
(2004) 10 AP CK 0112

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1006 of 2004

Kommoji Kiran Kumar @ Kiran

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 25-10-2004

Acts Referred:

Arms Act, 1959 — Section 27

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 42, 50, 57, 8

Penal Code, 1860 (IPC) — Section 324, 34

Citation : (2005) 3 ALT(Cri) 483 : (2006) 1 RCR(Criminal) 586

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K. Srinivas, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Accused No. 1 in Sessions Case No. 29 of 2001 on the file of I Additional Sessions Judge, Guntur, aggrieved by the Judgment dated 11th day of May, 2004, had preferred the present Criminal Appeal.

2. The learned Judge on appreciation of the evidence of PWs1 to 7, Exs.P.1 to P.14 and MOs 1 to 3 recorded an acquittal as far as A-2 is concerned and also recorded an acquittal as against A-1 so far as it relates to the charge u/s 324 of Indian Penal Code, but however, recorded conviction u/s 8(c) read with 20(b)(i) of Narcotic Drugs Psychotropic Substances Act (hereinafter referred to as NDPS Act in short) and Section 27 of the Indian Arms Act. Hence, the present Criminal Appeal.

3. Sri K. Srinivas, learned counsel representing appellant would contend that for the purpose of establishing the offence under NDPS Act, the mandatory provisions of Sections 50 and 57 of the Act should have been complied with and in the absence of the same, conviction cannot be recorded. The learned counsel also would submit that even the conviction u/s 27 of the Indian Arms Act, cannot

be sustained for want of evidence. The learned counsel also would submit that PWs1 to 4 did not support the version of the prosecution and were declared hostile. PW.5 also had not supported the version of the prosecution and in the absence of any independent witness relating to either search or the seizure, on the strength of the evidence of PW6-Head Constable, PW7-Circle Inspector of Police, conviction cannot be recorded and hence, the conviction and sentence imposed as against the appellant-A1 are liable to be set aside.

4. Per contra, the learned Additional Public Prosecutor would submit that inasmuch as the offence u/s 20(b)(i) of the NDPS Act had been detected in the course of some other crime, there is no question of applying the mandatory provisions of Sections 50 and 57 of the NDPS Act. The learned Additional Public Prosecutor placed reliance on State of Punjab Vs. Baldev Singh, . He would also contend that PW.5 is panch witness, who supported the prosecution case in his chief examination, but, however, he was not inclined to support the prosecution case in toto as can be reflected from the way in which he answered in the cross-examination. He also placed reliance on Koli Lakhmanbhai Chanabhai Vs. State of Gujarat, and would submit that even if a witness is turned hostile the relevant portion of the evidence of that witness which supports the version of the prosecution definitely can be relied on. He also would contend that even in the absence of independent panch witness, the evidence of the investigating officers definitely can be relied upon and hence, in the light of the facts and circumstances, the conviction and sentences are to be confirmed.

5. Heard both the counsel.

6. The state represented by the Station House Officer, Pedakakani Police Station, filed charge sheet as against A-1 and A-2 under Sections 324 and 326 read with Section 34 IPC and also under Sections 8(c) read with Section 20(b)(i) of NDPS Act and 27 of the Indian Arms Act. As already aforesaid, acquittal was recorded as against A-2 and so far as it relates to the charge u/s 324 IPC, acquittal is recorded as against A-1 also, but however, A-1 was convicted for charges under Sections 8(c) read with Section 20(b)(i) of NDPS Act and 27 of the Indian Arms Act.

7. The case of the prosecution is that on 10-03-2001 at about 5.00 p.m. PW2-Mande Nalimrudula, who is the daughter of PW1-Mande Madhavi went to the public water tap in their locality to fetch water, but A2 pushed away PW-2 without allowing her to take water from the public tap. PW-1 went and questioned A2 for her illegal act. Then A1 came there with a chutney pounder and beat PW-1 on her shoulders indiscriminately and caused injuries on left hand and leg. PW2, PW3-Bathula Sangeetha and PW4-Jupudi Premaraju are witnesses to the occurrence. PW1 gave a report to PW6-H.C.414 of Peddakakani Police Station, who registered it as Crime No. 35 of 2001 under Sections 324 read with 34 IPC and took up investigation and arrested A2 on 15.5.2001 and sent her for remand. PW-7 also took up investigation. On 23.3.2001 at 11.00 a.m PW-7 arrested A-1 at Venigandla Centre of Pedakakani (V) in the presence of PW5 and

Tellapati Srinu including the Assistant Engineer, Electrical and seized two packets of ganja and a big knife of 15 1/2" long including 4" - 1" wooden handle, 1.2" width of iron blade from him. The ganja packets are of five grams each in weight. On the confession of accused, the chutney pounder used by him in beating PW-1 was also seized. He was also sent for remand adding Sections 8(c) read with Section 20(b)(i) of NDPS Act, 1985 and 27 of the Indian Arms Act. The ganja packets seized from A-1 were sent for examination through the Court. The Government Chemical Examiner for Prohibition and Excise, Regional Laboratory, Guntur, in their report dated 17.4.2001 certified that the packets are of ganja.

