

Form J(2)

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Appellate Jurisdiction**  
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**Present :**  
**The Hon'ble Justice Prasenjit Biswas**

**C.R.A. 274 of 1989**

**Anadi Das**  
**Vs.**  
**The State of West Bengal**

**For the Appellant : Mr. Bibaswan Bhattacharya**  
**Mr. Shivam Debnath**

**For the State : Ms. Faria Hossain, Ld. APP**  
**Mr. Karan Bapuli**

**Heard on : 24.09.2025**

**Judgment on : 24.09.2025**

**(Dictated in Court)**

**Prasenjit Biswas, J.**

1. This appeal is directed against the impugned judgment and order of conviction dated 12.06.1989 passed by the learned Judge, Special Court, Burdwan in T.R. Case No. 7 of 1989.

2. By passing the impugned judgment, this appellant was found guilty for commission of offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of para 11(2) of the

West Bengal Kerosene Control Order, 1968 and para 5 of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 and he was sentenced to simple imprisonment for two years.

3. The appellant, having felt wronged and discontented with the judgment and order of conviction under challenge, has preferred this appeal.

4. To put it briefly, the case as projected by the prosecution is that –

*“The instant case was started on the basis of a complaint lodged by the defacto complainant by stating, inter alia, that the defacto complainant along with his team conducted raid in the house of the accused on 27.07.1988 on the basis of an information received by them. It is said that the DEO had raided on the date at about 17-30 hours, the two hutments attached to the residence of the mother of the appellant. The said hutments were used as godowns by the accused, which runs a grocery shop at Mandalhat under the name and style of “Gobinda Bhandar”. On searching the two hutments, it was found that 322 liters and superfine kerosene oil, contained in 22 tins and 15 quintals of rice, contained in 20 bags were stored therein. On asking no documents were shown to the raiding team for storing the aforesaid articles. It is stated in the written complaint that the DEO found that the accused violated the provisions*

*contained in para 4 of the first order and para 3(1) of the relevant second order. On the complaint, the instant case was started being Katwa P.S. Case No. 24/150 dated July 27, 1988 under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of paragraph 4 of the West Bengal Kerosene Oil Control Order, 1968 and paragraph 3 of the West Bengal Rice and Paddy Licensing Control Order, 1982.”*

5. After completion of investigation, charge sheet was submitted against the accused person for violation of the provisions contained in para 4 of the West Bengal Kerosene Oil Control Order, 1968 and para 11(2) of the West Bengal Rice and Paddy (Licensing Control Order), 1967.

6. In this case seven witnesses were cited by the side of the prosecution and documents were marked as exhibits on its behalf. On the other hand, the accused person adduced two witnesses as DW 1 and DW 2 on his behalf.

7. Mr. Bibaswan Bhattacharya, learned Advocate appearing on behalf of the appellant, has strenuously urged before this Court that the impugned order of conviction as passed by the learned Trial Court cannot be sustained in the eye of law, inasmuch as there are glaring contradictions and material omissions in the depositions of the prosecution witnesses, which strike at the very root of the case. According to him, the testimonies of the prosecution witnesses, far from establishing the charges, have rendered the prosecution story

wholly doubtful and unreliable. It has been emphasized that PW1, PW2, and PW3, who were cited as independent witnesses to the seizure, have not stated anything which may lend assurance to the version of the prosecution. Their depositions are completely bereft of any incriminating material against the present appellant and therefore, the very foundation of the prosecution case collapses. The learned Advocate has further drawn the attention of this Court to the categorical statement of PW1, who in his deposition specifically asserted that the other room, from which the alleged kerosene oil was said to have been seized, was actually used by the villagers for the purpose of spreading and reeling of thread. This admission, it is contended, makes it abundantly clear that the said premises was not in the exclusive occupation or possession of the appellant, but rather a place commonly accessible to the villagers at large.

8. Not only this, PW1 also stated that the kerosene tins, which were claimed to have been seized by the raiding team, were recovered from inside the 'barowari drum room'. The very expression 'barowari' connotes a place that is communal in nature, meant for the use of the public, and not restricted to any individual's private control. Therefore, the alleged seizure from such a place, which was open to public access, cannot by any stretch of imagination fasten criminal liability upon the appellant.

9. Mr. Bhattacharya, the learned Advocate has further contended that even in respect of the rice which was seized, the evidence

adduced by the prosecution does not at all inspire confidence. PW1 himself admitted that the rice stored and seized by the raiding team was obtained from the paddy grown on the agricultural land belonging to the family of the appellant. If that be so, the very basis of alleging that the rice was kept for any unlawful purpose stands demolished. In fact, the production of rice from one's own land is a natural and lawful act, and by no means can it be branded as an offence.

