State Of H.P vs Raj Kumar Chopra on 19 April, 1994

Equivalent citations: 1994 SCC, SUPL. (2) 318 JT 1994 (3) 291, AIRONLINE 1994 SC 673

Author: N.P Singh

Bench: N.P Singh

PETITIONER:
STATE OF H.P.

Vs.

RESPONDENT:
RAJ KUMAR CHOPRA

DATE OF JUDGMENT19/04/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
SINGH N.P. (J)

CITATION:
1994 SCC Supl. (2) 318 JT 1994 (3) 291
1994 SCALE (2)601

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- These two appeals, one by the State and the other by Shri M.L. Chadha, father of the deceased, are filed against the judgment of the High Court acquitting the respondents-accused. The trial court convicted them under Sections 302/34 IPC and sentenced each of them to undergo imprisonment for life. The appeal preferred by them was allowed by the High Court and they were acquitted.

2.The prosecution case is as follows. Shri R.K. Chopra, A-2 is the father and Mrs Santosh Chopra, A-3 is the mother of A-1 Anil Chopra. The deceased Mrs Kiran Chopra was married to A-1 in the year

1981 who was employed as Administrative-cum-Personnel Officer with Cement Corporation of India, Rajban. After marriage A-1 and the deceased lived in their flat at Rajban. In July 1981, A-2 retired from service. Thereafter he and his wife A-3 also joined A-1 and the deceased at Rajban and continued to live there. In December 1981 the deceased gave birth to a son. Thus the family living at Rajban at the time of occurrence comprised of the three accused, the deceased and the infant child.

3.A-1 used to come home for lunch on working days. On 20-8-1982 also as usual A-1 came home for lunch at about 1 p.m. and after lunch he returned to his office at 2 p.m. A few minutes thereafter an alarm was heard from the house of the accused "JAL GAI JAL GAI BACHAO BACHAO'. Attracted by this alarm, several persons gathered. Dr Sadiqi, PW 2, Ashok Bhatia, PW 13 and Mrs Kanan Sarkar, PW 15 were among the persons who reached the scene of occurrence soon after the alarm was heard. They found the deceased lying flat on the floor of the gallery outside the kitchen with extensive burns all over the body. The burns were estimated at 90% to 95% and the water flushed in the gallery where the deceased was lying, was emitting smell of kerosene. In the meanwhile A-2 rang up the office of his son A-1 and conveyed the news. A-1 rushed home on his motorcycle. He sought advice from PW 2 as to what should be done and as advised by him A-1 took the deceased to Civil Hospital, Paonta Sahib, the nearest medical centre, in his own car. Mrs Kanan Sarkar, PW 15 who at the relevant time was employed as a nurse in the Health Centre of Cement Corporation of India also accompanied them in the same car. PW 2 and A-2 followed in a separate vehicle. They reached the Civil Hospital at about 2.30 p.m. Dr Surender Gandhi, PW 1 who was incharge there, examined the deceased, rendered some medical aid and advised the accused to take her to some better hospital. They accordingly took the deceased to Harbertpur Mission Hospital which is about 9 kms. away from Paonta Sahib and which is a well-

equipped hospital. They reached there at about 3.30 p.m. and PWs 2 and 15 were also with the deceased at that time. Dr Claudius, Medical Superintendent. PW 5 admitted her in the Hospital. He examined the deceased and found burns all over the body except scalp. PW 5 gave Pathedine Injection 100 mg and another dose of 50 mg at 5 p.m. Before that at 4 p.m., PW 5 prepared the patient chart, Ex. PC-20 in which he recorded the history of the patient and it reads thus:

> "History given by patient herself that she got burnt while boiling milk due to bursting of stove (kerosene stove with wicks). Her child was sleeping there and her parents in-law were sleeping in another room. When she shouted they came to save her. Then they took her to Paonta hospital."

