

KAUR SAIN

v.

THE STATE OF PUNJAB

November 23, 1973

[M. H. BEG AND Y. V. CHANDRACHUD, JJ.]

B *Opium Act, s. 9 read with s. 54 Cr. P.C.—Appellant made a statement from lock-up that he possessed opium in his house. He was not arrested earlier for any such charge—Whether it was a made up story by the prosecution in the circumstances of the case.*

C The Judicial Magistrate convicted the appellant under s. 9 of the Opium Act for being in possession of over 1 Kg. of opium without a licence and sentenced him for 8 months R.I. and to pay a fine of Rs. 500/-. The order of conviction and sentence was confirmed in appeal by the Sessions Judge and in revision by the High Court.

D According to the prosecution, the appellant was arrested under s. 54 Cr.P.C. and while he was in the police lock-up, he was alleged to have made a statement that he had kept a tin of opium in his house. Accordingly, he was taken to his house where the accused is alleged to have handed over a tin of opium to the police. Before they were arrested, the appellant and another made an application before the Sarpanch of the village Panchayat stating that they were apprehensive that they would be involved in some false charge or the other on account of their enmity with certain persons.

Three courts had, however, held concurrently that the charge levelled against the accused stands clearly established. All the courts below had rejected the defence evidence summarily.

Allowing the appeal,

E HELD : (i) It is common ground that on June 9, 1968, the appellant was in the lock-up. Suddenly, the appellant made a disclosure that he had concealed a large quantity of opium in his house. The appellant was not arrested on the charge or on suspicion that he was in possession of contraband opium. After the statement made by the appellant was recorded in the police station, no case was registered against him before his house was searched. Secondly, without taking any help from any respectable person from the locality, the constable, got hold of two persons, to accompany the police party who were involved in criminal charges earlier. Further an uncle of one of the witnesses was a rival candidate against the appellant in the Municipal elections. Their evidence also was contradictory. The High Court however, unhesitatingly, believed their evidence. The High Court brushed aside the defence witness as a procured witnesses. There was no reference at all to the contradiction in the evidence of the two panchas in connection with the authenticity of the search. [395B-G]

F (ii) The respondent relied heavily on Ex. P.A., the statement alleged to have been made by the appellant at the police station, which bore his signature. In view of the infirmities in the evidence of the prosecution, no reliance can be placed on the circumstances that the statement bears the appellant's signature; besides in his examination under s. 342, Cr.P.C., the appellant was not asked by the Magistrate to offer any explanation in regard to the statement. [396G-397A]

In view of the exceptional circumstances of the case, the appeal was allowed. [397C]

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 68 of 1970.

Appeal by special leave from the Judgment and Order dated the 12th February, 1970 of the Punjab and Haryana High Court at Chandigarh in Criminal Revision No. 66 of 1969.

Nuruddin Ahmad and *B. P. Singh*, for the appellant. A

Harbans Singh and *R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, J. The learned Judicial Magistrate, 1st Class, Sunam convicted the appellant under section 9 of the Opium Act for being in possession of over 1 kg. of opium without a licence and sentenced him to suffer rigorous imprisonment for 8 months and to pay a fine of Rs. 500/-. The order of conviction and sentence was confirmed in appeal by the learned Sessions Judge, Sangrur, and in revision by the High Court of Punjab & Haryana. This appeal by special leave is directed against the judgment of the High Court. B

According to the prosecution, the appellant was arrested on June 9, 1968 under section 54 of the Code of Criminal Procedure. While he was in the police lock-up, he is alleged to have made a statement that he had kept a tin containing opium in his house. Gurdev Singh, the Station House Officer of the Lehra Police station, asked a constable to secure two Panchas and thereafter the police party went to the appellant's house. It is said that the appellant produced a tin of opium weighing 1 kg. and 300 gms. and handed it over to Gurdev Singh. C

The appellant examined seven witnesses in support of his defence that it was on June 8, 1968 that he was put under arrest in a place called Nagla where he runs a liquor shop. Before leaving Nagla, the appellant and his companion Jagdish Rai, who was also put under arrest, presented an application before the Sarpanch of the village panchayat stating that they were apprehensive that they would be involved on some false charge or the other on account of their enmity with certain persons. The appellant produced the application as also a receipt issued by the village panchayat, acknowledging the payment of the fee paid by the appellant for filing the application. Appellant denied that he either made a statement that he had kept the opium in his house or that he produced the opium. D

We are acutely aware that three courts have held concurrently that the charge levelled against the appellant stands clearly established on the evidence led by the prosecution. It is not the practice of this Court to undertake a fresh appraisal of the evidence in such matters. We are however constrained to observe that the story of the prosecution is so inherently impossible of belief that we are unable to persuade ourselves to stay our hands and let the conviction and sentence stand. If two views of the evidence were reasonably possible, we would not have substituted our conclusion for that of the High Court. Unfortunately, however, none of the three judgments which we have considered carefully even discloses an awareness of the fiction-like pattern of the prosecution story and none contains even a bare reference to the mutually destructive statements made by prosecution witnesses on the crucial points in the case. Besides, acting on *a priori* considerations, everyone of the three courts, including the High Court, has rejected the defence evidence summarily without E

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A pausing to consider it in the light of the probabilities of the case. Defence witnesses are often untrustworthy but it is wrong for that reason to assume that they always lie and that the prosecution witnesses are always trustworthy. The prime infirmity from which the judgment of the High Court suffers consists in this double assumption.

