

(2015) 07 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 379 and 423 of 2011

Jagir Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 374
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15

Citation : (2015) 2 ShimLC 948

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Peeyush Verma, for the Appellant; Ashok Chaudhary, A.A.G and V.S. Chauhan, A.A.G, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J.—Assailing the judgment dated 31.5.2011/8.6.2011, passed by learned Special Judge, Fast Track Court, Una, District Una, H.P., in Sessions Case No. 19/10 (Sessions Trial No. 19/10), titled as State of Himachal Pradesh v. Tarsem Lal and others, whereby appellants-accused stand convicted for having committed an offence punishable under the provisions of Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) and sentenced to undergo rigorous imprisonment for a period of 10 years each and pay fine of Rs. 1,00,000/- each and in default of payment of fine to undergo simple imprisonment for one year each, they have filed the present appeals under the provisions of Section 374 of the Code of Criminal Procedure, 1973. Cr. Appeal No. 423 of 2011 stands filed by convict Jagir Singh whereas Cr. Appeal No. 379 of 2011 stands filed by convicts Tarsem Lal, Jasvinder Kaur and Baljinder @ Kali.

2. It is the case of prosecution that on 21.8.2010, police party headed by Inspector R.R. Thakur (PW-11) comprising of ASI Harjit Singh, HHC Purshotam Lal (PW-8), HC Albel Singh (PW-3) and HHG Jasbir Singh were on patrolling duty

at Ajnoui. They had left the police station after recording entry (Ext. PW-5/D) in the daily diary. Same day at about 6.00 p.m., when the police party reached near railway crossing Ajnoui, they signalled car bearing registration number CH-1B-5078 to stop. The said car was driven by accused Tarsem Lal and accused Jagir Singh was sitting beside him. On the rear seat, accused Jasvinder Kaur and Baljinder Kaur were sitting. When the car was checked, police found five sacks containing poppy husk. Three sacks were kept in the dickey, one sack in the middle of the rear seat and the fifth sack was kept near the front seat. Checking was done in the presence of independent witnesses Dharam Pal (PW-1) and Sham Lal (PW-2). The contraband substance was weighed with the scales belonging to Dharam Pal. Sacks marked as A-1 to A-5 (Ext. P-1 to P-5) were found to be 17.200 k.g., 20.500 k.g., 19 k.g., 19.200 k.g. and 19.100 k.g. respectively. The sacks were sealed with seal impression-A and taken into possession vide memo (Ext. PW-1/B). NCB form (Ext. PW-5/A), in triplicate, was filed up on the spot. Ruka (Ext. PW-3/A) was sent for registration of case through HC Albel Singh (PW-3). Resultantly F.I.R. No. 272/2010, dated 21.8.2010 (Ext. PW-3/B) was registered against the accused under the provisions of Section 15 of the Act, by Inspector Rajinder Kumar (PW-10) at Police Station Una Sadar, Distt. Una. Accused were arrested and necessary investigation conducted on the spot. The contraband substance was resealed in the police station by the Officiating SHO, SI Yashpal (PW-9) with seal impression-B and deposited in the maalkhana with MHC Ajaib Singh (PW-5) who made entries in the maalkhana register and handed over the sacks to Constable Surinder Singh (PW-6) for being deposited at the State Forensic Science Laboratory, Junga, for chemical analysis. Special report (Ext. PW-4/A) was sent to the superior officer through Constable Manoj Kumar (PW-7), which was received by ASI Surjit Singh (PW-4). Report (Ext. PW-11/J)) of the Forensic Expert was obtained by the police. Investigation revealed, complicity of the accused in the alleged crime, hence challan was presented in the Court for trial.

3. Accused were charged for having committed an offence punishable under the provisions of Section 15 of the Act, to which they did not plead guilty and claimed trial.

4. In order to prove its case, in all, prosecution examined as many as eleven witnesses and statements of the accused under Section 313 Cr. P.C. were also recorded, in which they took up the following common defence:

"We were going to Pir Nighah in a vehicle No. DL-8-0174 and the car was developed mechanical defect and was parked at Kalia Filling Station and were searching a mechanic on Hamirpur road near bus stand Una where we were apprehended by the police and a false case was registered against us."

In defence accused examined Dr. Kapil Sharma (DW-1).

5. Appreciating the material on record, including the testimonies of the witnesses, trial Court convicted all the accused of the charged offence and

sentenced as aforesaid. Hence, the present appeals.

