

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 456 of 1990

Motilal Upadhyay and Ors.

-Vs-

State of West Bengal

For the Appellants No. 1 & 2 : Mr. Shymal Chakraborty
Mr. D. Mondal

For the Appellant No.4 : Ms. Pallavi Priyadarshee,
(Amicus Curiae)

For the State : Mr. Saryati Dutta

Heard on : 02.04.2024, 16.07.2024, 02.12.2024

Judgment on : 13.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 07.09.1990 passed by the Learned Judge, Special Court E.C. Act – Cum – Additional District & Sessions Judge, Midnapore in D.E.B. G.R. Case No. 39 of 1988.
2. The prosecution case precisely stated that the on 13.9.88 at about 16.25 hrs. while the accuseds/appellants were going along the National Highway No. 6 near Lodhasali under the jurisdiction of Jhargram Police Station in a mini truck loaded with 39 bags of rice and the police lead by Inspector H.G. Dutta, D.E.B., Midnapore intercepted the same. On interception the vehicle

was detected to be carrying 39 bags of rice. The accused persons were asked to produce papers and documents for carrying the aforesaid rice, who failed to produce any documents and papers. Consequently, the rice was weighed and found it to be of 38 quintals of rice (approx.). Accordingly, the rice were seized under seizure list and thereafter the accused persons were produced before the local P.S. Jhargram.

3. Based on the aforesaid incident a complaint was lodged by the Inspector D.E.B. H.G. Dutta at Jhargram Police Station which gave rise to institution of Jhargram P.S. Case No. 13 dated 13.9.88 under Section 7(1) (a) (ii) of Act X of 1955 was started. After completion of investigation, charge-sheet was submitted against all the four accused persons under Section 7 (1) (a) (ii) of Act X of 1955.
4. The accused persons were examined under Section 251 of Code of Criminal Procedure on an accusation that they were carrying the aforesaid quantum of rice for sale to Orissa in violating of Para 2(d)(1) and 3(a) and 16 of West Bengal Rice and Paddy (Licensing and Control) Order, 1967. The accusation was read over and explained to accused persons to which they pleaded not guilty and claimed to be tried.
5. The defence case revealed the accused persons to carry the rice for their own consumption and not for the purpose of own business, as there was drought in their area of their residence at the relevant time when the said goods were seized.
6. The appellants/accused specifically submitted that they were not sellers or dealers of rice or paddy but cultivators and they were carrying the said rice

for their own consumption. The appellants were uneducated and had not ever imagine of any adverse effect. Besides that the evidence of the prosecution were all interest witness, and they all participated in the alleged raid and no corroboration of the evidence of the police had been made and the same is not maintainable in law. The appellants and poor cultivators and they were the only earning members of their family.

7. The prosecution in order to prove its case cited 7 witnesses and exhibited certain documents.

8. Learned Advocate for the appellants submitted as follows:-

- i. The conviction made in the above case is bad, illegal, wrongful and not in accordance with law.
- ii. The West Bengal Rice and Paddy (Licensing and Control) 1967 did not attract in the relevant case and the accused were not carrying the rice for sale.
- iii. The Learned Sessions Judge wrongfully held without any piece of evidence excepting oral evidence of the prosecution being police personnel that the said rice was carrying for Orissa and without any positive evidence, the said observation decision is absolutely bad in law and liable to be set aside.
- iv. The Learned Sessions Judge did not consider the evidence adduced by the defence that in order to cross Bengal Check Post, Orissa border is to be crossed and there police is posted 24 hrs. and it was not possible to cross that check post in front of the police picket.

