

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1106 of 2002

Judgment Reserved on : 27.6.2018

Judgment Delivered on : 24.9.2018

- 1. Subhash, S/o Late Sharda Prasad Saw, aged about 34 years, R/o Kurud Road, Kohaka, District Durg, Chhattisgarh
- 2. Pramod Kumar, S/o Late Sharda Prasad Saw, aged about 36 years, R/o Kurud Road, Kohaka, District Durg, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Supela, District Durg, Chhattisgarh

--- Respondent

For Appellants	:	Shri S.C. Verma, Advocate
For Respondent/State	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 19.10.2002 passed by the Special Judge under the Essential Commodities Act, (henceforth 'the Act'), Durg in Special Criminal Case No.42 of 1991 convicting and sentencing each of the accused/Appellants as under:

Conviction	Sentence
Under Section 7 of the Act (In committing breach of Madhya Pradesh Kerosene Dealers Licensing Order, 1979)	Rigorous Imprisonment for 3 months and fine of Rs.2,000/-, in default additional rigorous imprisonment for 15 days
Under Section 353 of the Indian Penal Code	Rigorous Imprisonment for 3 months and fine of Rs.2,000/-, in default additional rigorous imprisonment for 15 days The jail sentences are directed to run concurrently

2. Case of the prosecution, in brief, is that Sharda Prasad Sao was father of both the Appellants and father-in-law of deceased accused Kedar Prasad Sao. Allegedly, House No.565 situated at Kohka, Bhilai was owned by Late Sharda Prasad Sao and House No.589 situated at Kohka, Bhilai was owned by one Raj Narayan Mishra. House No.589 was allegedly taken on rent by Kedar Prasad Sao. On 27.9.1991 at about 9:00 a.m., Food Inspector Bhagwati Prasad Sharma (PW6), Food Inspector Goutam Chand Vaidya (PW3), Food Inspector Huleshwar Katre (PW4), Food Inspector Ramswaroop Yadu (PW5) and Food Inspector Nakul Singh Thakur (not examined by the prosecution) reached to House No.565 which was owned by Sharda Prasad Sao. At that time, both the Appellants and Kedar Prasad Sao were present there. On making search of the house, it was found that 4,000 Litres of kerosene was filled in an iron tanker kept in the campus of the house. 1815 Litres of kerosene was also found in 10 drums kept in the godown of the premises. Additional 200 Litres of kerosene was found in another drum. Many instruments and pipes of different measurements were also found there. House No.589, which was owned by Raj Narayan Mishra and which was allegedly taken on rent by Kedar Prasad Sao was also searched in which 800 Litres of petrol and black oil were found in 3 containers. The articles found in House No.565 were seized. At the time when the seizure proceedings were going on, both the Appellants and Kedar Prasad Sao started shouting and they tore the seizure memo, panchnama and other documents. They spread out the kerosene filled in the tanker and drums. They also scuffled with all the Food Inspectors and created obstructions in government duty of those Food Inspectors and thereafter they ran away from there. This incident

was informed to Police Station, Supela. After reaching of the police staff at the spot, the Food Inspectors completed the proceedings. A written complaint (Ex.P1) was submitted by Food Inspector Bhagwati Prasad Sharma (PW6) on 27.9.1991 itself. With regard to the incident taken in House No.589 owned by Raj Narayan Mishra, a separate case was prepared by Food Inspector Huleshwar Katre (PW4). On the basis of Ex.P1, First Information Report (Ex.P2) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Sections 353, 185, 506B, 209, 34 of the Indian Penal Code. Charges were framed against them under Section 3/7 of the Act and Section 353 of the Indian Penal Code.