6. We have extensively heard learned counsel appearing on both the sides and perused the record.

7. Mr. Peeyush Verma, learned counsel assails the judgment, bringing out the contradiction in the testimonies of the prosecution witnesses, with regard to the place where the contraband substance was weighed, which according to him are absolutely fatal. It is further argued that the appellant stands falsely implicated without any justifiable reason or cause. Also genesis of the prosecution case stands belied from the testimonies of independent witnesses who were declared hostile.

8. Mr. N.K. Thakur, learned Senior Counsel has argued that : (i) Prosecution story of having set up a Naaka on the spot stands falsified, in fact belied, through the testimonies of independent witnesses as also HC Albel Singh (PW-3) and Inspector R.R. Thakur (PW-11). (ii) Shri Harjit Singh, author of the Rukka, was not examined in Court. (iii) Sample seal was not produced by Dharam Pal (PW-1) in the Court. (iv) Prosecution has failed to examine the recipient of the case property at the Forensic Science Laboratory, Junga. Also, the mode of transportation, through which the contraband substance was carried, has not been proved on record. All this had rendered the prosecution case to be fatal.

9. On the other hand, Mr. Ashok Chaudhary and Mr. V.S. Chauhan, learned Addl. A.Gs. have supported the impugned judgment for the reasons set out therein.

10. It is a settled proposition of law that merely because a witness has turned hostile, his entire evidence cannot be termed to be unworthy of credence. It is for the Court to consider, whether as a result of contradiction, witness stands fully discredited or part of his testimony can still be believed. If the credit of a witness is not fully shaken, Court can rely upon that part of the testimony which appears to be creditworthy.

11. It is also a settled proposition of law that sole testimony of police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and if required duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in the success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people, in that event, no credibility can be attached to the statement of such witness.

12. It is not the law that Police witnesses should not be relied upon and their

evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. Rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of police administration.

13. Wherever, evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction. Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, AIR 2012 SC 1292 : (2012) CriLJ 1991 : (2012) 3 JCC 1714 : (2012) 3 SCALE 414 : (2012) 4 SCC 722 : (2012) AIRSCW 1994 ; Tika Ram v. State of Madhya Pradesh, (2007) 15 SCC 760 ; Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 ; and Aher Raja Khima v. State of Saurashtra, AIR 1956].

14. Apex Court in Tahir Vs. State (Delhi), (1996) 3 AD 206 : AIR 1996 SC 3079 : (1996) 1 Crimes 222 : (1996) 3 SCALE 41 : (1996) 7 SCC 498 : (1996) 3 SCC 338 : (1996) 3 SCR 757 , dealing with a similar question, held as under:--

"6.....In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

15. In view of the aforesaid statement of law, we shall now examine the testimony of prosecution witnesses.

16. Inspector R.R. Thakur (PW-11) who was posted as SHO, Police Station Sadar, Una, in court, has deposed that on 21.8.2010, he alongwith other police officials

was on patrolling duty at Ajnouli in a government vehicle. Report (Ext. PW-5/D) stands proved on record to such effect. He further states that at about 6.00 p.m., near Ajnouli railway crossing, they noticed a maruti car bearing No. CH-1B-5078 coming from Samoor Kalan side. On signal, the vehicle stopped and was checked. Accused Tarsem was on the wheels and accused Jagir Singh was sitting beside him. On the rear seat, accused Jasvinder Kaur and Baljinder Kaur were sitting. Police found one sack kept near the front seat and one sack kept in the middle of the rear seat. When the dicky of the car was searched, three plastic sacks were recovered. The sacks were opened in the presence of independent witnesses who also were present on the spot. These sacks contained poppy husk. Each sack was weighed and found to be 17.200 k.g., 20.500 k.g., 19 k.g., 19.200 k.g. and 19.100 k.g. respectively. The recovered sacks were sealed with seal impression-A, sample of which was taken on a piece of cloth (Ext. PW-1/A). Sacks (Ext. P-1 to P-5) were taken into possession vide recovery memo (Ext. PW-1/B). Driving licence (Ext. PW-11/A) of accused Tarsem Lal was also taken into possession. NCB forms (Ext. PW-5/A), in triplicate, were filled up on the spot and the sample seal handed over to witness Dharam Pal vide memo (Ext. PW-1/C). The memos were signed by the witness and the accused on the spot. He sent ruka (Ext. PW-3/A) through HC Albel Singh, on the basis of which F.I.R. (Ext. PW-3/B) was registered at Police Station Sadar Una, Distt. Una. Subsequently, with the completion of necessary formalities, he arrested the accused and informed them of the grounds of arrest (Ext. PW-11/C to Ext. PW-11/F). Statements of the witnesses under Section 161 Cr.P.C. were recorded. Statement of witness Sham Lal is Ext. PW-11/G and that of Dharam Pal is Ext. PW-11/H. The case property was entrusted to SI Yashpal (PW-9) who resealed the same with seal impression-B, impression of which was also taken on a piece of cloth (Ext. PW-9/A). Thereafter, case property was entrusted to MHC Ajaib Singh (PW-5). He prepared special report (Ext. PW-4/A) which was sent through Constable Manoj Kumar to the superior officer. Report of the chemical analyst (Ext. PW-11/J) was received and taken on record.

