
(2012) 07 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 164 of 2012

Nanak Chand alias Nanu

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 20(b)(ii)
(B)

Citation : (2012) 07 SHI CK 0018

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : Virender Singh Rathore, for the Appellant; A.K. Bansal, A.A.G., for the Respondent

Judgement

Surinder Singh, J.—The instant appeal has been filed by the appellant, hereinafter referred to as "the accused", feeling aggrieved by the impugned judgment of conviction and sentence passed by the learned Special Judge (FTC), Kangra at Dharamshala in RBT S.C.No. 34-I/VII/2010 decided on 9.3.2012, for the offence punishable u/s 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, in short "the Act", for allegedly keeping in his possession 370 grams of Charas in the recovered stuff of 1 Kilo and 610 grams and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 20,000/- and in default of payment of fine to further undergo simple imprisonment for three months. Detention period was ordered to be set off u/s 428 of the Code of Criminal procedure. In short, the facts giving rise to the present appeal are that on 3.12.2009, the Police party headed by PW15 ASI Sarabjeet Singh was present at G.T. Road, Damtal near Ram Gopal Mandir. At 9.30 p.m., they spotted the accused coming from the Railway Gate side having a polythene carry bag in his right hand. On seeing them, the accused tried to escape. On this police got suspicious and the accused was apprehended. His identity was asked. Thereafter, he was taken to traffic Police Post and the

polythene bag held by him was checked. It contained 1 kilo and 610 grams contraband stuff, as such it was sealed with seal impression "B" at three places in the presence of the witnesses and taken into possession vide memo Ext.PW1/A. Its specimen seal was also taken on a piece of cloth Ext.PW1/F. Seal after its use was handed over to PW1 HC Ravi Kumar. NCB forms in triplicate were filled in copy of one of which is Ext.PW15/A.

(ii) A ruqa Ext.PW15/B was prepared and sent to Police Station for the registration of the case on the basis of which FIR Ext.PW16/A was formally recorded. Site plan Ext.PW15/C was prepared. Accused was arrested and grounds of arrest were informed to him.

(iii) Accused alongwith case property was produced before PW16 Inspector/ SHO Karam Chand, who resealed the aforesaid parcel with his own seal impression producing English letter "R" at two places. Its impression was also separately taken on a piece of cloth Ext.PW16/C. The facsimile of the seal also taken on the NCB forms (Ext.PW16/E). Sealed parcel alongwith samples of seals, were deposited with PW9 MHC Vinod Kumar.

(iv) On the next day, during interrogation, the accused alleged to have made a disclosure statement Ext.PW1/D in presence of the witnesses that he has kept hidden "Chura-Post" in a gunny bag in his village Mohtli, which he could get recovered. Pursuant to it, 4 Kilo 240 grams "Chura Post" (Opium Poppy) was got recovered which was sealed with seal impression "B" after taking the seal from PW1 HC Ravi Kumar and was again handed over to him. This "Chura-Post" was also produced before the SHO aforesaid. It was resealed by him with the same seal and deposited on 4.12.2009 with MHC aforesaid regarding which he made an entry in the Malkhana register copy whereof is Ext.PW9/A and on the same day, he sent the case property through PW6 HHC Raj Kumar vide R.C. No. 241/21 for its examination in FSL Junga to which he deposited on the next day in the Laboratory and after getting its receipt on the Road Certificate it was handed over to the MHC in Police Station Indora.

(v) As per the report Ext.PW15/H of the analysis, the recovered stuff tested positive for Charas and the "Chura-Post" was "Poppy Straw

2. After completing the challan, it was presented in the Court for the trial of the accused. He was accordingly charge-sheeted, to which he pleaded not guilty and claimed trial. To prove its case, prosecution examined its witnesses and the accused was also examined u/s 313 of the Code of Criminal Procedure. The circumstances which were found attendant upon him were put, to which he denied. However, no evidence in defence was led.

3. The learned trial Court though acquitted him for the offence punishable u/s 15 of the Act, for Chura-Post (Opium Poppy) whereas, he was convicted and sentenced for the offence u/s 20(b)(ii)(B) of the Act for keeping in possession Charas as aforesaid, hence the present appeal.

