
(2003) 08 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 400-SB of 1989

Devi Dial

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 394(2)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 55, 57

Citation : (2003) 6 CriminalCC 663 : (2003) 4 RCR(Criminal) 475

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Kiran Bala Jain with Mrs. Geeta Punia, for the Appellant; Rajesh Bhardwaj, Assistant Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, J.—Devi Dial son of Nathu Ram (since died) was convicted by learned Additional Sessions Judge, Ambala vide impugned judgment dated 25.9.1989 u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short to be referred as the Act) and has been sentenced to undergo R I for ten years and to pay a fine of Rs. one lac, in default of payment of fine to further undergo R I for one year. Aggrieved by the impugned judgment of conviction and sentence, he had preferred the present appeal.

2. It would be most appropriate to mention here that a Criminal Misc.No.33968 of 2003 u/s 394(2) Cr. P.C. has been moved by one Ravinder Kumar son of the appellant for leave to continue with the appeal after the death of his father. Alongwith that an other application bearing Criminal Misc.No.33969 of 2003 for condonation of delay was also moved. Notice of motion was issued to Advocate General, Haryana for today only. Since there was no objection from the side of the State the same was allowed after condoning the delay in filing the application u/s 394(2) Cr. P.C. and the leave to continue with the appeal has also been granted vide my separate order of even date.

3. Now I revert back to the facts of the present case.

4. The allegation against the appellant is that he was found in possession of 12 Kgs. of poppy straw on 7.2.86. ASI Hari Chand PW2 being Incharge of Police Post Government Railway Police, Jagadhri had allegedly recovered the above said contraband from the appellant in the presence of one Sunehari Lal PW1, a Safai Karamchari at Railway Station and two Head Constables namely Vijinder Singh and Krishan Lal. Further allegations are that the appellant was found present in second class waiting room at Railway Station Jagadhri. After the alleged recovery, 100 grams of poppy straw were separated as sample and other formalities were also done at the place of alleged recovery by ASI Hari Chand PW2. The formal FIR Ex.PI was recorded in the Police Station, Government Railway Police, Ambala Cantt after the receipt of ruqa. After the receipt of the report of Chemical Examiner, Ex. PD the appellant was challaned in this case. He was charged u/s 15 of the Act.

5. Prosecution in support of its case examined two main witnesses of the recovery namely PW1 Sunehari Lal and ASI Hari Chand PW2. Besides this two affidavits Ex. PE of MHC Harbans Lal and Ex. PF of Constable Vijinder Singh were also tendered in order to prove link evidence.

6. The defence set up by the appellant was that he has been falsely implicated in this case and he in fact was standing in the queue in front of the booking office at Railway Station Jagadhari when Head Constable Krishan Lal had a tiff with him and consequently he was beaten and involved in the present case. The stand of the appellant further is that he had also made complaints to the Superintendent of Police, GRP Ambala Cantt and that an inquiry was held in this regard. In support of his defence, the appellant had produced one Joginder Singh son of Kundan Singh as DW1. Besides this copy of application Ex. DA, a notice Ex. DB and the envelope Ex. DC were also tendered.

7. After appreciating the entire evidence, the appellant stands convicted and sentenced as indicated above.

8. I have heard Mrs. Kiran Bala Jain, learned counsel for the applicant and Mr. Rajesh Bhardwaj, learned Assistant Advocate General, Haryana. With their assistance I have also gone through the entire records of the case.

9. The learned counsel for the appellant has vehemently contended that the case of the prosecution is on a slippery wicket as both the witnesses of recovery have rendered themselves most unreliable. The learned counsel has taken me through the statement of Sunehari Lal PW1 where he has stated that his duty hours are 8 AM to 4 PM. The learned counsel thus urged that once Sunehari Lal was supposed to report at 8 AM the recovery allegedly made at 7.20 AM in his presence is nothing but a farce. Strengthening her arguments, the learned counsel contends that Sunehari Lal has been intentionally imported in this case in order to project him as independent witness because ASI Hari Chand PW2 had not joined any independent witness in this case inspite of the fact that many

witnesses were present at the time of alleged recovery. According to the learned counsel this material lacuna goes to the root of the case and speaks volumes of the false implication of the present appellant. At the same time, my attention has also been drawn to other material discrepancies in the statement of Sunehari Lal PW1.