Dr. G. Hanumanthu, C.A.S., C.M.O., G.G.H., Guntur, who examined the injured PW1 opined that the injuries are simple in nature. Thus, A-1 having voluntarily caused simple hurt to PW-1 and was found in possession of ganja and big knife threatening public, rendered himself liable for punishment u/s 324 IPC and Section 8(c) read with Section 20(b)(i) of NDPS Act, 1985 and Section 27 of the Indian Arms Act while A2 u/s 324 read with 34 IPC.

8. The evidence of PWs1 to 7 was recorded and Exs.P.1 to P.14 and Mos 1 to 3 were marked. MO1 is knife, MO2 is two ganja packets and MO3 is Rokalibanda. PWs1 to 4 had not supported the version of the prosecution. PW5-Retired Assistant Divisional Engineer, A.P. Transco, no doubt while deposing in chief examination, he identified A-1 that present in the Court hall. Though this witness had supported the version of the prosecution to some extent in chief examination, in cross-examination he was not inclined to support the version of the prosecution and the prosecution also had cross-examined this witness. Much comment was made on the nature of evidence of this witness and there is no serious controversy that PW5 is not a Gazetted Officer. In STATE OF PUNJAB v. BALDEV SINGH the Apex Court held that:

"On its plain reading, Section 50 would come in to play only in case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or cause arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered the requirements of Section 50 of the Act are not attracted."

9. On the strength of this decision, submissions at length were made by the learned Additional Public Prosecutor that inasmuch as this offence u/s 8(c) read with Section 20(b)(i) of NDPS Act was detected during the course of investigation of some other offences, the question of complying with the mandatory provisions of the said Act in relation to search and seizure, would not be attracted. Apart from the evidence of PW5, the evidence of PWs6-Head Constable and PW7-Circle Inspector of Police is available on record. No doubt PWs6 and 7 in detail had deposed about all the details of investigation. Exs.P.2 to P.5 were marked in the 161 Cr.P.C. statements of PWs.1 to 4. Ex.P.8 is the mediators report. Ex.P.9 is the complaint of PW1. Ex.P.10 is the original F.I.R. Ex.P.11 is the rough sketch of

scene of offence. Ex.P.12 is Form No. 66. Ex.P.13 is the letter of advice. Ex.P.14 is the analyst report. MO1 is the Knife. MO2 is the two ganja packets. MO3 is the Rokali Banda. It is no doubt true that mandatory provisions of the NDPS Act may not be applicable to a case of this nature, in the light of the decision rendered by Apex Court referred to supra. But however, relating to the seizure of weapon MO1 and also MO2, other acceptable evidence to be on record for the purpose of sustaining conviction. PW1 herself deposed that she did not go to the Police Station on that day and she had not given any report to police and the signature shown to her in the report is that of PW1 and her signature was marked as Ex.P.1 and she was declared hostile. PWs2 to 4 were also declared hostile. PW5- Assistant Divisional Engineer, AP Transco who is not a Gazetted Officer, also was not inclined to support the version of the prosecution.

10. In the light of the fact that PW-1 herself was not inclined to support the version of the prosecution, though the mandatory provisions under NDPS Act need not be complied with in a case of this nature, in the absence of any acceptable independent evidence on the strength of the evidence of PWs6 and 7 alone, the Head Constable and Circle Inspector of Police, the conviction and sentence imposed as against the appellant-A1 cannot be sustained. The learned Additional Public Prosecutor no doubt made elaborate submissions that even on the strength of evidence of Investigating Officers, the search and seizure of Material Objects definitely can be believed. It is not the version of the prosecution that PW5 alone was available. Yet another panch witness was also available, but the said panch witness was also not examined, hence, on overall appreciation of the facts and circumstances, this Court is of the considered opinion that the appellant-A1 is entitled to the benefit of doubt and accordingly, the conviction and sentence recorded by the learned Judge are hereby set aside.

11. In the result, the Criminal Appeal is allowed and bail bonds of appellant-A1 shall stand cancelled.