Charan Singh Vs State of Rajasthan

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: Dec. 17, 1996

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 397
Evidence Act, 1872 â€" Section 134
Rajasthan Excise Act, 1950 â€" Section 16, 16(1), 54, 7

Citation: (1997) CriLJ 1390 : (1997) 1 RLW 514 : (1997) 1 WLC 370 : (1996) 2 WLN 495

Hon'ble Judges: M.A.A. Khan, J

Bench: Single Bench

Advocate: Biri Singh, for the Appellant; S.S. Rathore, Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.A.A. Khan, J.
In this case Charan Singh, petitioner was caught red handed on May 23, 1988 at 6 p.m. by P.W.3 Om Prakash Yadav,

Excise Inspector and P.W. 2 Rati Ram, Constable while he was manufacturing illicit liquor, an excisable article, on a working still at the bank of a

river near a hillock situated at about 1 k.m.. away from village Baghoda under Police Station Ghoda, District Alwar. He was tried for having

committed the offence under Sections 16/54 of the Rajasthan Excise Act, 1950 (hereinafter referred to as the Act). The learned trial Magistrate

found the petitioner guilty for the said offence and convicted him as such. The petitioner was accordingly sentenced to six months" R.I. and a fine

of Rs. 500/- or in default to further undergo R.I. for two months more. In appeal the learned Addl. Sessions Judge, Kishangarh Bas, Alwar

confirmed the conviction and sentence of the petitioner as recorded by the learned trial Magistrate. Hence, this petition u/s 397, Cr.P.C.

2. Mr. Biri Singh, the learned counsel for the petitioner vehemently urged that the findings recorded by the two Courts below about the guilt of the

petitioner were perverse inasmuch as no independent witness has supported the prosecution case. The learned counsel further submitted that since

the sample liquor was forwarded to the chemical analyst as late as after 20 days of the seizure thereof, the testimony of P.W. 3 Om Prakash

Yadav, Excise Inspector and his peon P.W. 2 Rati Ram should not have been believed and relied upon for conviction of the petitioner as they

were interested persons. I find no force in this argument.

3. It is true that P.W.4 Jaimal Singh who was examined as an independent witness in the present case had turned hostile and had not supported the

prosecution case. But that hardly affect the worth and value of the sworn testimony of P.W. 2 Rati Ram. Constable and P.W. 3 Om Prakash

Yadav, Excise Inspector. Both these witnesses had stated that on May 23, 1988 when they were on patrolling duties they had seen smoke coming

up from behind a hillock and when they with their team, had reached there they noticed the petitioner manufacturing illicit liquor on a working still.

They clearly stated that a drum full of liquor wash was placed on a ""chulha"" under which fire was burning and with the help of a plastic tube which

was fixed with the help of ""Babri Mitti"" the liquor was being taken to a rubber tube. The witnesses further told that they had apprehended the

petitioner on the spot and seized all the relevant articles of the working still. P.W. 3 Om Prakash Yadav has proved the drum as Article-1, Babri

Mitti as Article-2, Degchi Silver as Article-3, rubber tube as Article-4, the liquor bottle as Article-5, the wash bottle as Article-6, a piece of Bhatti

as Article-7 and the piece of burnt wood as Article-8. No material contradiction could be extracted in their statements on their cross-examination.

Both these witnesses had no enmity with the petitioner. P.W. 3 Om Prakash Yadav, Excise Inspector, had even stated that he did not know the

petitioner from before. He further stated that since he had remained busy in other official work he could send the sample of liquor and the wash,

seized from the possession of the petitioner, only after about 20 days. The evidence led by both these witnesses was quite consistent and inspired

confidence. They being on their official duties of patrolling was not unnatural or abnormal. They had felt attracted towards the place of occurrence

on seeing the smoke rising in the sky. They had found illicit liquor being manufactured on a workable still. They had seized all the relevant articles

on the spot and such articles were also produced in the Court. There is thus nothing in their testimonies to disbelieve them. Unlike some of the

enactments under the English law where a particular number of witnesses is required to prove the existence of a fact Indian law of evidence does

not insist upon the quantity of evidence to prove a fact. Quality and not quantity of evidence is required to prove the existence of fact under our

laws. This principle has been given a statutory recognition under the Indian Evidence Act, 1872 in Section 134 which says that no particular

number of witnesses shall, in any case, be required for the proof of any fact. That being the position of the requirement of evidence to prove all

facts under our laws, conviction may safely be based on the testimony of a single witness if such testimony is found of sterling worth. If in the facts

and circumstances of a given case, the evidence of a solitary witness is acceptable and reliable the conviction of an accused may be based on the

testimony of such single witness.

