

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1257 of 2002

Judgment Reserved on : 22.1.2020

Judgment Delivered on : 21.5.2020

1. Jageshwar Ram Rajwade, son of Kalicharan Ram, aged about 48 years, occupation service, resident of Nagar Gudari Chowk, Ambikapur, Chhattisgarh ----- **His appeal is abated**
2. Manoj Sharma, son of Baij Nath Sharma, aged about 27 years, resident of Mohalla Darripara, Ambikapur
3. Shankar Ram, son of Ram Charan Bunkar, aged about 32 years, occupation service, resident of Village Gandhi Nagar, Ambikapur ----- **His appeal is abated**

---- Appellants

**versus**

The State of Chhattisgarh through the District Magistrate Surguja at Ambikapur, Chhattisgarh

--- Respondent

|                    |   |                                                                                                       |
|--------------------|---|-------------------------------------------------------------------------------------------------------|
| For Appellant No.2 | : | Smt. Indira Tripathi, Advocate with Shri Hanuman Prasad Agrawal, Advocate appointed through legal aid |
| For Respondent     | : | Smt. Smita Ghai, Panel Lawyer                                                                         |

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 28.11.2002 passed by the Special Judge under the Essential Commodities Act (henceforth 'the Act'), Surguja at Ambikapur in Special Criminal Case No.5 of 1998, whereby the Appellants have been convicted and sentenced as under:

| <u>Conviction</u>                                                         | <u>Sentence</u>                                                                         |
|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Under Section 3(2)(घ) of the Act read with Section 7(1)(k)(ii) of the Act | Rigorous Imprisonment for 6 months and fine of Rs.1,000/- each with default stipulation |

2. During pendency of this appeal, due to death of Appellants No.1 and 3, i.e., Jageshwar Ram Rajwade and Shankar Ram, respectively, their appeals have abated vide order dated 17.9.2019.
3. Prosecution case, in brief, is that at the relevant time, Appellant No.1, Jageshwar Ram Rajwade was Lampus Manager, Appellant No.2, Manoj Sharma was Lead Manager and Appellant No.3, Shankar Ram was Salesman of the Government Fair Price Shop in question situated at Village Fundurdihari. On 31.1.1998, Food Inspector K.S. Nag and Assistant Food Officer J.S. Tirki (PW5) reached the said fair price shop for surprise inspection. It was found by them that total 1000 litres of kerosene was given to the said fair price shop for selling to the ration card holders. According to the entries of the distribution register, out of the said quantity of 1000 litres of kerosene, entry of distribution of 538 litres was done in the said register. On physical verification, 20 litres of kerosene was found in the shop in question and shortage of 442 litres of kerosene was found in the shop. According to the case of the prosecution, the fixed price for sale of the kerosene was Rs.3.25 per litre and according to the relevant rules, on one ration card only one customer could purchase only 3.5 litres of kerosene. But, at the time of inspection, it was found that Appellant No.3, Shankar Ram, who was Salesman in the shop, had sold total 10 litres of kerosene @ Rs.5 per litre to Ashok Kumar (PW3) on one ration card (Article 'A'). in this regard, a panchnama (Ex.P3) was prepared. Statements of Ashok (PW3) and the Appellants were also recorded by the Food Inspector. Vide seizure memo (Ex.P16), a delivery memo was also seized from Appellant No.2, Manoj Sharma. First Information Report (Ex.P2) was lodged. On completion of the investigation, a charge-sheet was filed against

the Appellants. Charges were framed against them.

4. In support of its case, the prosecution examined as many as 9 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. No witness has been examined in defence.
5. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellants as mentioned in first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for Appellant No.2, Manoj Sharma submitted that without there being any evidence on record against Appellant Manoj Sharma, the Trial Court has wrongly convicted him. It was further submitted that first it is not established that Ashok (PW3) was sold 10 litres of kerosene @ Rs.5 per litre on one ration card. Ashok (PW3) has categorically admitted the fact that he had purchased total 10 litres of kerosene on 3 ration cards @ Rs.3 per litre. The prosecution has failed to prove that Ashok was sold total 10 litres of kerosene @ Rs.5 per litre one one ration card only. It was further submitted that the Trial Court itself has arrived at the conclusion that the prosecution did not produce any bond of the Appellants and the Trial Court has also arrived at the conclusion that statement of the Sarpanch or of any other member of the observation committee (*Nigrani Samiti*) was not recorded by the prosecution with regard to the fact whether 1000 litres of kerosene was delivered to the said fair price shop or not. It was further submitted that no distribution or stock register was produced by the prosecution before the Trial Court to show that 1000 litres of kerosene was delivered to the said fair price shop and out of that quantity, distribution of 538 litres was done and