10. Learned counsel for the appellant has also drawn my attention to the statement of ASI Hari Chand, the Investigating Officer of the case who has categorically stated in the cross-examination that Sunehari Lal was present in the second class waiting room at 7AM. Certain other major discrepancies in the statements of Sunehari Lal and ASI Hari Chand have also been pointed out.

11. So far as the weakness in the affidavits Ex. PF and PF is concerned, the argument raised by the learned counsel for the appellant is that although the affidavits Ex. PE and PF were tendered in evidence in the statement of Public Prosecutor on 7.1.87, yet the prosecution agency did not bother to produce the official witnesses namely Harbans Lal and Vijinder Singh for cross-examination and as such this material lacuna is fatal to the prosecution case Strengthening her arguments further, the learned counsel contends that even in the statement of the appellant recorded u/s 313 Cr. P.C, the above said two affidavits Ex. PE and PF were not put to the appellant. In support of her arguments, the learned counsel has relied upon two judgments of this court rendered in Bhoolan v. State of Punjab, 1995 (3) RCR (Cri.) 505 and Padam Singh v. State of Haryana, 1997 (4) RCR (Cri.)172.

12. It has been further contended that there is a failure on the part of investigating officer as he did not submit full report of all particulars to his immediate officer and as such there is non-compliance of section 57 of the Act. In support of her contentions, the learned counsel relies upon Gurbax Singh Vs. State of Haryana, .

13. The learned counsel also relies upon the documentary evidence adduced by the appellant in support of his defence and states that the appellant has been falsely implicated in this case.

14. Refuting the arguments advanced by the learned counsel for the appellant, Mr. Bhardwaj contends that both the witnesses of recovery cannot be doubted in this case as they had no animosity against the present appellant to falsely implicate him. He then contends that even if certain discrepancies have occurred in the statements of the witnesses of recovery but the same should not be taken as ground to discard the prosecution case in toto and as such the conviction already earned by the appellant deserves to be confirmed.

16. After hearing the rival contentions of both the sides and on scanning the entire evidence minutely, I am of the view that the prosecution has not been able to prove its case to the hilt against the present appellant and he deserves acquittal.

17. I have once again minutely scanned the statements of Sunehari Lal and ASI Hari Chand. So far as the joining of Sunehari Lal is concerned, it appears that his presence is doubtful. Simply that he was allegedly there at the time of recovery at 7.20 AM would not have bothered me much because he being an employee of the Railway Department could possibly be there at the Railway Station some time earlier to his reporting time i.e. 8 AM but the non-joining of the independent witness in this case has compelled me to see the entire prosecution story with a pinch of salt. It cannot be said that there was no one else present in the waiting room at that time. ASI Hari Chand PW2, the Investigating Officer of the case has even gone to the extent of saying that certain passengers were entering and leaving the waiting hall and there are 10 to 12 benches in the said waiting hall. This in my view is a weakness in the prosecution case. The other discrepancies occurred in the statements of the two witnesses coupled with the above narrated fact make the case of the prosecution doubtful so far as the alleged recovery is concerned.

18. The case of the prosecution gets dent on the other count as well. Concededly the affidavits Ex. PE and PF have not been put to the appellant when he was examined u/s 313 Cr. P.C. Admittedly when the affidavits were tendered in evidence by Public Prosecutor on 7.1.87, the persons who had sworn these affidavits namely MHC Harbans Lal and Constable Vijinder Singh were not present. I have seen the statement of Public Prosecutor recorded on 7.1.87. This is at page No.113 of the trial Court file. There is no reference to the fact that MHC Harbans Lal and Constable Vijinder Singh are present in the court and an opportunity has been given to the defence to cross-examine them in respect to the affidavits being tendered. In my view this is also one of the basic lacunas in the prosecution case. The judgments in Bhullan's case and Padam Singh's case (supra) cited by the learned counsel for the appellant squarely cover the case of the appellant.

19. There is non-compliance of sections 55 and 57 of the Act as well. This also weakens the case of the prosecution.

20. Since I am doubting the prosecution case for the aforesaid reasons, there is no need of entering into defence set by the appellant.

21. As a sequel to the above said discussion, in my considered view, the prosecution has not been able to bring home the guilt to the appellant and as such he deserves acquittal.

22. Resultantly, the present appeal succeeds and appellant Devi Dial (since dead) is acquitted of charge framed against him.