4. In the instant case P.W. 2 Rati Ram and P.W. 3 Om Prakash Yadav, Excise Inspector do not cease to be the witnesses worth reliance merely

because they happen to be the officers of the Excise Department. Prevention of crime in relation to excisable articles and bringing the offenders of

the Act to book were their official duties. In the course of discharging their duties, if they become witnesses of the commission of certain offences

against the Act, their testimonies cannot be discarded on the sole ground that they were interested in the success of the result of the discharge of

their official duties. Their testimonies shall have to be approached with care and caution and if on such scrutiny their evidence is found to be reliable

the Court can always act upon their testimonies. As stated earlier, there is nothing in the testimonies of these two witnesses which may discredit

them and help the Court to declare them unreliable witnesses. P.W.3 Om Prakash Yadav, Excise Inspector, has satisfactorily proved the delay in

sending the sample liquor for chemical examination and such explanation has been, in my opinion, rightly accepted by the Courts below as

plausible. In my opinion both the witnesses were certainly reliable and have rightly been relied upon by the Courts below for holding petitioner

guilty of the offence under Sections 16/54 of the Act.

5. The sending of the sample liquor and sample wash for chemical examination after a delay of about 20 days does not adversely affect the worth

and value of the evidence of P.W. 3 Om Prakash Yadav, Excise Inspector for the simple reason that P.W. 1 Jai Prakash, Excise Guard, has

stated on oath that on 13-6-88 he had received the sample liquor and the sample wash in sealed condition and had delivered the same to the

Chemical Examiner on 14-6-88 in sealed condition. No cross-examination was made on this witness. It is thus proved that the samples of liquor

and the wash, as had been prepared by Sh. Om Prakash Yadav, Excise Inspector, were kept in sealed condition till they were received by the

Chemical Examiner, The argument advanced by the learned counsel thus has no force and is hereby rejected.

6. It was next urged by Mr. Biri Singh that the offence in the present case was committed in the year 1988 and almost 8 years have passed by

now. It was submitted that after the lapse of so long a time it would not be worthwhile to send the petitioner to jail to undergo the imprisonment

awarded to him by the trial Court. It was submitted that the petitioner may be placed on probation for a specified period or, in any case, the

sentence already undergone by him may be considered sufficient in the facts and circumstances of the present case. In this behalf the learned

counsel relied upon the decisions of this Court in the cases of Madniya v. State of Rajasthan 1985 Raj Cri 131 and Sona Singh v. State of

Rajasthan 1990 Raj Cri C 596. After having considered the prayer made by Mr. Biri Singh in the light of the decisions cited by him 1 am of the

opinion that in the facts and circumstances of the case and the law made in Proviso to Section 54 of the Act and laid down by the Apex Court

from time to time it would not be proper on the part of this Court to ignore the nature and gravity of the offence and its impact and effect on the

economy of the State and health of the people.

7. On facts it is established that the petitioner was found manufacturing illicit liquor on a working still in a place away from a village. The liquor

being so manufactured was being stored in a rubber tube. The mode of manufacture of the liquor and the manner of its storage clearly indicate that

the liquor manufactured by the petitioner could have proved harmful to the health of the consumers thereof. The quality of the liquor manufactured

by the petitioner may, therefore, well remind a person of its likely fatal consequences also, which results from consumption of such liquor, day in

and day out. The act committed by the petitioner, therefore, clearly attracted the provisions of Section 54(d) of the Act. The relevant part of

Section 54 along with the Proviso thereunder reads as follows :-

Penalty for unlawful import, export, transport manufacture possession, etc.

Whoever, in contravention of this Act or any rule, or order made or of any licence, permit or pass granted, there under:

(a) imports, exports, transport, manufactures, collects, sells or possesses any excisable article; or

(b) and (c)...;

(d) uses, keeps or has in his possession any materials, still, utensil, implements or apparatus whatsoever for the purpose of manufacturing any

excisable article other than tari; or

(e) to (g)...;

shall be punishable with imprisonment for a term which may extend to three years [and] with fine which may extend to two thousand rupees.

[Provided that if a person is so found in possession of a workable still for the manufacture of any excisable article or is found to be guilty of selling

or possessing for sale any excisable article in contravention of the provisions of this Act or of any rule or order made or of any licence, permit or

pass granted thereunder, he shall be punished with the minimum sentence of imprisonment for six months and fine of two hundred rupees.]