10. The learned Advocate for the appellant has advanced elaborate submissions questioning the very foundation of the prosecution case. It is pointed out that PW3, who was cited as a seizure witness, has not deposed anything which may lend support to the case of the prosecution. His testimony is completely silent on material particulars, and therefore, his evidence does not advance the prosecution story in any manner.

11. Further attention of this Court has been drawn to the deposition of PW4, who happened to be the Pradhan of the Local Gram Panchayat. According to the learned Advocate, this witness, despite being a responsible person of the locality, has not stated anything incriminating against the present appellant. His evidence, therefore, does not inspire confidence nor does it connect the appellant with the alleged offence. The learned Advocate has also assailed the testimony of PW5, an Inspector of the Food and Supplies Department, who categorically stated before the Trial Court that the

place from where the kerosene was seized could not be sealed, as it was an open place having no doors. This statement, it is urged, creates a grave doubt as to the safe custody and sanctity of the seized articles. Coming to PW7, who is the complainant and also the Investigating Officer, the learned Advocate contends that his deposition is riddled with contradictions. Though PW7 has claimed that the seized articles were left in the custody of one Anil De and Samiar Krishna Das, surprisingly, neither of these two persons was cited nor examined as witnesses in the present case. The non-examination of these vital witnesses, according to the learned Advocate, casts a serious shadow on the fairness and reliability of the investigation.

12. The appellant, in his defence, examined two witnesses as DW1 and DW2. Their testimonies, according to the learned Advocate, clearly demonstrate that the kerosene oil was seized from a drum room which was being used openly by the villagers for a long time and did not belong to the appellant. DW1 further deposed that the paddy which was allegedly seized by the raiding party was, in fact, taken from the land of the appellant. Both DW1 and DW2 consistently stated that the appellant never dealt with kerosene oil and that the drum room from where the kerosene was recovered was accessible to the public at large.

13. On the strength of the above evidence, the learned Advocate contends that there exist serious discrepancies and inconsistencies

in the statements of the prosecution witnesses, which strike at the root of the case. The prosecution has utterly failed to establish any direct nexus between the seized articles and the appellant. In such circumstances, it is submitted that the judgment and order of conviction passed by the learned Trial Court, having been based on such unreliable and inconsistent testimony, is wholly unsustainable in law.

14. Accordingly, the learned Advocate prays that the impugned judgment and order of the Trial Court be set aside.

15. Ms. Faria Hossain, learned Advocate appearing on behalf of the State, has raised strong objection to the submissions advanced by the appellant. According to her, there are no grounds whatsoever to warrant any interference with the impugned judgment and order of conviction passed by the learned Trial Court. She submits that the evidence adduced by the prosecution is both consistent and cogent, and the prosecution has succeeded in establishing the charges beyond reasonable doubt. It is urged that all the witnesses cited by the prosecution have supported the contents of the written complaint and there has been no deviation in their testimony which could shake the prosecution case. The factum of search and seizure, which forms the core of the prosecution case, has been duly proved by the witnesses. It is further submitted that the appellant was found to have stored kerosene oil, paddy, and rice in violation of the prevailing

Control Order at the relevant time, and for such contravention he was rightly convicted by the learned Trial Court.

16. The learned Advocate has further pointed out that PW7, who is both the complainant and the Investigating Officer, stood firm in his testimony and fully corroborated the allegations made in the written complaint lodged by him. His evidence, read together with the depositions of the other prosecution witnesses, clearly establishes that the appellant was in possession of the seized stock of kerosene oil and food grains without lawful authority. Therefore, the submission that the prosecution witnesses have not supported the State's case is wholly untenable. Attention of this Court has also been drawn to the relevant portion of the impugned judgment and order, wherein the learned Trial Court noted that none of the prosecution witnesses ever disputed the fact that the drum room from which the kerosene was seized was situated in close proximity to the residential premises of the appellant. Further, it is highlighted that in his examination under Section 313 of the Code of Criminal Procedure, the appellant himself admitted that he had gone to one grocery shop at Mandalhat by the roadside. More importantly, he admitted that his shop, styled as "Gobinda Bhandar," was seized by the police in his absence on 27.07.1988.

17. It is also pointed out that the appellant did not dispute the seizure of 22 tins containing 322 liters of kerosene oil which were found in the western hutment of his house. This admission,

according to the learned Advocate, demolishes the appellant's contention that the seized articles were not in his possession or that they were stored in a public place.