B Whether the appellant was arrested under section 54 of the Code of Criminal Procedure on the 8th or 9th is immaterial for it is common ground that on June 9, 1968 he was in the lock-up. Suddenly, the appellant seems to have been seized by a strange urge to make a disclosure to Gurdev Singh that he had concealed a large quantity of opium in his house. The appellant was not arrested on the charge or on suspicion that he was in possession of contraband opium. After C the statement alleged to have been made by the appellant was recorded at the police station, no case was registered against him before his house was searched.

D It is in evidence that various municipal councillors and other respectable persons live in the vicinity of the Lehra police station. Rather than take the help of any respectable person from the locality, it is strange that the constable deputed by Gurdev Singh should have hit upon none more respectable than Kehar Singh and Krishan Chand. Kehar Singh was charged by the police in a case under section 429 of the Penal Code and he was cited as a prosecution witness at least in one case against a person called Gajjan Singh. Krishan Chand had figured as an accused in a prosecution under section 382 of the Penal Code initiated by one Sham Lal. He was also concerned with E the commencement of security proceedings against a person called Hans Raj. In the municipal elections of Lehra, Krishna Chand's uncle Mohan Lal was a rival candidate against the appellant and it is not without significance that the appellant had won the election. Krishan Chand lives half a mile away from the police station and the coincidence strikes us as too propitious to be true that the constable perchance discovered Krishan Chand sitting in the shop of a Halwai.

F Kehar Singh has stated in his evidence that the whole of the police party entered the room from which the appellant discovered the opium tin. Krishan Chand supported that evidence in the first flush of enthusiasm but he conceded later "We did not enter the room from where the recovery was effected. Immediately after entering the room the accused recovered the opium in a tin and G handed over the same 'thanedar' Gurdev Singh. We sat on the chabutra outside the house of the accused. . . . SHO was sitting on a cot while myself and Kehar Singh P.W. 1 were standing." It is obvious from these admissions that Kehar Singh and Krishan Chand were not in any sense witnesses to the seizure of the opium. The Station House Officer would appear to have put up the pretence of a search in which an opium tin sprung from a magic hat.

H It was easy to go through the formality of a search because even the half-hearted admission of Gurdev Singh shows that he had seen the two panchas before the case and that he was only "not fully

known to them". He should have stated how "unfully" he knew them and in what context. His evidence leaves the impression that if he were to disclose how closely he knew the panchas and in what connection he had come to know them, he would have himself laid the foundation for disbelieving them. A

The High Court found an uncommon reason for believing Kehar Singh by saying that the fact that he was charged under section 429 of the Penal Code showed that the police were not inclined favourably towards him. The question before the High Court was whether a person in the position of Kehar Singh could be taken at his word. The fact that he was alleged to be concerned in an offence should have at least put the High Court on its guard so that his evidence could be approached with care and caution. Instead of analysing his evidence the High Court was content to accept it without criticism by observing : "He is a person who is living near the Police Station and it is quite probable that he was associated by the police party in investigation." The fact that Krishan Chand's uncle had lost the municipal election against the appelland was, again, some reason for the High Court to consider his evidence carefully. The High Court however choose to compress its entire evidentiary appreciation in a sentence which runs thus : "All these witnesses were cross-examined at length by the counsel for the accused but no substantial discrepancy could be brought out from the evidence of these witnesses." We feel concerned that the judgment of the High Court should contain no reference at all to the contradiction in the evidence of the two panchas on an aspect vitally affecting the authenticity of the search. B

The evidence led by the defence has been brushed aside by the High Court with an observation : "I have no doubt in my mind that it is not difficult to procure such evidence by an influential man like the accused person. The accused person is running a liquor vend in the village and it is not difficult for him to get application of the kind fabricated." We have spent some time in trying to perceive what influence the appelland wields but we were unable to see any traces thereof. It is always possible to fabricate documents and one does not have to be a liquor vendor to be able to do it. A more careful scrutiny of the defence evidence would perhaps have induced in the High Court a greater receptivity to the criticism to which the evidence of the prosecution is justly open. C

Learned counsel for the State relied heavily on the circumstances that Ex. P.A., the statement alleged to have been made by the appelland at the police station, bears the appelland's signature. It is urged that the statement contains an unqualified admission on the part of the appelland that he had concealed a tin of opium in his house and that by itself would be sufficient to sustain the conviction. In view of the infirmities in the evidence of Kehar Singh, Krishan Chand and Gurdev Singh in whose presence the statement Ex. P.A. is said to have been recorded, no reliance can be placed on the circumstance that the statement bears the appelland's signature. Besides in his examination under section 342, Code of Criminal Procedure, the appelland was not D

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- A asked by the learned Magistrate to offer any explanation whatsoever in regard to the statement. Counsel for the State says that such a grievance is not open to the appellant as he did not complain either in the Sessions Court or in the High Court that any prejudice was caused to him on account of the Magistrate not seeking his explanation in regard to the statement. It is not as if the appellant is making a point before us that the conviction is bad because of any defect in his examination under section 342. If the State relies in this Court on any particular circumstance as being sufficient to sustain the conviction, it would be open to the accused to plead in answer that the particular circumstance was not put to him in his examination under section 342.

- C In view of these exceptional circumstances, we see no option save to allow the appeal and set aside the order of conviction and sentence. The bail bond is cancelled.

S.C.

Appeal allowed.