

State of Rajasthan

Vs

Daulat Ram

Criminal Appeal No. 112 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

23.01.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against an order of the High Court of Rajasthan dated March 5, 1973 by which the respondent Daulat Ram was acquitted of the charge under Section 9 of the Opium Act. It appears that on January 24, 1968 the District Excise Officer went to search the shop of the respondent in Jodhpur city and PW 2 Sher Singh, Excise Inspector, recovered an iron box along with two tins filled with opium. On being interrogated the respondent disclosed to the Excise Inspector that some quantity of opium was lying in his house at Ratanada and in pursuance of the information given by the respondent the raiding party went to the house of the respondent and at his instance three tins alleged to have contained illicit opium were also seized. Several samples were taken and sealed and given to Jawan Singh of the Excise Headquarters on January 24, 1968. On January 27, 1968 the samples marked 'A' were taken from the Excise Headquarters and were handed over to the S. I. Aidanram of Udai Mandir Police Station. On February 29, 1968 Nathu Singh took samples, marked 'A' given to him by PW 11 Harak Chand to the office of the Superintendent of Police, Jodhpur, for onward transmission to the Public Analyst but the samples were not accepted by the office of the Superintendent of Police as the labels were not in order. It is the admitted case of the prosecution that the samples changed several hands before reaching the public analyst. In other words, the samples remained in the custody of S. I. Adianram, P. S. Udai Mandir, Nathu Singh, Gajraj Singh J. Jawan Singh and the Assistant Public Analyst and yet none of these witnesses were examined by the prosecution to prove that while in their custody the seals were not tampered with. The inevitable effect of this omission is that the prosecution failed to rule out the possibility of the samples being changed or tampered with during this period - a fact which had to be proved affirmatively by the prosecution. This is the main infirmity which has been relied upon by the High Court in holding that the prosecution has not proved that right from the stage of the seizure of the opium up to the time when the samples were handed over to the public analyst the seals remained intact. The prosecution has not taken the court into confidence in disclosing as to the reasons why the office of the Superintendent of Police refused to take the samples. Even though the labels were not in order it was for the prosecution affirmatively to prove that the seals were still intact. It is true that Harak Chand and Jabbar Singh have stated that the seals of the samples were intact so long as they were in their custody. But then as pointed out above neither Jawan, Nathu, Gajraj, Aidanram and Assistant Public Analyst were examined hence it cannot be said that the prosecution has proved all the links starting from the seizure of the samples till the same reached the hands of the public analyst so that the court could conclude that their seals remained intact throughout. The High Court in view of this serious lacuna was of the opinion that the prosecution has not proved beyond reasonable doubt that the opium seized was the opium which was sent to the

public analyst. In fact, the prosecution realized its mistake and at the fag end of the trial an application was made under Section was made under Section 540, Criminal Procedure Code to examine Nathu Singh, Gajraj Singh and Jawan Singh. This application was rejected by the learned Magistrate. Even before the High Court the stand taken by the counsel for the State was extremely vacillating and at one time he filed an application for additional evidence and sometime later chose to withdraw it. It is obvious that the onus is on the prosecution to prove the entire case at the trial and the prosecution could not be allowed to fill up the gaps or lacunae left at the trial, at the appellate or revisional stage. In these circumstances, we do not find any error of law in the view taken by the High Court. We find no merit in this appeal which is accordingly dismissed.

</html