8. A plain reading of the above provision clearly says that if a person is found in possession of a workable still for the manufacture of any excisable

article or is found to be guilty of selling or possessing for sale any excisable article in contravention of the provision of this Act or of any rule or

order made or of any licence, permit or pass granted thereunder he shall be punished with the minimum sentence of imprisonment for six months

and fine of two hundred rupees. The proviso to Section 54 thus creates a bar to the discretion of the Court to be lenient in awarding punishment

less than the minimum prescribed by the statute. It may further be noted that the provisions made in the proviso do not give any discretion to the

court to impose a. punishment lest, than the minimum prescribed thereunder even for any reasons whatsoever. The object of prescribing minimum

sentence for the offence u/s 54(d), which has been found proved against the petitioner in the present case, is not far away to find. It. admits no

controversy that liquor which is an intoxicant is injurious to public health, morality and wealth of the people. The State has the power, nay a day, to

prohibit the trade in liquor which is harmful to the public health, morality and welfare and, therefore, no person can claim an absolute right to deal in

liquor. The purpose of the Act is to control and restrict not only illegal trade in liquor but also restrict the consumption of intoxicating liquor

particularly those which are manufactured in non-hygienic conditions. This object of the, Act makes the manufacture of illicit liquor in non-hygienic

conditions a grave crime against the people at large. It is, therefore, for such reasons that the legislature appears to have prescribed a minimum

sentence of six months and a fine of Rs. 200/- for offences falling under the purview of the proviso to Section 54 of the Act.

9. The Apex Court appears to have time and again considered the sentencing practice for socio-economic crimes. Dealing with a case under the

Prevention of Food Adulteration Act, 1954 in the case of Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others, the Apex Court

observed in para 31 as under:

The Court has jurisdiction to bring down the sentence to less than the minimum prescribed in Section 16(1) provided there are adequate and

special reasons in that behalf. The normal minimum is six months in jail and a thousand rupees fine. We find no good reason to depart from the

proposition that generally food offences must be deterrently dealt with. The High Court under the erroneous impression that the offence fell u/s 7(i)

read with Section 16(1)(a)(i) actually it comes u/s 7(v) read with Section 16(1)(a)(ii) did not address itself to the quantum of sentence. Even so the

punishment fits the crime and the criminal.

10. Their Lordships further observed in para 32 as under:

We are not unmindful of the possibilities of village victuallers and tiny grocers being victimised by dubious enforcement officials which may

exacerbate when punishments become harsher, and the marginal hardships caused by stern sentences on unsophisticated small dealers. Every

cause has its martyr and Parliament and Government - not the Court...must be disturbed over the search for solutions of these problems. Savage

severity may not always prove effective and may be cruel on petty and marginal offences.

11. Their Lordships cautioned the Magistracy of the country while awarding sentence involving socio-economic offences and observed as under:

The learned Magistrate, we are constrained to observe, has completely failed to appreciate the gravity of food offences when he imposed a

naively negligible sentence of one hundred rupees fine. In a country where consumerism as a movement has not developed, the common man is at

the mercy of the vicious dealer. And when the primary necessaries of life are sold with spurious admixtures for making profit, his only protection is

the Prevention of Food Adulteration Act and the Court. If offenders can get away with it by payment of trivial fines, as in the present case, it brings

the law into contempt and its enforcement a mockery. In this context, it is opposite to draw attention to measures taken in many advanced

countries for the evolution of a rational and consistent policy of sentencing. Conferences between Judges, Magistrates and Penal Administrators,

are being organised with increasing frequency in England and in the United Stales. The 47th Report of the Law Commission has stressed the need

for the programme because of the sentencing, vagaries witnessed in our country.

Indeed, the education of the sentencing lodge, particularly in the context of economic offences, is a yawning gap in our criminal system and the

near-escape of the accused before the trial Court in this case, prevented only by the criminal revision to the High Court, permits us to observe that

the Magistracy in the country has yet to realise that there are occasions when an offender is so anti-social that his immediate and some times

prolonged confinement is the best assurance of society''s physical protection. Or, we may add, even in less severe situation heavy enough fine to

drive him out of the trade if he tried the trick again. There is injustice to the community - the invisible but immense victim of the crime - in the

Court''s misplaced sympathy for the culprit.

12. Deprecating the practice of extending the benefit of the provision of Probation of Offenders Act, 1958 liberally in such cases their Lordships

observed as under in Paras 27 and 28 of the Report:

The rehabilatory purpose of the Probation of Offenders Act, 1958, is pervasive enough technically to take within its wings an offence even under

the Act. The ruling in Ishar Das v. State of Punjab is authority for this position. Certainly, ''its beneficial provisions should receive wide

interpretation and should not be read in a restricted sense. But in the very same decision this Court indicated one serious limitation:

''Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-

social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the Legislature as revealed by

the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts

should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences

under the Prevention of Food Adulteration Act....''

