

REVISIONAL CRIMINAL

Before C. G. Suri, J.

UDHAM SINGH,—Petitioner.

versus .

THE STATE OF PUNJAB,—Respondent.

Criminal Revision No. 559 of 1972.

October 26, 1973.

Opium Act (I of 1878)—Section 3—Conviction for an offence under the Act—Whether can be based on the testimony of Police Officer alone—Percentage of Morphine or Meconic acid in the stuff recovered from the accused—Proportion of—Whether necessary to be proved by the prosecution—Onus to show the percentage of morphine not exceeding the prescribed maximum in the recovered stuff—Whether lies on the accused.

Held, that there is no rule of universal application that a conviction for an offence under the Opium Act, 1878 cannot be based on the testimony of Police Officers of the rank of Sub-Inspector and the Assistant Sub-Inspector, where there is nothing to detract from the testimony of such Police Officers. The circumstances in each case would determine the weight or value to be attached to the testimony of a particular witness. The official witnesses are not accomplices so as to necessitate the corroboration of their testimony or attestation of the memo prepared by them as if section 68 of the Indian Evidence Act were to govern the case.

Held, that where-ever a Chemical Examiner on scientific analysis of a sample reports that it is Opium because of the presence of morphine and meconic acid, it is thereafter for the person found in possession thereof to bring his case within the exception or proviso given under the sub-clauses to the clause under section 3 of the Act defining 'Opium'. Morphine can be derived only from the opium poppy (*papaver somniferum* L) and its presence in whatever quantity or proportion establishes the fact that the stuff recovered contains some derivative from poppy plant in a mixed or unmixed form. The stuff will fall within one or more sub-clauses of the clause defining opium under section 3 of the Act, unless the accused can establish that it falls within the exception or proviso under these sub-clauses. Hence the absence of the mention of the percentage of morphine or meconic acid in the report of the chemical examiner is not material, because it is not necessary for the prosecution to prove such percentage. The onus is upon the accused to show that the morphine has not exceeded the prescribed maximum limits in the stuff recovered from him.

Petition under section 439 Cr. P.C. for revision of the order of Shri Avtar Singh Gill, Additional Sessions Judge, Amritsar, dated

24th May, 1972, modifying that of Shri Gurdial Singh, Judicial Magistrate 1st Class, Amritsar dated 2nd March, 1972, convicting the petitioner.

Harbans Lal, Advocate, for the petitioner.

Nemo, for the respondent.

JUDGMENT

SURI, J.—The petitioner was convicted by a Magistrate under section 9 of the Opium Act for the recovery of 1.10 kilograms of opium and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 200. On appeal, the Additional Sessions Judge maintained the conviction but reduced the sentence of substantive imprisonment to a term of six months leaving the fine intact. This revision petition has now been filed against the said conviction and sentence.

(2) Shri Harbans Lal, the learned counsel for the petitioner, argued that the conviction is based only on the testimony of two police officers and that no non-official witness had been associated at the time of the recovery. The prosecution story is that the Sub-Inspector and the Assistant Sub-Inspector were on patrol duty and searched the petitioner on suspicion when they met him on a crossing of roads. The search had to be carried out unexpectedly and there was no time for associating any non-official witness. There is, however, no rule of universal application that a conviction cannot be based on the testimony of police officers of such high rank. Shri Harbans Lal relied in this connection on a Single Bench decision of this Court in *Kartar Singh v. The State* (1). In the case cited, both the non-official witnesses had been examined and had failed to support the prosecution and the Court was left only with the evidence of one Head Constable. It was found that it would be unsafe to sustain the conviction on the testimony of that lone official witness. There is, however, nothing in the present case to detract from the testimony of two police officers of a much higher rank. In *Babu Lal etc. v. The State of Gujrat* (2), the Hon'ble Judges of the Supreme Court had held that a conviction for an offence under the Prevention of Food Adulteration Act could be based on the testimony of

(1) 1966 P.L.R. (S.N. No. 5).

(2) A.I.R. 1971 S.C. 1277.

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the Food Inspector alone. The circumstances in each case would determine the weight or value to be attached to the testimony of a particular witness. The official witnesses are not accomplices so as to necessitate corroboration of their testimony or the attestation of the memos prepared by them as if section 68 of the Indian Evidence Act were to govern the case. These remarks would apply with equal force to a case of search and recovery under the Opium Act.