- v. The Learned Judge in support of the prosecution case observed that the defence could not show any account or stock or record in compliance with West Bengal Rice and Paddy (Licensing and Control) Order 1967 – the Learned Judge failed to consider that the accuseds were not at all dealer of rice or paddy and above all in the road it was not possible to show account ect. even if for the sake of argument it was thought that the accuseds were dealers. So, this obviously showed the non-application of the mind of Learned Judge of the Court below.
- vi. The Learned Judge wrongfully held in page 8 of the judgment that in basis of admitted position he considered the reliability or credibility of the witness while in fact no admission has been bade by defence and any as such the said observation was bad, and not in accordance with law.
- vii. When the defence stated that there was drought in the particular area wherein the goods were carried in relevant time and goods were being carried for, their own consumption and when there was not adverse evidence against that the Learned Judge ought to believe that statement and order of acquittal was to be passed in favour of the accuseds.
- viii. The Learned Judge ought to have given some importance and weight to the oral evidence of the prosecution as well as to the defence and it had not been legal and proper to discard the oral evidence of the defence and to accept the evidence of the prosecution.

- ix. The Learned Judge ought to have observed that the FIR,s seizure list and above all the entire evidence had been given and made through police only and no public or any disinterested witness had given any corroboration or light to the case made out by the prosecution and conviction should not be made on the basis of same.
 - x. When the prosecution witness had admitted that near the alleged place of raid, there was petrol pump and people were passing by the side of the truck, it was incredible that the police or the prosecution could not bring any disinterested witness.
 - xi. The Learned Judge wrongfully held that the defence did not make out any case that they were carrying the rice for their own consumption when the specific case of the defence was that they were carrying the rice for their own consumption when the specific case of the defence was that they were carrying the same for their own consumption and evidence was adduced to that effect, suggestions and cross-examination were also made to that effect.
 - xii. The above conviction is bad when the prosecution admitted that no sketch map was prepared and above all S.I. Nani Gopal Pal admitted that he received 4 xerox copies of receipts.
9. The Learned Advocate representing the State submitted the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal should be dismissed.
10. PW-1 had accompanied one Mr. H.G. Dutta, D.E.B. (Medinapore) being the complainant, on 13.09.1988, who had intercepted the truck laden with rice.

PW-1 reiterated the statement in the complaint and identified his signature with the endorsement in the notice marked as Exbt. 1/1, Exbt. 2/1. PW-1 submitted the accused persons to be owners of the rice seized. He further stated the presence of one petrol pump near the place of seizure, however, nobody from that petrol pump was cited as witness to the seizure.

11. PW-2 reiterated the evidence of PW-1, who had been a member of the raiding party. In his cross-examination he contradicted himself stating his ignorance that the seized truck was bound for Odisha.
12. PW-5 had been the complainant, who endorsed the narrative of the incident in the complaint before the Court who ascribing the authenticity of the documents marked as exhibits.
13. PW-3 and PW-4 conceded to the deposition of the PW-1 and PW-2.
14. The prosecution failed to establish the process of the seizure. The inconsistencies in the deposition of the prosecution witnesses who had been solely the members of the raiding party failed to establish the offence committed by the appellants. Mere possession of bags of rice without proper investigation concerning usage of the same for the purpose of business, violating the provision of law cannot be sustained.
15. The evidence of the police personnel should be trustworthy and credible in itself to be exclusively flawless for the Court's reliance to justify an order of conviction in absence of independent witness. However, in the instant case, not only the investigation of the police personnel had been shoddy, the evidence adduced before the Court did not instill reliability and confidence in

their deposition which should have been dealt by the Trial Court in its proper perspective..

16. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such criminal appeal being CRA 456 of 1990 is allowed.

17. Under such facts and circumstances, the judgment and order dated 07.09.1990 passed by the Learned Judge, Special Court E.C. Act – Cum – Additional District & Sessions Judge, Midnapore in D.E.B. G.R. Case No. 39 of 1988 is set aside.

18. Accordingly, the criminal appeal being CRA 456 of 1990 is disposed of.

19. There is no order as to costs.

20. I record my appreciation for the able assistance rendered by Learned Advocate Ms. Pallavi Priyadarshee as Amicus Curiae representing the appellant No.4 in disposing of this appeal.

21. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)