PW 5 informed the concerned Police Station at Sehaspur and got the deceased prepared for the necessary operation. At about 5.20 p.m., Shiv Kumar, S.I. of Police, PW 20 came to the Hospital and PW 5 recorded the dying declaration, Ex. PE, of the deceased in the presence of PW 20 and the same was sent in a sealed cover to the Superintendent of Police, Dehra Dun. In this dying declaration, the deceased has clearly stated that while boiling the milk, the stove got burst and she was all alone in the room and her in-laws were in the other room and at that time her husband had gone to office. Because of the burst of the stove, she caught fire. She shouted and immediately A-2 and A-3 came and wrapped blanket on her body. She has also mentioned about the presence of PW 2, another Doctor, who came there and as to how she was taken to the Civil Hospital, Paonta Sahib. The

deceased received her medical treatment throughout at Harbertpur Mission Hospital but her condition started deteriorating. She, however, remained conscious and could talk in a feeble tone. Shri M.L. Chadha, PW 12, the father of the deceased, reached the hospital on 21-8-1982 and he and his wife remained at the hospital and attended on the deceased. The deceased, however, died on 25-8-1982 and PW 5 sent the message to the Police Station. PW 20, S.I. came to the Hospital, held the inquest and sent the dead body of the deceased for postmortem. Dr A.K. Pandey, PW 2 1, who conducted the postmortem, opined that she died because of bum injuries. On 24-8-1982, PW 12 lodged a report, Ex. PJ with police alleging that the deceased told him that the three accused persons poured kerosene on her and set fire for not bringing adequate dowry. The case was investigated and the charge-sheet was laid against the respondents- accused under Sections 302/34 IPC. The accused pleaded not guilty,

4.The trial court relying on the circumstantial evidence as well as on the evidence of PW 12 who spoke about the oral dying declaration convicted the accused. The trial court rejected the dying declaration recorded by PW 5 holding that the deceased would not have been in a position to make such a statement and that it was a fabricated one. The appellate court, on the other hand, after considering the evidence of PW 5 and the dying declaration held that the learned Sessions Judge has grossly erred in convicting the accused and accordingly acquitted them.

5.This Court granted leave only in respect of A-2 and A-3 and dismissed both the SLPS. so far A-1 is concerned. Therefore we are left with only A-2 and A-3 in these appeals.

6.The prosecution suggested that the accused were not satisfied with the dowry and that was the motive. This aspect has been considered by the High Court in great detail. We have also perused the evidence and we are not satisfied that there is sufficient evidence to establish the same.

7.The main question that arises for consideration is whether the dying declaration recorded by PW 5 is a fabricated one? PW 5 is a respectable witness and a highly qualified doctor. He did his best to save the deceased. The High Court has discussed his evidence in great detail and in our view has rightly held that there are no grounds whatsoever to doubt the veracity of PW 5. S.I., PW 20 also confirmed about the recording of the dying declaration by PW 5 and he also attested the same. PW 12, the father of the deceased, naturally was very much upset and he has come forward with the story of oral dying declaration only after some days. One important thing which we have noticed is that PWs 2 and 15 who are very respectable witnesses namely a doctor and a nurse and who reached the flat immediately after hearing the alarm, do not say that the deceased said anything against any of the accused. The High Court has considered all the circumstances and has rightly given the benefit of doubt to the accused. The High Court, however, passed severe strictures against the police. It is observed that for reasons unknown, the police officers incharge of Police Post, Rajban and Police Station, Paonta Sahib evinced undue interest and went out of their way in fabricating the evidence to involve the accused in a case under Section 302 IPC. The High Court also ordered that an enquiry should be held.

8.From a perusal of the records, it is clear that PW 12 gave a report to the police based on the alleged oral dying declaration stating that it was a case of murder. Therefore the police had to necessarily

register a case and investigate. In that process they also investigated into the circumstance namely whether the deceased having received 90% to 95% burns and also having been administered Pathedine could have made a statement to PW 5, Dr Claudius. In this regard they seemed to have their own suspicion and they could not conclude one way or the other. In this view of the matter if the police filed a charge-sheet alleging that it was a case of murder committed by the accused, it is difficult to say that they made out a false case evincing undue interest. In this context it has to be noted that the trial court, as a matter of fact, convicted the accused accepting the prosecution case namely that it was a case of murder. Therefore it cannot be concluded that the police evinced undue interest and went out of the way and fabricated the evidence.

9.However, as already discussed, there is no reason whatsoever to doubt the veracity of PWs 5 and 20. The plea of the defence that the death was due to an accident, cannot be ruled out. Therefore the prosecution has not proved the guilt of the accused beyond all reasonable doubt. Further these are appeals against acquittal and the High Court has given good reasons for acquitting the respondents. We see no grounds to interfere. Accordingly both these appeals are dismissed.

ITC BHADRACHALAM PAPER BOARDS LTD. V. C.C.E. (Hansaria, J.) The Judgment of the Court was delivered by HANSARIA, J.- The only point for determination in this appeal against the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) is whether the appellant is entitled to the exemption from such portion of excise duty as has been spelt out in Notification No. 108 of 1981. Central Excises, dated 24-4-1981 read with Notification Nos. 83 of 1984 Central Excises, dated 2-4-1984 and 214 of 1984 Central Excise, dated 9-11-1984. (Though there is yet another notification bearing No. 139 of 1984, dated 2-6-1984 that however is not material for our purpose.)

2.All the aforesaid notifications owe their origin to the Central Government's decision to attract investment in industries manufacturing paper, the bulk of which relating to writing and printing was being imported at the relevant time. On this subject Minister of State for Industries made a speech on the floor of the House on 24-4-1981 regarding incentives, inter alia, to paper industry and stated about the excise duty concession to the extent of 50% to those industries which had commenced clearance for the first time during the period from 1-4-1979 to 31-3-1984.

3.This policy statement saw the first of the aforesaid notifications which was issued on 24-4-1981 itself and exempted printing and writing paper from so much of duty of excise leviable thereon as was in excess of the duty calculated at the rate of 50% of the rate of duty leviable on the said goods. That notification was issued in exercise of power conferred by Rule 8(1) of the Central Excise Rules, 1944. It had three provisos. The first of these stated, inter alia, that exemption would be available to the aforesaid goods which were manufactured in a factory whose clearance had commenced from 1-4-1979. The second proviso is important for our purpose which read as below:

> "Provided further that the exemption contained in this notification shall not apply to clearances of the said goods effected after the expiry of a period of five years from the date of first clearance of the said goods from such factory."

4.On the matter being taken up with the Government, an amendment was issuedon 2-4-1984 to the notification of 24-4-1981 by substituting the words 'paperand paper board' for the words 'printing and writing paper' in the first notification. This apart, the rate of exemption was enhanced to 80%. By 2-6-1984 notification referred in parenthesis earlier, the rate was brought down to 50%. Finally came the notification of 9-11-1984 which substituted the second proviso in the first notification as below:

> "Provided further that the exemption contained in this notification shall not apply to clearances of the said goods effected after the expiry of a period of five years from the date of first clearance of the said goods from such factory or the date of publication of this notification in the Official Gazette, whichever is later." (emphasis supplied)

5.Despite exemption of excise duty having been given to the paper board also by the notification of 2-4-1984, the appellant could not get full benefit of the same because it had started manufacturing paper board in 1979 and the department is said to have given benefit from 24-4-1981 (which date is irrelevant according to the appellant as stated in the written submissions filed on 5th April), and so benefit from 1979 till 1-4-1981 got denied. The contention of the appellant however is that the notification of 9-11-1984 which stated that the period of exemption would be from the "date of first clearance of the said goods" or "the date of the publication of this notification", whichever is later, would require exemption to be given to the appellant from 1979 as the word "this" in the notification refers not only to the first notification of 24-4-1981 but also the second notification of 2-4-1984.

6.On the plain language of the last notification which has been quoted above, the aforesaid contention cannot be accepted inasmuch as the last notification clearly speaks of substitution of the second proviso in the first notification which is of 24-4-1981; and therefore the expression "this notification" appearing in the last notification has to refer to the notification of April 1981. Even if these words were to relate to the notification of November 1984 that cannot help the appellant in claiming exemption as notification of November 1984 had not granted any exemption.

7.Faced with the aforesaid position as emerging from the literal interpretation of the notifications at hand, Shri Salve, learned counsel appearing for the appellant, has strenuously contended that the entire object behind the exemption and more particularly one sought to be achieved by the last notification would be only partially achieved if benefit were not to be given to the appellant's clearance of paper board from 1979. According to the learned counsel the notification of November 1984 was required to be issued to take care of an anomaly which would have arisen in case clearance had started from say from August 1979 in which event the five-year period would have come to end of August 1984, because of which the concession would have really been available for 40 months, that is, from April 1981 to August 1984, as the first notification was issued in April 1981, as a result of which the concession could not have been available for five-years to the clearance of the aforesaid type, whereas in those cases where clearance was from April 1981, full five-year exemption would have been available. It is correct that the notification of November 1984 takes care of this anomaly by making the terminus a quo relatable to the date whichever is later.

8.Nothing, however, turns on the aforesaid contention. The appellant would not be entitled to the exemption as claimed unless we were to agree that what has been stated in notification of November 1984 were really to take within its fold the notification of April 1984 also. The strained submission of Shri Salve in this connection is that though the April 1984 notification speaks about amendment of the April 1981 notification, that notification in fact is a substantive one giving exemption to paper board and what has been stated in notification of April 1981 should be read by reference in the notification of April 1984. To put it differently, according to the learned counsel, April 1984 notification re-enacts the contents of April 1981 notification insofar as paper board is concerned; and so, the words "this notification" in November 1984 notification would take within its fold notification of April 1984 also. Shri Salve would say that if his contentions were not to be accepted the object behind granting of exemption, if not frustrated totally, would be made lame.

9.To persuade us to agree with him, Shri Salve urges and strenuously that in a case of present nature object must be kept in view; and to support him, we are referred to a number of decisions of this Court to wit, K.P. Varghese v.

ITO; Indian Express Newspapers (Bom) P. Ltd. v. Union of India2; Collector of Central Excise v. Parley Exports (P) Ltd.'; Union of India v. Suksha International and Nutan Gems4; Tata Oil Mills Co. Ltd. v. Collector of Central Excise5; Shri Sitaram Sugar Co. Ltd. v. Union of India6; Union of India v. Wood Papers Ltd.7 and Collector of Central Excise v. Neoli Sugar Factory8. A perusal of these decisions shows that a court should apply its mind to the object and purpose if literal interpretation were inter alia to give rise to manifest absurdity, which would have been the result in Varghese1 and Neoli Sugar Factory8 cases. The present is apparently not such a case. As to the decision in Parley Exports case3 it may be stated that there the question was whether benefit of exemption of the concerned notification which stated about "all kinds of food products and food preparations" could be extented to non-alcoholic beverages, in trying to find out which the purpose of exemption was taken note of. The present is a case different in nature. The judgment in Indian Express Newspaper case2 (which was mentioned in the written submission of 5th April) is not relevant as that case deals basically with the scope of Article 19(1)(a) of the Constitution and has spelt out as to when tax on newspaper industry would be violative of the freedom protected by the aforesaid clause.

10.In Suksha International case4 this Court, while concerned with a beneficial provision of statute opined that the same should not be interpreted so as to unduly restrict the beneficial scope of the policy. By disagreeing with Shri Salve, we would not be doing anything of such nature inasmuch as to why exemption to paper board was given by the notification of April 1984 and not by April 1981 notification is really a question of policy, the scope and width of which is for the Government to decide and not for this Court. Indeed, by agreeing with Shri Salve we would be extending the benefit to the appellant though the policy of the Government as incorporated in April 1984 notification did not visualise the same. So, the view taken by us is not one about which it could reasonably be said that we are interpreting the April 1984 notification with undue restriction. Indeed, our endorsement of Shri Salve's contention would amount to enlarging the scope of exemption which we cannot.

11.The decision in Tata Oil Mills case5 too has no cutting edge, because there the question for consideration was whether rice bran oil converted into hydrogenated oil used in manufacturing of soap was entitled to rebate. This Court was called upon there to decide whether rice bran fatty acid is different from rice bran oil, as what had been exempted was such "soap as is made from indigenous rice bran oil". This Court took the view that the tribunal proceeded on too narrow an interpretation, as while interpreting the notification of the type which came for consideration, court should apply its mind to the object and 1 (1981) 4 SCC 173 1981 SCC (Tax) 293 (1982) 1 SCR 629 2 (1985) 1 SCC 641 1985 SCC (Tax) 121 (1985) 2 SCR 287 3(1989) 1 SCC 345 1989 SCC (Tax) 84: 1988 Supp (3) SCR 4 1989 Supp 1 SCC 422: (1989) 1 SCR 1 5 (1989) 4 SCC 541 1990 SCC (Tax) 22: (1989) 3 SCR 839 6 (1990) 3 SCC 223 JT (1990) 1 SC 462 7(1990) 4 SCC 256: 1990 SCC (Tax) 422: (1990) 2 SCR 659 8 1993 Supp (3) SCC 69 purpose of exemption. The facts of the present case are much different from those which had confronted this Court in Tata Mills case5.

12.The Wood Paper case7 (referred in the written submission of 5th April) supports the broad contention of Shri Salve only partially, as, while stating that inequitable and incongruous result flowing from an exemption notification should be avoided, it has also held that such a notification must be strictly construed insofar as subject of exemption is concerned. Of course, after ambiguity about applicability of the exemption is removed full play must be given and at that stage liberal construction would be called for.

13.The decision in Shri Sitaram Sugar Co. case6 was concerned with the question of price fixation and it was stated in paragraph 58, which alone is pressed into service by Shri Salve, that the judicial function in respect of such matter is exhausted when there is found to be rational basis for the conclusions reached by the authority concerned. Though Shri Salve has contended that there is no rational basis for granting exemption from excise duty for full five years to those industries manufacturing paper board which had started clearance from 2-4-1984. Indeed, this would be discriminatory as highlighted in the aforesaid written submission as units which commenced production from 1-4-1979 to 1-4-1984 would not get exemption for full five years. If it is borne in mind that the notification concerned was issued on representation of the Paper Industry that confining of the exemption to printing and writing paper alone was not achieving the object, the rationality of the notification becomes apparent and acceptable. It may be mentioned that insofar as utility of the product is concerned, paper board does stand on a footing different from printing and writing paper. There was therefore no irrationality in exemption of printing and writing paper from April 1981 while giving the benefit of the same to the paper board for the first time from April 1984. We do not also read any discriminatory treatment in denying full benefit to those units which started production prior to 1-4-1984, as, for different purposes different cut-off dates may be fixed having regard to the purpose to be achieved. So, the differential treatment given to the paper board is not even arbitrary, as good reasons exist for treating it differently and exempting it from a different date. We do not, therefore, read any vice of discrimination as submitted.

14.In view of the above, we would hold that what had been stated in the notification of 9-11-1984 cannot relate to the notification of April 1984. We would add that granting of exemption to the paper board from 2-4-1984 does not suffer from any irrationality or discriminatory treatment. So, no case for our interference with the impugned judgment of CEGAT, in exercise of power under

Article 136 of the Constitution, has been made out. The appeal is, therefore, dismissed. In the facts and circumstances, we leave the parties to bear their own costs.