(3) The next argument advanced by Shri Harbans Lal was that the petitioner's brother-in-law, Anup Singh D.W., had filed a complaint against the Sub-Inspector. There is no reliable proof about the alleged relationship between the petitioner and his defence witness. If the petitioner had asked Anup Singh to withdraw the complaint, then Anup Singh's refusal to do so would not make the petitioner a target of the Sub-Inspector's annoyance. If the said complaint had been the motive for the petitioner's false implication, then he was not likely to have let the matter rest without raising an agitation at the earliest opportunity. The Courts below have, therefore, given cogent reasons for ignoring the defence plea.

(4) Shri Harbans Lal then argued that the percentages of morphine or meconic acid have not been mentioned in the Chemical Examiner's report and that the stuff recovered is not shown to be 'opium' as defined in section 3 of the Opium Act, 1878. This definition runs as follows:—

“3. *Interpretation clause.*—In this Act, unless there be something repugnant in the subject or context,—

“opium’ means—

- (i) the capsules of the poppy (*papaver somni ferum L.*), whether in their original form or cut, crushed or powdered, and whether or not juice has been extracted therefrom;
- (ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and
- (iii) any mixture, with or without neutral materials, of any of the above forms of opium; but does not include any

preparation containing not more than 0.2 per cent of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930;"

(5) A Single Bench decision of the Rajasthan High Court in *Bhairulal and others v. The State* (3) has been relied on by Shri Harbans Lal in this connection. It may appear that in the case cited, no sample of the stuff recovered had been sent to the Chemical Examiner for analysis and report and that the prosecution had rested content with the empirical opinion of an Excise Inspector and that his cross-examination revealed that he was not in a position to say whether the stuff was opium in a concentrated or an adulterated form. Even otherwise, the Hon'ble Judge has not given any reasons for his view that it was necessary for the prosecution to prove the proportion or percentage of the morphine or why the onus was not on the accused to show that the morphine had not exceeded the prescribed maximum limits in the opium recovered from him. For reasons given further in my judgment in this case it would be apparent that morphine can be derived only from opium poppy (*papaver somni ferum* L.) and its presence in whatever quantities or proportions establishes the fact that the stuff recovered contains some derivatives from that plant in mixed or unmixed form and that the stuff would fall within one or more of the sub-clauses of the clause defining 'opium' in section 3 of the Opium Act unless the accused could establish that it falls within the exception or proviso given under these sub-clauses. Reference could in this connection be made to section 105 of the Indian Evidence Act which is as follows:—

"105. Burden of proving that case of accused comes within exceptions.

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

(3) 1957 Cr. L.J. 237.

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A similar argument had been raised before me in *Parkash v. The State of Punjab* (4). That was a case of recovery of seven bags of poppy husk and the Chemical Examiner had not given the percentage of morphine in the samples and had only said that morphine and meconic acid were present. The submissions made by the defence counsel were negatived by me with the following observations:—

“The minimum percentage of 0.2 of morphine mentioned in the proviso under the three sub-clauses of the definition of opium relates only to preparations or derivatives of opium. The word ‘preparation’ may seem to imply that some processing of the stuff ordinarily found occurring or growing in its natural conditions has taken place. According to sub-clause (i) of the definition of opium capsules of poppy whether in their original form or cut or crushed or powdered would be ‘opium’ even if the entire juice had been extracted therefrom. According to the Chemical Examiner’s report, morphine and meconic acid were present in all the seven samples taken from the seven bags. Even if the percentage of opium in the poppy husk is not mentioned, the stuff would fall within the definition of ‘opium’ as poppy husk grow or occur in their natural state and are not a preparation contemplated by the proviso. It may appear that the proviso is intended to cover derivatives of opium like sleeping pills, tranquilizers, barbiturates etc. which would not fall within the definition of opium if they do not contain morphine above the limit of 0.2 per cent. The word ‘preparation’ may seem to involve some process of manufacture or treatment where things occurring or growing in natural state are made to take a different shape or form and to serve a different purpose. This proviso would not to my mind apply to poppy husk. The Chemical Analyst’s report mentions the presence of morphine and meconic acid to prove that the stuff recovered is capsules of opium because poppy husk in powdered or crushed form could resemble ordinary saw dust or wood shavings etc. derived from other harmless sources.”