3. In order to prove the guilt of the accused/Appellants, the prosecution examined as many as 8 witnesses. Statements of the accused/Appellants under Section 313 Cr.P.C. were also recorded in which they denied the circumstances appearing against them. They claimed to be innocent and pleaded false implication. No witness has been examined in their defence.
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that House No.565 was owned by Sharda Prasad Sao. The licence in respect of petrol and kerosene was in the name of Sharda Prasad Sao only. Even if it is considered that there was any stock kept in

that house, the said stock was kept by the Appellants or they had any role in keeping the said stock in that house, there is no evidence on record in this regard. Therefore, no offence under Section 7 of the Act is made out against any of the Appellants. He further submitted that with regard to the offence under Section 353 of the Indian Penal Code, except Bhagwati Prasad Sharma (PW6) no other prosecution witness has supported the case of the prosecution. Bhagwati Prasad Sharma (PW6) has exaggerated his version before the Court and has falsely implicated the Appellants. There are number of omissions and contradictions in his statement and, therefore, his statement is not reliable. It was further submitted that R.A. Khandelwal, who was allegedly present at the spot at the time of incident, has not been examined by the prosecution. Thus, the case of the prosecution completely gets shattered.

6. On the other hand, Learned Counsel appearing for the State opposed the arguments raised on behalf of the Appellants and supported the impugned judgment. He submitted that on the basis of the evidence available on record, the Trial Court has rightly convicted and sentenced the Appellants.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. The case of the prosecution is mainly based on the evidence of Bhagwati Prasad Sharma (PW6), Goutam Chand Vaidya (PW3) and Huleshwar Katre (PW4), who were Food Inspectors on the date of incident.

9. Food Inspector Bhagwati Prasad Sharma (PW6) has deposed that on the date of incident, he along with Ramswaroop Yadu (PW5), Huleshwar Katre (PW4) and Goutam Chand Vaidya (PW3), all Food Inspectors and R.A. Khandelwal, the then Sub-Divisional Magistrate, Durg reached to the premises of the Appellants. At that time, one tanker was parked there. Both the Appellants were standing in their shop. Kedar Sao was also present there. The tanker was filled with about 4,000 Litres of kerosene. He has further deposed that the shop and the godown, which were situated in House No.565 were searched. Black oil and kerosene were also found in the said shop and godown. He has further stated that in the said shop and godown, they found 1875 Litres of kerosene in 10 drums, 240 Litres of kerosene were filled in 2 drums, burnt black oil was filled in 2 drums. 200 Litres of kerosene was also found in a drum in front of the shop. He has further stated that all the articles were seized, a panchnama thereof was prepared and statement of Appellant Pramod Kumar was recorded. He has further stated that at that time, both the Appellants and Kedar Sao assaulted on them, snatched the papers and tore them. They also scuffled with them and attempted to shut them inside the shutter. They saved their lives anyhow and reached to Police Station Supela and thereafter they again reached back to the spot along with police staff. On return to the spot, they saw that the whole kerosene and oil filled in the drums were spread out. A panchnama thereof was prepared and photographs were taken. Thereafter, he returned and lodged the First Information Report in Police Station Supela. He also reported the matter to the Collector vide Ex.P23. In his cross-examination, in paragraph 15, he has admitted the fact that Sharda Sao was the owner of House No.565

which was searched by them. He has further admitted that in the said house family of Sharda Sao was residing, but he was not aware of number of members of the family. At the time of inspection, Sharda Sao was called, but he was not available. His children and son-in-law only were available. In paragraph 14 of his cross-examination, he has further admitted that Sharda Sao was having 2 licences for kerosene, but those licences were already suspended. In paragraph 21, he has also admitted that the Appellants had spread out the kerosene in his presence. In paragraph 30, he has further admitted that the place mentioned in the licences issued to Sharda Sao was the house of Sharda Sao where they found kerosene.

10. Goutam Chand Vaidya (PW3), who was along with Bhagwati Prasad Sharma (PW6), has deposed that at the time of incident, when they reached to the shop of Sharda Sao, both the Appellants and Kedar Sao were present there. He has further stated that at the time of inspection, Bhagwati Prasad Sharma (PW6) and S.D.M. Khandelwal were inside the shop and he was outside the shop. At that time, the Appellants had closed the shutter of the shop. The shutter was got opened. At that time, Bhagwati Prasad Sharma (PW6) and S.D.M. Khandelwal told that the Appellants and Kedar Sao had also scuffled with them. In paragraph 10 of his cross-examination, he has admitted the fact that he did not witness what happened inside the shop of Sharda Sao. He has also admitted the fact that in the house of Sharda Sao, the whole joint family of Sharda Sao resided. He has further stated that thereafter they went to Police Station Supela. After return from there, they seized the tanker and drums from the spot. They also seized one drum

from the front of the house of Kunti Thakur in which kerosene was filled in.

