

(2011) 01 SC CK 0053

In the Supreme Court Of India

Case No : Criminal Appeal No. 259 of 2006

Daulat Ram and Another

APPELLANT

Vs

C.B.N. Mandsaur, M.P.

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 8
Narcotic Drugs and Psychotropic Substances Rules, 1985 — Rule 13

Citation : (2011) CriLJ 2329 : (2011) 3 KCCR 316 SN : (2011) 2 RCR(Criminal)
62 : (2011) 2 SCALE 488 : (2011) 1 SCR 1092

Hon'ble Judges : H. S. Bedi, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : Ashok Kumar Sharma and Avinash Kumar Jain, for the Appellant;
J.S. Attri Sadhana Sandhu, Rashmi and Sushma Suri, for the Respondent

Final Decision : Allowed

Judgement

1.This appeal arises out of the following facts:

1.1The Appellants herein, both brothers, Daulat Ram and Mangilal, sons of Hurdabai, were living with their mother at village Dorana. Hurdabai had been issued a licence to grow opium in her land and the Appellants were looking after the cultivation on her behalf. On the 5th April, 1997, reports were received in the Narcotics Office that Hurdabai was not depositing the entire yield of opium with the Lambardar. The ASI CBN,Balaram PW 2, and the District Opium officer, Satyaveer Singh Choudhary PW 6, along with other members of a raiding party reached the village Dorana at 2:00p.m., and on inquiry it was ascertained that the allegations appeared to be correct. The Appellants were, accordingly, apprehended and interrogated by the ASI and during interrogation Daulat Ram admitted that some of the undeclared opium had been hidden in his field. Thereafter Mangilal Appellant was also interrogated and he made a similar statement. The raiding party then visited the field of Daulat Ram and after digging the pit at the place pointed out by him, took out a polythene bag which

when weighed was found to contain 3kg of opium. Similarly, Mangilal took the officers to the place which he had identified and Anr. 3 kg of opium was recovered from another pit. The Appellants also gave their confessions Exhibits P 16 and P17 respectively, stating therein that they had withheld the opium to sell it in the market in an unauthorised manner.

1.2 On the completion of the investigation, the Appellants were charged u/s 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, (hereinafter referred to as 'the Act'). The trial court relying on the evidence of P.W. 1 Bhanwarilal Patwari who had identified the fields as belonging to Hurdabai and in particular the evidence of P.W. 2, P.W. 5 and P.W. 6 and also on the confessions made by the accused held that the case against them had been proved beyond doubt. The Appellants were each sentenced to 10 years rigorous imprisonment and a fine of Rs. 1 lakh with a default sentence. An appeal taken to the High Court too was dismissed.

2. Before us, today, Mr. Ashok Kumar Sharma the learned Amicus Curiae for the Appellants, has raised one basic argument. He has submitted that as per the Act and Rule 13 of the Narcotics Drugs & Psychotropic Substances Rule, 1985, framed thereunder the opium which was produced had to be reported to the Lambardar and it was only after the final notification had been issued and the production had been quantified that the final accounting had to be made and not at any stage prior thereto. It has also been pointed out that the two independent witnesses having not supported the prosecution there was no independent evidence against the Appellants.

3. Mr. J.S. Attri, the learned senior counsel for the Respondents has, however, supported the judgment of the courts below.

4. We have considered the arguments advanced by the learned counsel. It is true, as contended by Mr. Sharma, that an over all accounting of the opium has to be made after the notification has been issued identifying the percentage of opium that should be in the hands of a producer. However, there is an obligation under Rule 13 of the Rules, 1985 to make a

declaration to the Lambardar as to the quantity of opium produced everyday. There is no evidence or suggestion to show that the opium which had been recovered had been declared or accounted for before the Lambardar. On the contrary the fact that it had been buried three feet underground and far away from the residence of the Appellants clearly shows that the intention was to stash away the opium for sale in an authorised way.

5. Mr. Sharma has, however, cited Bheru Lal Vs. State of Rajasthan, to contend that till the final quantification had been made the opium could not be said to be contraband. We find that some of the conclusions drawn in the cited judgment are too far reaching and basically ignore Rule 13 which requires a day to day accountability before the Lambardar. On facts, it is also apparent that the opium in Bheru Lal's case had been recovered from the residential house of the

accused. In the case before us, as per the prosecution story, the opium had been recovered from 3 feet underground.

6. It is equally true that no independent witness has supported the prosecution story. The evidence of the official witnesses is, however, supported by the recovery of the opium and also by the confessions made by the Appellants.

7. The appeal is, accordingly, dismissed.