

APPELLATE CRIMINAL
Before Kapur and Dulat, JJ.
 THE STATE,—Appellant.

v.

SOHAN LAL,— Respondent.

Criminal Appeal No. 287 of 1955

1955

Dec., 22nd

Opium Act (I of 1878)—Sections 3(1) and 9(a)—Punjab Excise Rules, Rules 21.1(b) and 21.5 in Chapter 21—Poppy husk (Bhuki)—Whether covered by the definition of the word opium in section 3(i) or by the Rules 21.1(b) and 21.5.

Held, that there is no rule which deals with poppy husk (bhuki) which was found from the possession of the accused. It is not covered by the definition of the word "opium" as given in the Act and no offence can be held to be committed. 'Capsule' as given in Webster's Dictionary means "any closed vessel containing spores or seeds". Poppy husk has not been shown to be a capsule and the word 'capsule' is not synonymous with husk or bhuki.

Jagjiwan Pitambar Gujrathi v. Emperor (1), dissented from.

State appeal against the order of Shri I. M. Lall, Sessions Judge, Ambala, dated the 15th December, 1954, reversing that of Shri H. K. Jain, Resident Magistrate, Kharar, dated the 3rd September, 1954.

K. S. CHAWLA. Assistant Advocate-General, for Appellant.

B. S. CHAWLA, for Respondent.

JUDGMENT

KAPUR, J. This judgment will dispose of three appeals (Criminal Appeals Nos. 287, 288 and 289 of 1955) in which the questions to be decided are the same and can conveniently be dealt with in one judgment.

Kapur, J.

Sohan Lal, Ram Gopal and Pahu Ram were tried and convicted under section 9 (a) of the Opium Act for possessing various quantities of poppy husk which it was claimed by the prosecution to be covered by the word 'opium' as given in the Opium Act. The learned Magistrate relying on a judgment of the Nagpur High Court in *Jagjiwan Pitambar Gujrathi v. Emperor* (1), held that the substance which was found from the various accused persons fell within the definition of the word 'opium' as given in section 3 (i) of the Opium Act and he convicted and sentenced them to imprisonment till rising of the Court and a fine of Rs. 1,000 each. On the matter being taken to the learned Sessions Judge he was of the opinion that the substance may technically fall within the word 'opium' but was really not opium. He, therefore, acquitted all three accused persons and the State has come up in appeal to this Court.

The substance which was found from the possession of the accused persons is called *bhuki* (poppy husk) and the question for determination is whether that substance is covered by the definition of the word 'opium' which in section 3(i) of the Opium Act is defined in the following terms:—

3. In this Act, unless there is something repugnant in the subject or context,—

Opium means—

(i) the capsules of the poppy * * ;

(1) A.I.R. 1936 Nag. 240

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Section 4 of the Act provides for rules in regard to prohibition of poppy cultivation and possession of opium, and section 5 empowers the Government to make rules in regard to the possession, transport, importation or exportation and sale of opium. Under section 9 any person who contravenes any provision of the Act or the rules made thereunder becomes liable to a penalty, and amongst the articles prohibited is possession of opium, and therefore the Act as it stands means that any person who possesses opium as defined in the Act, subject, of course, to the rules, becomes liable to a penalty on a contravention of the statute or the rules made thereunder.

The rules which were in force at the time when this offence was committed are contained in Chapter 21 of the Punjab Excise Manual, Volume II, which dealt with opium. Under rule 21. 1 (b) the expression 'poppy-heads' was defined to mean the capsules of the poppy plant from which the juice has not been extracted. Rule 21. 5 dealt with possession and ran as under :—

"21. 5. Any person may without a licence at any one time have in his possession—

- (a) poppy-heads in any quantity not exceeding two seers ;
- (b) the decoction of poppy-heads known as *post* in any quantity not exceeding one seer ;
- (c) excise opium in any quantity not exceeding two tolas.

possession of any kind of opium other than excise opium in any quantity is prohibited under section 4 of the Opium Act, 1878, unless otherwise specifically provided under these rules."

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Thus a combined reading of the two rules means that no person could possess poppy heads exceeding two seers in quantity. There is no rule which has been brought to our notice which deals with poppy husk or *bhuki* which is the substance in dispute in the present case.

The learned Assistant Advocate-General Mr. Kartar Singh Chawla has relied on the judgment of the Nagpur High Court in *Jagjiwan Pitambar Gujrathi v. Emperor* (1), where it was held that the substance called *bondika bhusa* which consist of the shells of poppy heads possesses in some measure the active properties of opium and can be used as an intoxicant, and therefore comes within the definition of 'opium'. With due respect we are unable to agree with this opinion. The case before us is a criminal case and it is for the State to show that the accused persons have committed the offence with which they are charged. In other words, unless the State shows that the substance which was found from the possession of the accused person is covered by the definition of the word 'opium' as given in the Act, no offence can be held to have been committed, and the prosecution cannot succeed. 'Capsule' as given in Webster's Dictionary means "any closed vessel containing spores or seeds". Poppy husk has not been shown to be a capsule and we cannot agree that the word 'capsule' is synonymous with husk or *bhuki*, which is the name of the substance found in the present case. The accused persons have in our opinion been rightly acquitted and we would therefore dismiss all the three appeals.