18. On the strength of these materials, the learned Advocate for the State contends that there are no material contradictions in the statements of the prosecution witnesses. On the contrary, their depositions are mutually consistent and sufficient to establish the prosecution story beyond reasonable doubt. Accordingly, she submits that the instant appeal preferred by the appellant, challenging the order of conviction is devoid of merit and is liable to be dismissed.

19. I have considered the rival submissions advanced by both the parties and have also gone through all the materials available in the record.

20. In the present case, PW1 Mukunda Das, PW2 Dilip Pal, and PW3 Tapan Kumar Rakshit were cited as independent seizure witnesses and, therefore, are regarded as the most vital witnesses in connection with the prosecution story. Their evidence requires careful scrutiny. PW1, Mukunda Das, in his testimony, categorically stated that the police had gone to the house of the accused at Panuhat. He further deposed that the rice which was found stored in the house of the appellant was obtained from the paddy grown on the land of the appellant's family. This witness has also given a very significant statement regarding the place from which the kerosene

was allegedly seized. According to him, the room in which the 22 tins of kerosene were found and seized was not in the exclusive occupation of the appellant. On the contrary, that room was used collectively by the villagers in connection with the spreading and reeling of thread. PW1 clarified that nearly 50 to 60 families of weavers, who carried on handloom operations in the village, were making use of the said drum room for their weaving-related activities. His deposition, therefore, indicates that the room was a “barowari” or common place, open to public use, and not the private property of the appellant.

21. PW2, Dilip Pal, has also supported the testimony of PW1 in material particulars. He too stated that several tins of kerosene were found inside the ‘barowari’ drum room at the time of the raid. He confirmed the communal nature of the room, implying that it was not under the exclusive control of the appellant. PW2 also added that at the time of the raid, the mother of the appellant was present and she clearly stated before the police that the rice which was found in the room had been obtained from the paddy grown on their agricultural land. This statement lends further weight to the contention that the seized rice was legitimately procured produce from the appellant’s family land and not intended for any unlawful purpose.

22. PW3, Tapan Kumar Rakshit, though also cited as an independent witness to seizure, did not depose anything of substantial value which could advance the case of the prosecution

against the appellant. His evidence remains neutral and does not in any way implicate the appellant in the alleged unlawful storage of kerosene or food grains.

23. Thus, a close analysis of the testimonies of PW1 and PW2, supported in part by PW3, demonstrates that the seizure of kerosene tins was from a place that was commonly used by the villagers and not under the sole dominion of the appellant. Moreover, the rice seized was shown to have been obtained from paddy grown on the family's own land, which is a legitimate source. These statements, instead of strengthening the prosecution case, significantly dilute it and create reasonable doubt as to the guilt of the appellant.

24. From the evidence on record it further transpires that PW3, Tapan Kumar Rakshit, who is an independent witness to the seizure, has categorically deposed that the younger brother of the appellant owns certain lands which are being cultivated and, in addition thereto, he is also a bargadar in respect of about 7 to 8 bighas of land. In such circumstances, the stocking of paddy in the storeroom stands aptly justified, as agricultural produce of such magnitude would naturally require storage for future use and consumption.

25. It is significant to note the evidence of PW4, Ranjit Dutta, regarding the seizure proceedings. In his deposition, PW4 has categorically stated that he was not an actual witness to the seizure of the alleged material. He admitted that his signature was appended to the seizure list purely at the request of the Magistrate and the Collector. This acknowledgment, in itself, raises serious questions

about the probative value of the seizure list and the credibility of the prosecution's evidence concerning the chain of custody of the recovered material.

26. Further, PW4 expressly stated that he was not present at the time of the actual search and seizure conducted by the police. He has clearly disavowed any knowledge or observation of the circumstances under which the alleged kerosene was recovered. In his own words, he is not in a position to state from where the kerosene had been recovered, or under what conditions it was found. This admission demonstrates that PW4 cannot corroborate the prosecution's version regarding the location, manner, or authenticity of the seizure.

27. The implications of this testimony are considerable. Since PW4's presence at the seizure was effectively nominal, and his involvement was limited to signing the document at official request, his evidence does not constitute independent or direct proof of the seizure. The reliance on his testimony for establishing the legality and correctness of the seizure is therefore severely undermined. Consequently, the evidentiary value of the seizure list itself is materially weakened, as it lacks the corroboration of a truly independent witness who observed the actual recovery of the contraband.