11. Food Inspector Huleshwar Katre (PW4), who was also present at the time of inspection, has stated that kerosene was filled in the drums kept in the rooms of the house. Crude oil was also filled in a canister. Some other canisters were also found which were taken into possession. At that time, no person was present there.
12. Food Inspector Ramswaroop Yadu (PW5) has only stated that Bhagwati Prasad Sharma (PW6) had seized kerosene kept in an open ground. Inspector Ajit Choubey (PW1) is the witness who recorded First Information Report (Ex.P2) on the basis of the written report (Ex.P1) submitted by Bhagwati Prasad Sharma (PW6). He prepared spot-map (Ex.P3) and recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. J.S. Saggu (PW2) seized photo copies of documents vide Ex.P9. Rajkumar Pandey (PW7) is the witness of seizure memo (Ex.P10 and P12). He did not support the seizures and has been declared hostile. Ram Mishra (PW8), son of Raj Narayan Mishra has only stated that he did not know about the person to whom his father had given the house on rent. This witness has also been declared hostile.
13. On minute examination of the above evidence, it is clear that Food Inspectors Bhagwati Prasad Sharma (PW6), Ramswaroop Yadu (PW5), Huleshwar Katre (PW4) and Goutam Chand Vaidya (PW3) had searched House No.565, which belonged to Sharda Sao, father of both the Appellants. From the statements of above witnesses, it is also clear that 2 licences were issued in the name

of Sharda Sao. Allegedly, the kerosene was found in the house belonging to Sharda Sao. Though both the Appellants and Kedar Sao were present there, they were not owners of the house and shop and there is no evidence on record to show that the said house and shop were in possession of the Appellants and Kedar Sao or they were running the said shop. From the evidence on record, it is also clear that some quantity of kerosene was found filled in a tanker and few drums kept in an open place. There is also no evidence on record to show that the said tanker and drums belonged to the Appellants and Kedar Sao or the kerosene filled therein belonged to them. In these circumstances, no offence under Section 7 of the Act is made out against any of the Appellants. With regard to the offence punishable under Section 353 of the Indian Penal Code, Bhagwati Prasad Sharma (PW6) has categorically stated that at the time of incident, when they were making inspection, both the Appellants and Kedar Sao were present there and the Appellants and Kedar Sao had assaulted them and after snatching the papers from them they had torn the same. They had also scuffled with him and they had made attempt to shut him behind the shutters. He has remained firm on the above facts during his lengthy cross-examination. His statement is duly corroborated by Food Inspector Goutam Chand Vaidya (PW3). Goutam Chand Vaidya has also stated that at the time of incident, both the Appellants and Kedar Sao were present at the spot and during inspection, he was present outside the shop and Bhagwati Prasad Sharma (PW6) was present inside the shop. At that time, the Appellants had closed the shutters of the shop. Though this witness has admitted that what had happened inside the shop he did not witness, as stated by him he had witnessed that the

Appellants were present at the time of incident and they had closed the shutters of the shop. This version of the witness has not been rebutted. There is nothing on record on the basis of which it could be presumed that there was any previous enmity between Bhagwati Prasad Sharma (PW6) and the Appellants. In these circumstances, considering the entire evidence adduced by the prosecution, it is clear that both the Appellants had assaulted Bhagwati Prasad Sharma (PW6), who, at the time of incident, was a public servant and was discharging his duties. Thus, the offence under Section 353 of the Indian Penal Code is duly proved. Therefore, the finding of the Trial Court regarding the conviction under Section 353 of the Indian Penal Code is in accordance with law.

14. Consequently, the appeal is allowed in part. The Appellants are acquitted of the charge framed under Section 7 of the Essential Commodities Act, but their conviction under Section 353 of the Indian Penal Code and the sentence awarded thereunder are affirmed.
15. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE