

APPELLATE CRIMINAL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Caspersz.

EMPEROR

v.

HAMID ALI.*

1909
July 23.

Opium, illegal possession of—Opium Act (I of 1878) ss. 9 (c), 10—Mere possession contrary to the Act without guilty frame of mind—Respective liabilities of owner of boat and crew—Presumption of commission of offence under the Act—“Conveyance”—Boat.

Under sections 9 (c) and 10 of the Opium Act (I of 1878), mere possession of opium without being able to account for it satisfactorily, apart from any frame of mind, is an offence.

The owner of a boat in which opium is found is in possession of it, but not the crew when they are neither owners nor jointly interested with him in any venture as an incident of which possession might be attributed to them.

Where the owner of a boat alleged that opium was carried on board by a passenger without his knowledge, but there were circumstances disproving his story:—

Held, that as he had not satisfactorily accounted for its possession, it must be presumed, under section 10, that it was opium in respect of which he had committed an offence under the Act.

Quære: whether a boat in which opium is carried is a “conveyance” used in carrying it so as to be liable to confiscation on conviction of the owner under the Act.

THE three appellants, Hamid Ali, Serajuddin and Akkil Ali, were put on trial before Muhamed Iskander Ali, Deputy Magistrate of Noakhali, charged under section 9 (c) of the Opium Act, and were acquitted on the 9th January 1909. The appellant Serajuddin was the owner of a boat plying between Calcutta and Chittagong, and the other two were the crew. On the 9th December 1908, a Salt Inspector and his staff boarded the boat at the Badami^a khal, and on search found a quantity of contraband opium. There was a fourth man on the boat, named Ainuddi, who, it was

* Government Appeal No. 9 of 1909, against the order of M. Muhamed Iskander Ali, Deputy Magistrate of Noakhali, dated Jan. 9, 1909.

alleged, escaped and was absconding. The appellants admitted the finding of the opium on the boat, but they explained the fact by stating that Ainuddi got on board at Hatia as a passenger and had the opium with him without their knowledge. The Magistrate accepted the explanation as satisfactory and acquitted them. The Government of East Bengal and Assam, thereupon, filed the present appeal.

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Mr. Donogh, for the Crown.

Babu Kumar Shankar Roy, for the accused.

JENKINS C.J. AND CASPERSZ J. This is an appeal by the Government from the acquittal of three men, Hamid Ali, Serajuddin and Akkil Ali, who were charged under section 9 of the Opium Act (I of 1878) with possessing opium. The charge of possession rests on the fact that it was in a boat, in which these three men and another were. For the purposes of an offence under section 9, clause (c), nothing is necessary beyond possession of the opium. There is no particular frame of mind required, so that what we have to consider is, first of all, whether these three accused or any one of them was in possession of the opium. As against two of the accused, that is to say, Hamid Ali and Akkil Ali, there is, I think, a complete failure on the part of the prosecution to show possession, for the evidence so far as it goes is that they were not owners of the boat, nor jointly interested with Serajuddin in any venture as an incident of which we might attribute to them possession of the opium, but they were merely two of the crew. On the evidence before us we are unable to hold that these two accused were in possession of the opium.

With regard to Serajuddin, the case is different, for he was the owner of the boat, and I do not understand the learned Magistrate, by whom he has been acquitted, as suggesting that the opium was not actually found in the boat. On the evidence I hold as a fact that the opium was in the boat, and the boat being his, I hold in the circumstances of the case that he was in possession of the opium. Then we

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have to consider the terms of section 10 of the Act which provides that "in prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily, is opium in respect of which he has committed an offence under this Act." The learned Magistrate seems to have thought that the accused person, that is to say, Serajuddin, had accounted satisfactorily. What he says is this: "The accused admit that the articles seized by the Salt Officers were found in their boat. But they explained this fact by saying that the fourth man (Ainuddin) got into their boat at Hatia as a passenger with these articles, and that they did not know that there was opium among them." There is no evidence of any witnesses to this effect, but some of the accused have at different times made statements suggesting this. On the other hand, we find that the immediate statement made by one of the accused is in direct conflict with it, because his version is this, "We are four co-workers in the *sampan*. Two men, Serajuddin and Ainuddin, carry on business, sell articles;" and that is manifestly inconsistent with what commended itself to the Magistrate as satisfactorily accounting for the opium. But more than that, we have the very significant circumstance that when the boat was boarded, Serajuddin threw over-board a *handi*, which was recovered and in the process of recovering which, it is sworn, a piece of opium dropped out. Even if this be treated as problematical, it is established that when the *handi* was brought into the boat and examined, it was found that it contained a quantity of opium. This is very significant and goes to show that the account now given by Serajuddin is one which cannot be accepted. In the circumstances, I hold that it has been established by the prosecution that Serajuddin did possess opium, and he has been unable to account satisfactorily for his possession. Therefore, he must be convicted under section 9 of the Opium Act. It has been stated before us that he was convicted on another occasion, but there is no proof of that. We cannot act on that statement, although it may very well be, as the learned counsel for the prosecution says, that the

absence of proof is due to the fact of the acquittal by the Magistrate. In the circumstances, it certainly would not be worth while calling for evidence on this point. We, therefore, determine the amount of punishment irrespective of this allegation. We fine him a sum of Rs. 250, and in default he will undergo three months' rigorous imprisonment. We do not propose to direct confiscation of the conveyance, even if a boat is a "conveyance," as to which we express no opinion.

E. H. M.

Appeal allowed.

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CRIMINAL REVISION.

Before Mr. Justice Cox and Mr. Justice Ryves.

FAIZ ALI v. EMPEROR.*

1909
Aug. 20.

Emigration—Unlawful recruitment—Assam Labour and Emigration Act (VI of 1901) s. 164.—“Emigrate,” meaning of—Inducement to go from a place in British India to Fiji—Subsequent inducement at another place to proceed to Sylhet—Locus delicti—Jurisdiction of Criminal Court—Criminal Procedure Code (Act V of 1898) s. 177.

A recruiter, who induces a person at Cawnpore to go to Fiji, but on the way takes him to a cooly depôt at Arrah and induces him to proceed to Sylhet, in contravention of the Assam Labour and Emigration Act, commits no offence under s. 164 of Act VI of 1901 at Cawnpore, but only at Arrah, and a Magistrate of the latter place has jurisdiction to try such offence.

THE petitioner was tried by the District Magistrate of Shahabad and convicted under section 164 of the Assam Labour and Emigration Act, on the 26th April 1909, and sentenced to a fine of Rs. 500, and in default to three months' rigorous imprisonment. The sentence was reduced on appeal. It appeared that he induced a cooly, named Lal Bahadur, at Cawnpore, to go to Fiji, which he represented to be near Calcutta. Lal Bahadur and a number of others were brought down from Cawnpore and were made to alight at Arrah and taken to a cooly depôt. Whilst there they learned that they were to be sent to

* Criminal Revision No. 819 of 1909, against the order of J. Johnston, Officiating District Magistrate, dated April 26, 1909.