

APPELLATE CRIMINAL

Before M. R. Sharma and K. S. Tiwana, JJ.

THE STATE OF PUNJAB,—Appellant.

versus

DARA, SON OF DULA,—Respondent.

Criminal Appeal No. 599 of 1972.

January 14, 1976.

Opium Act (1 of 1878)—Section 3—Opium—varying reports of Chemical Examiners regarding content of morphine—Accused—Whether entitled to benefit of doubt.

Held, that illicit opium ordinarily consists of coagulated milk of poppy (*papaver somniferum*) and the purity of such opium may vary from person to person who collect the same. The coagulated poppy milk collected by one person may contain more of dust or even impurities than such a milk collected by another person. When the opium produced by different persons is lumped together, in the very nature of things, the different portions of the lump would vary in morphine content. In a situation like this, all that has to be seen is whether the illicit opium recovered from an accused person falls within the definition of 'opium' as contained in section 3 of the Opium Act, 1878, or not. If the preparation or a mixture of coagulated poppy milk contains more than 0.2 per cent morphine it shall have to be declared as 'opium'. The analogy of a homogeneous solution cannot be relied upon in determining whether a non-homogeneous solid mass is illicit opium or not. This analogy would apply to an article which contains morphine in the form of a homogeneous solution. Thus, the mere fact that the reports of two Chemical Examiners are at variance with each other regarding the content of morphine, does not entitle the accused to benefit of doubt and therefore, acquittal, if the substance is otherwise opium.

(Paras 4 and 5)

Satnam Singh v. The State, 1967 Current Law Journal 411 overruled.

Appeal from the order of Shri Rajinder Paul Gaiind, Chief Judicial Magistrate, Ferozepur, dated the 28th March, 1972, acquitting the respondent.

Ved Paul Prashar, Assistant Advocate-General, Punjab, for the Appellant.

Meja Singh Sandhu, Advocate, for the Respondent.

JUDGMENT

M. R. Sharma, J.—(1) This is an appeal by special leave against the order of acquittal dated March 28, 1972, passed by the learned Chief Judicial Magistrate, Ferozepore.

(2) On May 21, 1970, Police Inspector Sudarshan Singh, Sub-Inspector Chaman Lal, Assistant Sub-Inspector Pyare Lal, Shri Bhatnagar, Assistant Superintendent of Police (under training) and some other Constables were on patrol duty. When the party reached near the cremation ground beyond Basti Bhatian, the respondent was seen coming from the opposite direction. On seeing the police, he tried to slip away. He was, however, apprehended on suspicion and on his personal search he was found carrying a packet, in a piece of cloth, containing 1,300 grams of opium wrapped in glazed paper. A sample of opium was taken out and sealed in a parcel. The remaining opium was also separately sealed into another parcel. Both these parcels were taken into possession,—*vide* memo Exhibit P.A. After the completion of the investigation, the respondent was sent up for trial before the learned Chief Judicial Magistrate, Ferozepore. The prosecution examined Inspector Sudarshan Singh, P.W. 3, Sub-Inspector Chaman Lal P.W. 1 and Assistant Sub-Inspector Pyare Lal P.W. 2. In the course of the trial, the respondent made an application that a sample of the alleged opium be got analysed at his expense. This request was acceded to another sample was drawn out and sent to the Asstt. Chemical Examiner, Punjab, Chandigarh, for analysis. About this sample, it was reported by him that it contained 12% morphine. The earlier sample which had been sent to the Assistant Chemical Examiner, Punjab, Amritsar, who reported to be containing 3 per cent morphine upon this the learned trial Magistrate summoned Dr. S. K. Bhatnagar, Assistant Chemical Examiner, Punjab, Amritsar and Dr. Har Gobind Singh Asstt. Chemical Examiner, Punjab, Chandigarh, as Court witnesses. After going through the entire evidence led in the case, the learned trial Magistrate accepted the testimony of Sub-Inspector Chaman Lal, P.W. 1, Assistant Sub-Inspector Pyare Lal, P.W. 2 and Inspector Sudarshan Singh, P.W. 3 and held that the respondent was in fact found to be in possession of illicit opium as alleged by the prosecution, but on the basis of the disparity in the two reports of the Chemical Examiners about the morphine content, he acquitted the respondent. In doing so, he relied upon *Satnam Singh v. The State* (1) in which a similar view had been taken.