17. Perusal of cross examination part of testimony of this witness, in no manner, raises any doubt in our mind about the credibility or veracity of his statement. He is clear in deposing the events which took place on the spot. He has explained as to who all were accompanying him. Categorical denial of the suggestions put by the accused does not even remotely reflect his version to be untrue or false.

18. Now simply because there is no mention of the number of the F.I.R. in the NCB form (Ext. PW-5/A), as he admits in his testimony or that in the challan there is no reference of the seal impression so embossed in triplicate, would not render the genesis of the prosecution story to be false or prosecution case to be fatal. This we say so for the reason that there is overwhelming evidence on record linking the accused to the crime, clearly establishing the prosecution story of recovery of the contraband substance from their conscious possession.

19. HC Albel Singh (PW-3) has corroborated the version of Inspector R.R. Thakur

(PW-11). However, we find that there is slight contradiction in his version and that being, as to whether the contraband substance was taken to the shop of Dharam Pal where it was weighed or whether the scale and weights were brought from his shop to the spot where it was weighed. Now, even this contradiction, we do not find to be major or material for it stands explained by Inspector R.R. Thakur that the depot (shop) of Dharam Pal was just near the place of recovery of the contraband substance.

20. On material facts with regard to (a) presence of the police officials on the spot; (b) presence of accused persons on the spot; and (c) recovery and seizure, after resealing, of the contraband substance from the conscious possession of the accused, we find the testimonies of Inspector R.R. Thakur (PW-11) and HC Albel Singh (PW-3) corroborated by Constable Parshottam Lal (PW-8).

21. When we examine the testimony of Dharam Pal, we find him to have fully supported the prosecution case on material facts. The witness was declared hostile only when, in court, he refused to identify the accused persons from whose possession the contraband substance was recovered. However when cross examined by the Public Prosecutor, he categorically named the accused who signed/put their thumb impression on the memo of recovery/identification (Ext. PW-1/A), on which, he also appended his signatures. He also admits the memo of possession of the contraband substance as also the vehicle in question to have been taken into possession by the police and the same to have been signed/thumb marked by the accused persons in his presence. He admits portion A to A of the statement (Ext. PW-11/H), with which he was confronted, to be correct wherein it is recorded that "you in presence of me and Sham Lal checked a white coloured maruti car bearing No. CH-01-B-5078 in which two male persons and two females were found sitting of which the females were sitting on the rear seat. The driver on asking disclosed his name as Tarsem Lal and the other person sitting next to him disclosed his name as Jagir Singh whereas the females sitting on the rear seat disclosed their names as Jasvinder Kaur and Baljinder Kaur @ Kali". Witness admits the sacks taken into possession by the police to be the ones produced in court. In this view of the matter, his earlier version of not remembering the names/identity of the four persons, two males and two females, travelling in the car, which was checked by the police, pales into insignificance.

22. We notice that even Sham Lal (PW-2) refused to identify the accused persons, but however when cross examined by the Public Prosecutor he clarified that "It is correct that male accused persons told their names to be Tarsem Lal and Jagir Singh". The said persons are the accused. Though he does not state anything with regard to the identify of the two females present on the spot, but however he admits his signatures on memos (Ext. PW-1/A, 1/B and 1/C) recording their presence. The witness also admits that the police had taken into possession sacks (Ext. P-1 to P-5) from the spot when the vehicle was checked. Thus, in our considered view, version of the police officials, in fact, stands

corroborated, to a large extent, by the independent witnesses.