shortage of 442 litres of kerosene was found. Lastly, it was submitted that Appellant Manoj Sharma has been convicted only on the ground that as stated by Mohd. Kayum Khan (PW8) the delivery memo was seized from Appellant Manoj Sharma himself. According to the case of the prosecution, the said delivery memo was seized from Appellant Manoj Sharma vide seizure memo (Ex.P16) at the office of Lampus, Namnakala, but Mohd, Kayum Khan (PW8) has categorically admitted that he had signed the seizure memo at Village Chatirama. Therefore, the said seizure of the delivery memo from Appellant Manoj Sharma is also not established. Therefore, the prosecution has totally failed to prove its case against Appellant Manoj Sharma, but despite that, the Trial Court has wrongly convicted him.

7. Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. First I have gone through the statement of Ashok Kumar (PW3), who has only admitted his signatures on panchnama (Ex.P3), his statement (Ex.P4) and seizure memo (Ex.P5). According to his Court statement, he purchased 10 litres of kerosene at the total price of Rs.30. According to this witness, he purchased that quantity of 10 litres of kerosene on 3 ration cards out of which 1 ration card is in the name of his father and that ration card is Article A and the said ration card was kept by the Food Inspector and remaining 2 ration cards were returned to this witness. This witness has been declared hostile. Other witnesses of the

panchnama (Ex.P3), namely, Sarju Prasad Gupta and Ramakant Gupta have not been examined by the prosecution. There is no evidence available on record to show that Ashok (PW3) was sold 10 litres of kerosene @ Rs.5 per litre on one ration card. Therefore, the finding of the Trial Court that Ashok (PW3) was sold 10 litres of kerosene @ Rs.5 per litre on one ration card is not in accordance with the evidence available on record.

10. As stated by Assistant Food Officer J.S. Tirki (PW5), the fair price shop in question was given total 1000 litres of kerosene for sale to the ration card holders. Out of the said quantity of kerosene, total 538 litres of kerosene was distributed and 442 litres of kerosene was found to be short and in the stock total 20 litres of kerosene was found. But, the prosecution has failed to submit any stock or distribution register or any other document to show that at the relevant time 1000 litres of kerosene was delivered to the said fair price shop and out of that quantity of kerosene ration card holders were distributed total 538 litres of kerosene. Therefore, it is also not established that total 1000 litres of kerosene was given to the said fair price shop and out of that quantity of kerosene total 538 litres of kerosene was distributed to the ration card holders and total 442 litres of kerosene was found to be short.
11. From perusal of the judgment of the Trial Court, it seems that the Trial Court has convicted Appellant Manoj Sharma only on the ground that from him the prosecution had seized a delivery memo vide seizure memo (Ex.P16). One of the witnesses of the said seizure memo, namely, Pradeep Tripathi (PW9) has not supported the case of the prosecution and turned hostile. Other witness of the said seizure memo, Mohd. Kayum Khan (PW8) has only stated

that one delivery memo was seized from Appellant Manoj Sharma, but according to this witness, in the said seizure memo (Ex.P16), he had put his signature at Village Chatirama. But, according to the case of the prosecution, the said delivery memo was seized at the lampus office situated at Village Namnakala. Therefore, seizure of the delivery memo from Appellant Manoj Sharma is doubtful. Even if for the sake of argument it is considered that the delivery memo was seized from Appellant Manoj Sharma, the said delivery memo is not available on record. It has already been discussed above that against Appellant Shankar Ram (dead), who was a Salesman of the fair price shop in question, the prosecution has failed to prove that the alleged irregularities were committed by him and, therefore, no liability can be fastened on Appellant Manoj Sharma, who was the Lead Manager of the said fair price shop. For the foregoing reasons, I find that the prosecution has failed to prove its case beyond reasonable doubt.

12. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. Appellant Manoj Sharma is acquitted of the charges framed against him.
13. 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**