



2026:AHC:68244

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 458 of 1987

Islam

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	A.N. Bhargava, Sanjay Singh
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Sanjay Singh, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. for the State.

2. This criminal appeal has been filed against the judgment and order dated 29.01.1987, passed by Special Judge (Economic Offences), Agra in Criminal Case No.2 of 1985, convicting and sentencing the appellant to undergo six months R.I. under Section 3/7 of E.C. Act.

3. The prosecution case, in brief, is that on 15.05.1984, Sub-Inspector Hardas Verma of Police Outpost Sarai Khawaja, Police Station-Shahganj, has recovered four canisters of kerosene oil and one canister containing two liters of kerosene oil and one glass bottle for measurement from the shop of the accused Islam. He arrested the accused and took into his possession the above material. Recovery memo was prepared on spot. On the basis of recovery memo chik FIR was registered as Case Crime No.291 under Section 3/7 of E.C. Act and G.D. entry was drawn. The case was investigated by S.I. N.M. Sharma, who prepared the site plan, took sanction for prosecution from the District Magistrate, Agra. After investigation of the case, the charge-sheet was submitted.

4. Charge was framed and read over to the accused and the accused denied his involvement in the crime and claimed to be tried.

5. The prosecution, in support of its case, has produced P.W.-1 Hardas Verma, who has supported the prosecution version. Documentary evidences namely recovery memo Ext. Ka-1, FIR Ext. Ka-2, carbon copy

of G.D. Ext. Ka-3, site plan Ext. Ka-4, charge-sheet Ext. Ka-5, sanction for prosecution Ext. Ka-6 and Ex. K-7 entry of Malkhana Register, are available on record.

5. After hearing the arguments and considering the evidence on record, the trial court convicted the accused for offence under Section 3/7 of E.C. Act and sentenced him to undergo rigorous imprisonment for six months.

6. Learned counsel for the appellant submitted that the conviction of the appellant is based on testimony of the sole interested witness P.W.-1 Hardas Verma, without any corroboration, the case property itself is doubtful. No sample of kerosene oil was taken and sent for chemical examination. The prosecution failed to establish the ownership or existence of alleged shop of the appellant. No independent witness or customer of the shop was examined, therefore, it is prayed that the conviction and sentence of the appellant recorded by the trial court may be set aside and the appellant be acquitted of the charges levelled against him.

7. Learned A.G.A. for the State supports the conviction and sentence recorded by the trial court.

8. The appellant was held guilty for committing the breach of clause 3 of U.P. Kerosene Control Order, 1962, punishable under Section 3/7 of E.C. Act. The trial court held that kerosene oil was stored for selling purpose and the accused Islam was engaged in that business without any license.

9. Section 3 of the U.P. Kerosene Control Order, 1962 strictly restricts the sale, or storage for sale of kerosene, which mandates that no person can be engaged in these activities without a valid license granted by the licensing authority of the district, where the business is conducted. It reads as under :-

"No person shall sell or store for sale kerosene oil except under a license granted by the licensing authority of the district in which he carries on business."

10. The prosecution has examined only one witness, P.W.-1 S.I. Hardas

Verma, the informant who deposed that he had recovered 4 canisters of kerosene from the shop of the appellant and deposited the same in the Malkhana. However, when the case property was produced before the Court, it was found that one of the canisters containing Ghee instead of kerosene oil. P.W.-1 Hardas Verma stated that although the crime number of this case was mentioned on the canisters, the handwriting was not his.

11. The trial court overlooking this discrepancy, held that kerosene was deposited in Malkhana on 15.05.1984 and it was produced before the Court on 20.01.1987. There may be some lapse on part of Malkhana, Moharrir, the other 3 canisters containing kerosene oil have not been disputed. P.W.-1 Sub Inspector Hardas Verma has proved entries of Malkhana Register as Ext. Ka-7, wherein it is mentioned that 4 canisters containing kerosene oil and one canister containing two liters of kerosene oil were deposited in Malkhana and proceeded to convict the appellant.

12. Upon perusal and examination of the record, this Court finds that the prosecution case suffers from serious infirmities. The entire case rests on the testimony of P.W.-1 Hardas Verma, who is informant and a Police Officer.

13. While it is true that conviction can be based on the testimony of a single witness, such testimony must be reliable and inspire confidence which is not the case here.

14. A most glaring inconsistency arises from the case property itself. Out of 4 canisters allegedly containing kerosene oil, one was found to contain Ghee when produced before the Court. This creates serious doubt regarding the integrity and identity of the recovered articles. The explanation recorded by the trial court in this regard that the case property might have been replaced during the gap of about two year is wholly speculative and legally untenable. The prosecution is under a duty to maintain the sanctity of the chain of custody and any break therein strikes at the root of the case.

15. Further, no sample of the alleged kerosene oil was taken nor was it sent for any chemical examination. In absence of such scientific or corroborative evidence, it cannot be conclusively held that the seized

substance was, in fact, kerosene oil.

16. The prosecution has also failed to establish that the appellant was running any shop at the alleged place. No documentary evidence, site plan details or independent witness has been produced to substantiate this fact.

17. Significantly, no independent witness or customer has been examined to prove that the appellant was dealing in kerosene oil or selling the same without a license. The defence taken by the appellant under Section 313 Cr.P.C., alleging false implication due to enmity, though not required to be proved beyond doubt, gains probabilities and supports the weakness in the prosecution case.

18. It is a principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt, and the benefit of doubt must go to the accused. In the present case, the cumulative effect of discrepancies, lack of corroboration and doubtful case property create serious and reasonable doubt in prosecution case.

19. This Court is of the considered view that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The conviction recorded by the trial court is based on conjunctures and surmises and cannot be sustained in law. The appeal deserves to be allowed.

20. Accordingly, the appeal is allowed.

21. The judgment of conviction and sentence dated 29.01.1987 passed by Special Judge (Economic Offences) under Section 3/7 of E.C. Act is hereby set aside and appellant is acquitted of the charges levelled against him. The appellant is on bail. His bail bonds are cancelled and sureties are discharged.

22. Let a copy of this judgment along with trial court be sent back to the concerned trial court forthwith.

(Mrs. Vani Ranjan Agrawal,J.)

February 10, 2026

P. Pandey