The kindly application of the probation principles is negatived by the imperatives of social defense and the improbabilities of moral proselytisation.

No chance can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a

security risk. Secondly, these economic offences committed by white-collar criminals are unlikely to be dissuaded by the gentle probationary,

process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the

incentive not easily humanised by the therapeutic probationary measure. It is not without significance that the recent report (47th Report) of the

Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments. It observed:

We appreciate that the suggested amendment would be apparent conflict with current trends in sentencing. But ultimately, the justification of all

sentencing is the protection of society. There are occasions when an offender is so anti-social that his immediate and sometimes prolonged

confinement is the best assurance of society''s protection. The consideration of rehabilitation has to give way, because of the paramount need for

the protection of society. We are, therefore, recommending suitable amendment in all the Acts, to exclude probation in the above case''.

13. The Apex Court reiterated the same proposition in the case of Dhananjay Chatterjee alias Dhana Vs. State of W.B., where their Lordships

observed as under in paras 14 and 15 of the report:

In recent years, the rising crime rate - particularly violent crime against women has made the criminal sentencing by the courts a subject of

concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an

essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice

suffer by weakening the system''s credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but

the object of sentencing should be to see that the crime does not go unpunished and the victims of crime as also the society has the satisfaction that

justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and taking an overall

view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating

circumstances have also to be taken into consideration.

In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the

defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society''s

cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public

abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at

large while considering imposition of appropriate punishment.

14. Speaking in the same tone the Apex Court again reminded and stressed upon the authorities dealing with the offences of grave nature in the

case of Ravji alias Ram Chandra Vs. State of Rajasthan, : Ravji alias Ram Chandra Vs. State of Rajasthan, in the following words:

It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The

Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim

but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should

conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public

abhorrence and it should ''respond to the society''s cry for justice against the criminal''.

15. In the same context it may be recalled that way back in 1982 the Apex Court while dealing with a case under the Andhra Pradesh Excise Act,

1968. State of Andhra Pradesh Vs. S.R. Rangadamappa, had expounded the law on the subject in the following words:

The statute prescribed a minimum sentence. It does not provide for any exceptions and does not vest the Court with any discretion to award a

sentence below the prescribed minimum under any special circumstances. The learned Judge has himself noticed that the sentence imposed is the

statutory minimum. Having noticed that the statute prescribes a minimum sentence for the offence, the High Court has understandably reduced the

sentence of imprisonment to less than the minimum permissible. The High Court was clearly in error in doing so. We think we have said enough to

correct the error. It is unnecessary to pursue the matter further by granting special leave.

16. It may thus be noted that all along the Apex Court has viewed the offences involving the national economy and the national health very sternly.

It has been stressed time and again that where the statute prescribes a minimum sentence for an offence the Court must administer the law in letter

and spirit unless some discretion has been given to the court to become lenient in the matter of awarding sentence. It is a well known fact that

misplaced sympathy shown by the court to the offenders against socio-economic laws, more often then not enocurages the breach of such laws.

That is not a happy state for any civilized society as it compels the Legislature to come out with stringent and has her laws for the people depriving

at the same time the Court of its discretion to become lenient in the matter of awarding sentences. As stressed by the Apex Court in the case of

Ravji alias Ram Chandra Vs. State of Rajasthan, it is the nature and gravity of the crime but not the criminal, which are germane for consideration

of appropriate punishment in a criminal trial. Undoubtedly the courts will be failing in their duty if appropriate punishment is not awarded for a crime

which has been committed not only against the individual victims but also against the society at large to which the criminal as well as the victims of

his crime belong. Deterrent theory of punishment shall have, therefore, be applied in the cases of offences against national economy and public

health in the larger interest of our society. In the instant case the offence which the petitioner was convicted of lies within the domain of anti-social

and anti-economic offences against the society at large and, therefore, cannot be lightly viewed at. For these reasons, therefore, and in view of the

law repeatedly stressed by the Apex Court on the subject I am unable to treat the petitioner leniently by either reducing his sentence or dealing with

his case according to the benevolent provisions of the Probation of Offenders Act, 1958. That being so I hold that the decisions relied upon by the

learned Advocate do not afford any help to him.

17. In the result the petition fails and is hereby dismissed.