23. We find that even by way of link evidence, prosecution has been able to establish its case. SI Yashpal (PW-9) has categorically deposed that he resealed the parcels with his seal impression-B. The specimen seal was produced by him in court.

24. MHC Ajaib Singh (PW-5) also states that the case property was handed over to him by SI Yashpal. He made entries in the register (Ext. PW-5/C). He further states that on 23.8.2010, the contraband substance alongwith the road certificate and NCB forms were handed over to Constable Surinder Singh for being deposited at the State Forensic Science Laboratory, Junga, which version stands corroborated by Surinder Singh (PW-6). SI Yashpal, HC Ajaib Singh and Constable Surinder Singh, in their un-rebutted testimonies, have stated that so long as the case property remained in their custody, it was not tampered with. Report of the Forensic Science Laboratory clearly establishes the contraband substance to be a psychotropic substance. PW-6 has explained that he took the case property in a Government vehicle which he deposited with the appropriate authority at the State Forensic Science Laboratory, Junga. Report (Ext. PW-11/J) clearly establishes such fact which was never disputed before the trial Court.

25. Further we find that special report (Ext. PW-4/A) prepared by Inspector R.R. Thakur was sent to the office of the Superintendent of Police, through Constable Manoj Kumar (PW-7) whose testimony remains un-controverted. This witness handed over the same to ASI Surjit Singh (PW-4) who admits the report to have been received by him.

26. It is true that Dharam Pal and Sham Lal have deposed that the police had set up a naaka on the spot whereas police officials are silent on this aspect. Would this fact render the genesis of the prosecution case to be doubtful? In our considered view, No. Inspector R.R. Thakur states that at about 6.00 p.m., police party, in a government vehicle, went from bus stand Una to Ajnouli and reached at the railway crossing. He does not state that from the moving vehicle the maruti car was signalled to stop. In any event, presence of the police on the spot stands acknowledged by Dharam Pal and Sham Lal.

27. Absence of examination of SI Harjit Singh, author of the ruka (Ext. PW-3/A), in no manner, renders the prosecution case to be doubtful. After all Inspector R.R. Thakur does state that the ruka prepared on the spot was sent through HC Albel Singh, which was received in the police station, as is so deposed by Inspector Rajinder Kumar (PW-10), who registered the F.I.R. in question.

28. Non production of the sample seal by Dharam Pal would also not render the prosecution case to be doubtful in view of other overwhelming evidence with regard to the sealing of the contraband substance in the presence of independent witnesses. Version of Inspector R.R. Thakur with regard to handing over the sample seal to Dharam Pal cannot be discredited only for the reason that Sham Lal has not supported the prosecution, since we find other independent witness

to have supported the prosecution on this issue.

29. It is brought to our notice that there is cutting in the document (Ext. PW-5/B), reverse portion of the Road Certificate, rendering the prosecution version to be doubtful. We are not in agreement with the learned counsel on this issue. Word "four parcel" has been cut out to read as "five", but however from the Road Certificate itself we find that five parcels were sent, which were also received at the State Forensic Science Laboratory, Junga, as is evident from report (Ext. PW-11/J).

30. From the material placed on record, it stands established by the prosecution witnesses that the accused are guilty of having committed the offence charged for. There is sufficient, convincing, cogent and reliable evidence on record to this effect. The circumstances stand conclusively proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused stands proved beyond reasonable doubt to the hilt. The chain of events stand conclusively established and lead only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered fully establish completion of chain of events, indicating the guilt of the accused and no other hypothesis other than the same. It cannot be said that accused are innocent or not guilty or that they have been falsely implicated or that their defence is probable or that the evidence led by the prosecution is inconsistent, unreliable, untrustworthy and unbelievable. It cannot be said that the version narrated by the witnesses in Court is in a parrot-like manner and hence is to be disbelieved.

31. Thus, from the material placed on record, it stands established by the prosecution, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence, that accused committed the charged offence.

32. For all the aforesaid reasons, there is no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties. There is no illegality, irregularity, perversity in correct and/or in complete appreciation of the material so placed on record by the parties. Findings of conviction cannot be said to be erroneous or perverse. Hence, the appeals are dismissed.

33. Appeals stand disposed of, so also pending application(s), if any.

Records of the Court below be immediately sent back.