(3) On behalf of the State of Punjab, the correctness of the view taken by the learned Judge of this Court in *Satnam Singh's*

(1) 1967 Current Law Journal 411.

The State of Punjab v. Dara, son of Dula (M. R. Sharma, J.)

case (supra) has been challenged. It is submitted that benefit of doubt can be given to an accused person only in that case in which the reports submitted by two Chemical Examiners are discrepant about a substance contained in homogenous solution and this principle does not apply to the case of mixture, the components of which are not uniformly mixed up.

(4) It is a matter of common knowledge that illicit opium ordinarily consists of coagulated milk of poppy (*papaver somniferum*). The purity of such opium may vary from person to person who collect the same. The coagulated poppy milk collected by one person may contain more of dust or even impurities than such a milk collected by another person. When the opium produced by different persons is lumped together, in the very nature of things, the different portions of the lump would vary in morphine content. In a situation like this, all that has to be seen is whether the illicit opium recovered from an accused person falls within the definition of 'opium' as contained in section 3 of the Opium Act, 1878, or not. Under that provision, 'opium' means—

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

- (i) the capsules of the poppy (*papaver somniferum*) 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.”

If the preparation or a mixture of coagulated poppy milk contains more than 0.2 per cent. morphine it shall have to be declared as 'opium'.

(5) In *Satnam Singh's* case (supra), reliance was placed on (2) *Tara Singh v. The State*, decided by Mehar Singh, J. (as the learned

(2) Criminal Revision No. 280 of 1962, decided on July, 25, 1962.

Chief Justice then was). But that was a case of adulterated milk which is a homogenous solution. The other case relied upon by the learned Judge was (*Pritam Dass v. The State*), decided by R. P. Khosla, J. (3), which also related to adulterated milk. We are accordingly of the view that the analogy of *Tara Singh's* case (supra) and *Pritam Dass's* case (supra) cannot be relied upon for determining whether a non-homogenous solid mass is illicit opium or not. This analogy would only be applicable to an article which contains morphine in the form of a homogeneous solution. With utmost respect to the learned Judge who decided *Satnam Singh's* case (supra), the view taken by him cannot be justified either in principle or on authority. We accordingly over-rule the same.

(6) The learned counsel for the respondent then took us through the evidence and submitted that the evidence of the three prosecution witnesses on the point of recovery of opium from the possession of the respondent should not be relied upon. The principal argument advanced by him on this point was that Shri Bhatnagar, Assistant Superintendent of Police, who was admittedly a member of the police patrol party, had not signed any document, because he was not satisfied about the genuineness of the recovery. We find no merit in this submission because Shri Bhatnagar, being under training, might not have thought it fit to become a witness in the case. On the other hand, because of his presence in the police party, the Inspector, Sub-Inspector and the Assistant Sub-Inspector (Sudarshan Singh, Chaman Lal and Pyare Lal, respectively) could not have falsely planted opium on the respondent.

(7) For the reasons aforementioned, we allow this appeal and convict the respondent under section 9 (a) of the Opium Act, 1878. Since the occurrence took place in 1970 and the respondent was acquitted in 1972, we would not like to send him to jail at this late stage. In these peculiar circumstances, we order that he should pay a fine of Rs. 1,000 (rupees one thousand) only. In default of payment of this fine, he shall undergo rigorous imprisonment for six months.

N. K. S.

(3) Criminal Revision No. 679 of 1965 decided on December 8, 1965.