4. Shri Virender Singh Rathore, learned counsel for the accused forcefully argued that there are material contradictions in the statements of the prosecution witnesses and the report of analysis is not linked with the recovered stuff, therefore, the accused deserves to be acquitted.

5. On the other hand, Shri A.K. Bansal, learned Additional Advocate General supported the impugned judgment of conviction and sentence.

6. I have given my thoughtful consideration to the rival contentions of the parties and carefully and cautiously examined the evidence on record.

7. During the hearing of this case to clarify the doubt, the case property i.e. the Charas parcel was ordered to be produced. The condition of the parcel so produced was noticed as recorded in para-1 of the order of even dated i.e. 31.7.2012. It reads as under:-

31.07.2012 Present: Mr. Virender Singh Rathore, Advocate, for the appellant..

Mr. A.K. Bansal, Addl.A.G., for the respondent.

A parcel purported to be of Charas in FIR No. 305 of 2009 produced having 4 seals in one and 4 in another end and all the seals are not decipherable. However, one corner's seal reads as either "K" or "R", but this seal is not matching with the sample of Seal "R" Ext.PW16/C. Even the letter against which this case property has been produced does not refer to any of the specimen of the seal used on the parcel, which has been produced by HC Ashok Kumar, Police Post Damtal. After perusal, the same has been returned back to HC Ashok Kumar present in the Court through learned Additional Advocate General intact and in the same position without opening it for its deposit in the Malkhana from where it was brought by him.

8. According to PW15 ASI Sarabjeet Singh, Investigating Officer on the recovery of the alleged stuff, it was sealed with seal impression "B" at three places in the same manner it was recovered in the presence of the witnesses and the seal after its use was handed over to PW1 HC Ravi Kumar and the parcel was produced before PW16 Inspector Karam Chand on the same day, who also confirmed that it was having three seals of "B" at that time, thereafter, he resealed it with his own seal impression "R" at "two" places. He also obtained the sample of seal separately on a piece of cloth and then it was deposited in the same condition with PW9 MHC Vinod Kumar. According to PW9 MHC aforesaid, its entry was made in the Malkhana register and the abstract thereof is Ext.PW9/A; entry is at Serial No. 829. Pertinently, there is a mention in the entry against this parcel that there were three seals impressions of "B" and "R" at five places as against "two" as stated by PW16 Inspector Karam Chand, which is contrary to the statement of PW16 Inspector Karam Chand.

9. Further, PW6 HHC Raj Kumar was entrusted the case property for its deposit in the Laboratory. He has stated that he had taken the parcel having three seals of "B" and two seals of "R", which was received in the Laboratory, but the R.C.

Ext.PW9/B is in consonance with the entry in Malkhana register, which says it was having 5 seals of "R". The receipt of Laboratory obtained on R.C. also says having received the parcel with "5" seals of "R" but the report of analysis at S.No. 7 reveals it was having "2" seals of "R". Thus, whole thing becomes fishy and irreconcilable.

10. Further, the case property was also ordered to be produced for perusal of this Court, the condition whereof is noted above. The seal impression "R" found in one corner of the said parcel also does not tally with the sample of seal Ext.PW16/C even the letter against which the case property was produced do not refer to any specimen of the seal used on the parcel produced before the Court through HC Ashok Kumar of Police Post Damtal.

11. Learned Additional Advocate General also failed to explain the above discrepancy which goes to the root of the case, which also remained un-noticed even by the learned trial Court. This rendered the whole prosecution case a suspect. The case cannot be said to have been proved in accordance with law.

12. Therefore, for the aforesaid reasons, the appeal is accepted and the impugned judgment of conviction and sentence passed by the learned trial Court is set-aside. Accused is acquitted by giving him the benefit of doubt. Since he is undergoing the sentence, is ordered to be released forthwith, if not required in any other case. The fine amount, if any, already deposited be refunded to the accused.

13. The Registry of this Court is hereby directed to issue the release warrant accordingly.

Cr.M.P.No.432 of 2012.

14. In view of the acquittal of the appellant in the instant appeal, this application has become infructuous. Send down the records.