

SUPREME COURT OF INDIA

Budhdeo Sahu

Vs.

State of Jharkhand

Crl.A.No.807 of 2004

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

28.05.2009

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This appeal has been filed against the judgment and order of the Jharkhand High Court dated 8.8.2003 passed in Criminal Appeal No.24 of 1996 (R) by which the High Court has allowed the said appeal partly, setting aside the conviction and sentence of the co-accused and upholding the conviction and sentence of the present appellant against the judgment and order of conviction and sentence dated 25.3.1996 and 26.3.1996 respectively passed by the Additional Sessions Judge-cum-Special Judge, Gumla in connection with Kamdara P.S. Case No.31/1992 (G.R. No.11/1992).

2. The facts and circumstances giving rise to this appeal are that the appellant was dealing in public distribution shop. Since the appellant became the Government servant, the license for the said shop was cancelled in March, 1992. On 10.5.1992, a raid was conducted at the appellant's house and during the search a drum containing 180 liters of kerosene oil was found and, therefore, an FIR was, accordingly, registered against the appellant and his father on the same day under the provisions of Section 7 of the *Essential Commodities Act, 1955* as there was a violation of the provisions of the Bihar Kerosene Dealers' Licensing Order, 1965 which provided that a person other than a licensee, was permitted to store kerosene oil maximum up to 37 liters. The appellant and his co-accused denied the charges. However, the trial court vide judgment and order dated 25.3.1996 and 26.3.1996 convicted the appellant and his father for violation of the aforesaid provisions and sentenced each of them to undergo R.I. for six months with fine of Rs.500/- and in default of payment of fine, further to undergo R.I. for one month.

3. Being aggrieved, the appellant and his father filed the criminal appeal No.24/1996 (R) before the Patna High Court. The High Court of Jharkhand at Ranchi disposed of the said appeal vide judgment and order dated 8.8.2003 by which it acquitted the co-accused Balchand Sahu - father of the appellant, but maintained the conviction and sentence so far as the present appellant was concerned. Hence this appeal.

4. We have heard learned counsel for the appellant and learned counsel for the State. There are concurrent findings of fact so far as the appellant is concerned. During the raid conducted by the Department on 10.5.1992 at 1.30 P.M. 180 liters kerosene oil was found in the house of the appellant. It was specifically stated by PW.5 Sharvan Sai, BDO, that kerosene oil was measured and it was found to be 180 liters. In the cross-examination nothing could be elicited from him that the statement so made by him was not correct. He has denied the suggestion that no oil was recovered from the appellant Budhdeo Sahu and he was deposing falsely.

5. Recovery of kerosene oil and quantity thereof cannot be doubted. Thus, there is no cogent reason to interfere with the said findings of fact. No material has been placed before us to show that the findings of fact so recorded are perverse or unreasonable being based on no evidence. No other point worth consideration and acceptance was raised. The appeal is liable to be dismissed.

6. Learned counsel for the appellant has submitted that the incident had occurred in 1992. A period of 17 years has elapsed.

“The appellant has served about 5 months and 6 days in jail out of the six months sentence awarded to him and he has deposited the fine also. Therefore, it has been suggested by him that the sentence of the appellant be reduced to the period already undergone by him.

Considering the fact that the Act provides minimum punishment of three months and the appellant has already served for more than 5 months out of the six months sentence awarded to him and has deposited the fine and a period of 17 years has elapsed, in the facts and circumstances of this case, the sentence of the appellant is reduced to the period already undergone by him. Since the appellant is on bail, his bail bonds are discharged.”

7. With these observations, the appeal stands disposed of.