28. In view of the above, the testimony of PW4 underscores a critical lacuna in the prosecution's case, namely, the absence of a reliable, firsthand witness to the seizure. This deficiency goes to the

very root of the evidentiary foundation upon which the case against the accused rests, casting doubt on the credibility of the prosecution's claim regarding the recovery of the kerosene.

29. The evidence of PW5, Narayan Bhattacharjee, Inspector of the Food and Supplies Department, assumes considerable significance in the present case. In his deposition, PW5 categorically stated that the godown from where the rice bags were recovered was duly sealed after the seizure, thereby securing the stock and ensuring that no outside interference could thereafter take place. This demonstrates that so far as the rice bags are concerned, the procedure of seizure and sealing was carried out in conformity with the established norms.

30. However, PW5 has further admitted that the place from where the kerosene was seized stood on an entirely different footing. He stated that the said place was not a godown or a room capable of being locked and sealed, but rather an open space without any doors or protective enclosure. Because of its open character, the authorities could not seal the same. This very admission reveals that the alleged stock of kerosene was not in a secured or exclusive.

31. The testimony of PW6, Pranab Kumar Dey, Constable No. 1360, also fails to inspire confidence in the prosecution case. This witness, though examined to support the alleged seizure, could not specify the exact quantity of kerosene and rice that were said to have been recovered. In a case of this nature, where the entire prosecution rests upon the alleged seizure of essential commodities, the precise

quantity and description of the seized goods is a material fact. The inability of PW6 to state the same reflects either a lack of actual participation in the seizure proceedings or a serious lapse in the documentation of the recovery. Such omission naturally casts grave doubt on the veracity of the seizure itself.

32. Further, PW6 has deposed that the seized articles were kept in situ, meaning that they were left at the very place where they were allegedly recovered. This assertion appears wholly improbable and inconsistent with the ordinary course of lawful seizure. Standard procedure requires that the seized articles be either sealed and taken into police custody, or deposited in the custody of a reliable person under proper acknowledgment, so as to ensure their safety and prevent tampering. The version that the articles were simply left in situ, without adequate sealing or security, makes the prosecution case doubtful and creates a serious break in the chain of custody.

33. Such improbability becomes even more glaring in the context of the prosecution's own claim that the seized materials consisted of commodities like kerosene and rice. It is highly unlikely and unreasonable that the investigating agency would abandon the seized goods at the spot without ensuring their protection. This lapse weakens the prosecution's case materially, as it gives rise to the possibility that the goods were either never seized in the manner alleged, or that they were subsequently tampered with, misplaced, or substituted.

34. Therefore, the testimony of PW6 not only suffers from omissions as to the exact nature and quantity of the seized items but also introduces a highly improbable and unsafe version regarding the handling of the articles. Both these aspects together erode the reliability of the prosecution's evidence and render the seizure proceedings doubtful, thereby weakening the entire substratum of the case against the accused.

35. It is pertinent to observe the testimony of PW7, N.K. Sharma, who functioned as both the complainant and the investigating officer in the present case. A careful examination of his evidence reveals notable omissions and gaps which significantly affect the credibility and reliability of the seizure proceedings. Firstly, PW7 did not state that he or any other officials initially visited the shop of the appellant prior to the seizure. This omission is significant because it leaves unclarified the precise sequence of events leading up to the alleged recovery of the goods. The absence of a direct reference to the appellant's premises or shop in the testimony suggests that there was no firsthand observation of the appellant's involvement in the possession of the seized articles at the relevant location. Secondly, it is admitted by PW7 that the seized goods were subsequently placed in two hutments. Importantly, these hutments were not sealed, thereby raising serious questions regarding the safekeeping and integrity of the alleged seized articles. The lack of sealing renders the custody of the goods susceptible to tampering, misplacement, or

substitution, and this procedural lapse directly undermines the evidentiary value of the seizure.

36. Furthermore, PW7 stated that the seized articles were kept in the custody of Anil De and Samir Krishna Das. However, it is a critical observation that neither Anil De nor Samir Krishna Das were cited as witnesses in the case. The failure to examine these individuals as witnesses deprives the record of corroborative evidence regarding the chain of custody of the seized goods. Without their testimony, there is no independent verification of where the seized articles were kept, in what condition, and whether they were handled in accordance with legal procedures.

37. Taken together, these factors highlight substantial procedural deficiencies in the seizure process as narrated by PW7. The lack of initial verification at the appellant's shop, the non-sealing of the hutments where the goods were stored, and the absence of testimony from those actually entrusted with the custody of the articles collectively cast serious doubt on the credibility, authenticity, and integrity of the seizure. These deficiencies raise fundamental concerns regarding the reliability of the prosecution's evidence and its sufficiency to establish that the seized goods were lawfully recovered from the appellant.

