

Tej Bahadur Singh

Vs

The State of U. P.

Criminal Appeal No. 13 of 1968

(M. Hidayatullah, A. N. Grover, G. K. Mitter JJ)

27.04.1970

JUDGMENT

GROVER, J. -

1. Three persons, Bechu Singh, Tej Bahadur Singh and Bans Bahadur Singh, were convicted by a Magistrate, First Class, Bara Banki, under Section 9 of the Opium Act. A sentence of two years' rigorous imprisonment and payment of fine of Rs. 2,000/- was imposed on each one of them. In default of payment of fine it was directed that each would have to undergo rigorous imprisonment for six months. The Sessions Judge on appeal acquitted bans Bahadur Singh but confirmed the conviction and the sentence of the other two. The High Court dismissed the petition for revision filed by Bechu Singh and the appellant Tej Bahadur Singh. The present appeal has been filed by special leave by Tej Bahadur Singh alone.

2. The facts may be stated. On June 14, 1963, Sarkar, P.W. 1, Deputy Superintendent Central Excise, received information that the appellant and the two others were carrying on smuggling of opium on a large scale and that they had a huge stock of that article at their house in village Birapur. Sarkar organised a raiding party and on June 15, 1963, went to village Birapur. Two persons Vishum Parag and Manak Saran joined the party on the way. The raiding party arrived at the village at about 6 a.m. on June 16, 1963. According to the case of the prosecution the appellant and the other two persons were present in the house which was searched. At first 1 Maund and 3 Seers of opium were recovered from a small room. The appellant and Bechu Singh were taken into custody but Bans Bahadur Singh managed to escape. On information given by Bechu Singh opium weighing 3 Maunds and 8 Seers was recovered from two cellars in the house. Similarly at the instance of the appellant 3 Maunds and 14 Seers of opium were recovered from two other places in the house. Thus the entire quantity of opium which was recovered weighed 7 Maunds and 25 Seers. The appellant and Bechu Singh were taken to the police station Bara Banki. Other formalities were then carried out and the report of the Chemical Examiner was obtained. The defence of the accused person was one of denial of recovery of opium from their house. It was asserted that they had been falsely implicated on account of enmity with certain persons.

3. The High Court took the view that the accused were influential persons in the locality and it was for that reason that no villager from the locality was willing to come forward and become a witness to the search. The raiding party was, therefore, justified in having the search memo witnessed by persons who accompanied it. The evidence of Sarkar, the Deputy Superintendent of central Excise and Inam Ali, Circle Inspector Kotwali, as also Mehrban Singh Deputy Superintendent of Police, Bara Banki, was considered and the High Court felt satisfied that the opium had been recovered from the house of the accused persons. These three officers were members of the raiding party and

there was no suggestion that they were in any way interested in planting such a huge quantity of opium in the house of the accused persons and implicating them falsely.

4. On behalf of the appellant it was urged before the learned Sessions Judge and had been contended before us as well that he did not reside in the house from where the opium was recovered and that he was living separately in another house. Certain evidence on the point was produced in defence which was not believed. It does not appear that before the High Court any serious attempt was made to establish that the appellant did not reside in the house from which the opium had been recovered. The prosecution witnesses who have been believed by the Courts had stated that the appellant was present in the house at the time of recovery. Inam Ali, Circle Inspector, who appeared as P.W. 2 deposed that two guns were taken into possession from that house, one belonging to the appellant and the other to Bechu Singh. Both these guns were found in one room. The licences relating to them as also 24 cartridges were taken into possession. The fact that the gun of the appellant together with his licence was found in the house in question supports the case of the prosecution that he was residing there. To the same effect was the testimony of Mehrban Singh, P.W. 8, Deputy Superintendent of Police, and no reason has been shown for disbelieving him.

5. It has been contended on behalf of the appellant that the Pancha witness did not belong to the locality in which the house to be searched was situated and that the provisions of Section 103 of the Criminal Procedure Code were not complied with. According to the prosecution the accused being very influential in the locality where they were residing there was little chance of getting any one from the locality itself to witness the search. For that reason, as stated before, certain persons from another locality were made to accompany the raiding party. This seeming irregularity cannot affect the legality of the proceedings. It can only affect the weight of evidence which it was for the Courts of fact to consider. There is also no substance in the submission that even those Pancha witnesses who had witnessed the search memo were not produced. It has been suggested on behalf of the State that they had been prevailed upon not to give truthful evidence and therefore they were not produced. In our opinion the other evidence which has been believed was quite sufficient to establish that the opium had been recovered from the house where the appellant and Bechu Singh were residing.

6. In the result the appeal fails and it is dismissed. The appellant who was released on bail shall surrender to his bail bonds.

</html