, it is noticed that the independent witnesses of the prosecution namely PW/2 Shankar Lal, PW/5 Sabir Ali and PW/6 Ram Singh have not supported the prosecution case and turned hostile. So far as PW/3 Girvar Singh is concerned, he has simply stated that the police obtained his thumb impression on site plan Ex. P/6. Thus, he is merely a formal witness. PW/8 Devi Singh is also a witness of site plan Ex. P/6. PW/9 Ram Kalyan states that he took the sample along with challan Ex. P/1 from incharge of Mal khana and deposited the same with FSL, Jaipur for chemical examination. Now, we are left with only two witnesses PW/1 Ram Karan and PW/4 Laxmi Narayan, who belonged to police Department and adjudge as to how far their testimony is credible.

9. Albeit, there is no ground to abandon the testimony of these two police witnesses PW/1 Ram Karan and PW/4 Laxmi Narayan, but the prosecution has failed to prove that the sample of opium remained intact throughout and was not interpolated by police. PW/7 Bachchan Ram was the SHO Police Station Gangdhar on 15<sup>th</sup> June, 1979. He is the Investigating Officer of the case. In his cross-examination, this witness has stated that he gave the sample on 2<sup>nd</sup> July 1979 which was to be collected by Ram Kalyan and he deposited the same on 27<sup>th</sup> July, 1979 with FSL, Jaipur of which the receipt Ex. P/12 was handed over to him. A conjoint reading of the statements of PW/7 Bachchan Ram and PW/9 Ram Kalyan reveals that the sample was entrusted to PW/9 Ram Kalyan on 2<sup>nd</sup>

July, 1979 which he deposited with FSL, Jaipur on 27<sup>th</sup> July, 1979. The prosecution has failed to prove as to where did the sample remain in between 2<sup>nd</sup> July, 1979 to 27<sup>th</sup> July, 1979. The possibility of interpolation in the sample under the circumstances cannot be ruled out. Though it is proved from FSL, report Ex. P/13 that the four samples contained morphine and they were found to be of opium but it is not proved that these samples were the same which were taken by PW/9 Ram Kalyan on the spot from that opium which is alleged to have been recovered from the possession of the accused. Thus, reliance cannot be placed on the statements of PW/1 Ram Karan and PW/4 Laxmi Narayan and recovery of so called opium being established. It is also not proved that the article recovered from the possession of the accused was of opium because it is not properly explained that the so called samples of opium entrusted to PW/9 Ram Kalyan on 2<sup>nd</sup> of July 1979 remained intact up to 27<sup>th</sup> July, 1979 and it was not interpolated. The Learned trial Court has critically examined the prosecution evidence at length and rightly arrived at the finding of acquittal with which I fully concur as the impugned judgment is found to be cogent and well reasoned which calls for no interference.

10. For these reasons, the State appeal being bereft of merits stands dismissed.

The accused respondent is on bail and his bail bonds also stand cancelled.

(MAHESH BHAGWATI) J.

PCG