(4) Cr. Re. No. 990 of 1970 decided on 2nd May, 1972.

(6) Now that the ruling in *Bhairulal's case* (3) (supra) has been cited before me, I have studied the matter more carefully and do not find any reasons for changing my views as expressed above. The three sub-clauses to the clause defining 'opium' in section 3 and the proviso underneath these sub-clauses make a clear distinction as to the manner of processing and treatment of different parts of the poppy plant. In the proviso, the emphasis is as much on a scientific or a semi-scientific processing of the plant or its parts which may control or regulate the morphine content as on keeping the percentage below the harmful and dangerous limits. The use of the words 'original form', 'spontaneously', 'not submitted to any manipulation', and 'any mixture' in these clauses suggest the resort to some crude or unregulated processes which do not control the morphine content of the stuff on scientific basis. The crude cutting, crushing or powdering of the poppy husk would bring the stuff within sub-clause (1) even if the entire juice had been extracted and the morphine content reduced to negligible proportions. The Chemical Examiner mentions the presence of the morphine and meconic acid in such cases without indicating the percentage only to establish that the stuff is derived from the poppy plant, and not from any neutral or innocuous sources. Ordinary saw dust, wood shavings or powder could resemble poppy husk in cut, crushed or powdered form and the Chemical Examiner mentions the presence of morphine and meconic acid to identify the source. The words "spontaneously" and "manipulations" in sub-clause (ii) have not been defined in the statute and I have looked up their dictionary meanings. The word spontaneous, according to the Chamber's Twentieth Century Dictionary, means of one's free will, acting on its own impulse or natural law, produced of itself without outside interference. 'Manipulation', according to the same dictionary, would mean the use of hands especially in scientific experiments or to give a false appearance to something or to turn it to one's own purpose or advantage. Spontaneous coagulation of the juice of poppy without submitting it to any manipulations would imply that no care has been taken to control or regulate the morphine content. Sub-clause (iii) may then suggest that a mechanical mixing of the husk or juice with any amount of neutral substances which may reduce the morphine content to negligible proportions will still make the stuff opium unless the morphine content has been controlled or regulated by some scientific process or treatment so as to make the preparation or drug safe for human use by keeping down the

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percentage of morphine below the permissible limits. It is only a manufactured drug as defined in section 2(g) of the Dangerous Drugs Act, 1930, which would be excepted from the definition of opium according to this proviso. Section 6 of the said Act shows that the Central Government exercises strict control over the manufacture of such drugs and has framed detailed rules for the purpose. A person who wants to manufacture such drugs has to take out a licence. Manufacture of medicinal opium or preparations containing morphine are not governed by section 6 of the Dangerous Drugs Act but the maximum permissible percentage of morphine for such preparations has been prescribed by the proviso under the definition of opium. Morphine is described in Chamber's Dictionary as the principal alkaloid of opium. According to Webster's International Dictionary, this alkaloid of opium may constitute 7.5 to 15 percentage of the poppy plant. Morphine meconate is the morphine salt of meconic acid which occurs naturally in opium. The presence of morphine and meconic acid in a substance may, therefore, seem to establish the fact that some ingredient, if not the whole, is derived from the opium poppy (*papaver somni ferum L.*). So wherever the Chemical Examiner has reported, after a scientific analysis of the sample, that it is opium because of the presence of morphine and meconic acid, it would thereafter be for the person found in possession to bring his case within the exception and if he has processed the preparation or manufactured the drug in a scientific manner or under a licence and in accordance with the rules regulating the manufacture of such drugs, it should not be difficult for him to prove that the morphine content has remained well below the permissible limits so as not to attain any dangerous or harmful proportions. If the husk, juice or mixture have not been processed in a scientific manner so as to control or regulate the morphine content, the possession of the substance would be culpable whatever may be the percentage or proportion of morphine in the substance.

(7) The sentence awarded to the petitioner cannot be described as harsh or severe, considering the quantity of opium recovered.

(8) All the submissions made by Shri Harbans Lal having failed, the revision petition is dismissed.

B.S.G.