38. It is an admitted position from the record that the seized articles were not discovered or recovered neither from within the residential premises of the appellant, nor from any such place which could be said to be under his exclusive possession, custody, or

control. On the contrary, the articles were stored in an open place situated at some distance away from the residential house of the appellant. The said place, by its very nature and usage, is easily accessible to all the villagers, more particularly to the weavers of the locality, who, in their day-to-day professional activities, regularly make use of the said spot.

39. It is also significant to note that the place of storage is of common and public utility, where no measures of restriction, fencing, or exclusive enclosure were put in place to confine the entry of others. Therefore, it cannot be reasonably presumed that the said articles remained within the sole availability or reach of the appellant. On the contrary, the circumstances clearly suggest that the spot was open and accessible to a large number of persons belonging to the village community.

40. In such a situation, fastening exclusive ownership, possession, or knowledge upon the appellant with regard to the seized articles becomes doubtful and unsafe. The possibility of access, interference, or even deposit by others cannot be ruled out, particularly when the spot in question is admittedly one that is habitually frequented and used by different villagers in connection with their weaving profession.

41. Thus, the recovery from such an open and accessible place, distant from the appellant's dwelling house and lacking the characteristics of private or exclusive control, materially weakens the

prosecution case and militates against the theory of exclusive possession of the appellant over the seized articles.

42. On the other hand, the plea of the defense is that the recovered paddy and rice were not procured in violation of law, but were the natural yield from their own cultivable lands, intended for the year-long personal consumption of the members of the joint family. Having regard to the size of the family, the extent of agricultural holdings, and the fact that cultivation was being carried out not only on owned land but also on 'bargadari' land, the explanation furnished by the defense appears plausible.

43. In the backdrop of these circumstances, the mere recovery of stored paddy/rice cannot conclusively establish a violation of the relevant provisions of the Act. The evidence on record raises a reasonable probability that the seized articles represented the legitimate produce of the appellant's agricultural lands and were meant for bona fide family consumption. Consequently, the allegation that the appellant had stored such stock in contravention of statutory provisions does not inspire confidence and does not appear believable.

44. Moreover, DW1 has stated in his evidence that the appellant and his mother jointly resided at the house and they have sufficiently land where paddy is produced and the rice is stored in the loom room. Drum room is a public property and is no longer used by them and the villagers constructed the room, they are all owners of the said property.

45. The inability to seal the place of seizure of kerosene creates a serious infirmity in the prosecution case. It introduces an element of uncertainty as to whether the seized kerosene was in the exclusive possession of the appellant or whether it could have been accessed, deposited, or interfered with by other persons. The possibility of planting or tampering cannot be completely excluded when the seizure is shown to have been made from an open and unsecured place.

46. Therefore, while the recovery of rice bags from a sealed godown may carry some evidentiary value, the alleged recovery of kerosene from an open space without doors, incapable of being sealed, casts a shadow of doubt on the authenticity and reliability of the prosecution case. This inherent weakness materially affects the prosecution's version and renders the allegation of unauthorized possession of kerosene against the appellant doubtful and unsafe to rely upon.

47. In light of the foregoing discussion and upon careful appreciation of the evidence on record, it becomes abundantly clear that the prosecution has miserably failed to establish the charges framed against the accused beyond the pale of reasonable doubt. The testimony of the prosecution witnesses does not inspire confidence, and the inconsistencies therein have rendered the case of the prosecution wholly unreliable. There is no substantive or cogent material on record which may justify the conviction of the appellant as recorded by the learned Trial Court.

48. Consequently, the judgment of conviction and the order of sentence passed by the learned Trial Court in connection with T.R. Case No. 7 of 1989 dated 12.06.1989 cannot be sustained in the eye of law. The same is, therefore, set aside.

49. In the result, the appeal succeeds and is hereby **allowed**.

50. The appellant is on bail. He is to be discharged from bail bond and be set at liberty if not wanted in connection with other case.

51. Having regard to the statutory requirement embodied in Section 437A of the Code of Criminal Procedure (Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the appellants are obligated to furnish bail bonds with sureties, and such bonds shall continue to remain in force for duration of six months from the date of execution.

52. Let a copy of this judgment along with the Trial Court Records be forthwith sent down to the learned Trial Court.

53. Urgent Photostat Certified Copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

**(Prasenjit Biswas, J.)**