
(2014) 09 SHI CK 0063
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 536/2010

Poshu Ram

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

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

Citation : (2014) 09 SHI CK 0063

Hon'ble Judges : Sureshwar Thakur, J; Rajiv Sharma, J

Bench : Division Bench

Advocate : Ajay Mohan Goel, Advocate and Vipul Sharda, Advocate for the Appellant; Ramesh Thakur, Asstt. A.G, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is instituted against the judgment dated 4.10.2010 rendered by the Special Judge, Fast Track Court, Kullu in Sessions Trial No. 9 of 2010 whereby the appellant-accused (hereinafter referred to as the "accused" for convenience sake), who was charged with and tried for offence punishable u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been convicted and sentenced to undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs. 1,50,000/- and in default of payment of fine, he was further directed to undergo simple imprisonment for a period of three years for the commission of offence u/s 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act. The period of detention undergone by the accused was ordered to be set off as per provisions contained u/s 428 of the Code of Criminal Procedure.

2. Case of the prosecution, in a nutshell, is that on 21.11.2009, PW-9 HC Paras Ram, SI Krishan Chand, PW-2 Het Ram, PW-10 HHC Amar Singh, constable Karamjore and PW-3 SI-SHO Narain Singh were present at Upper Mohal at 6.30

P.M. for patrolling. The vehicle was driven by Dinesh Kumar. Accused came from Pahnnullah towards the police party carrying a backpack. He started going backwards on seeking the police party. He was apprehended. HHC Amar Singh was sent to bring independent person. However, he could not get any independent person. He narrated this fact to the Investigating Officer. PW-1 Sita Ram was coming from Mohal. He, Het Ram and Karamjore were associated as witnesses. Accused was told that the police was suspecting possession of some narcotic. Accused was asked whether he wanted to be searched before a Magistrate or a competent Gazetted Officer. Accused consented to be searched by the police. Memo Ex. PW-1/A was prepared. Personal search of the accused was undertaken. Backpack Ex. P-2 was taken off. It was opened. It carried polythene bag containing charas. It was wrapped in red, blue and green coloured polythene wrappers Ex. P-3. It was found to be charas. It weighed 5 kgs. Sealing process was completed. Seal impressions were taken separately on separate pieces of cloth. NCB-1 form Ex. PW-3/B was filled in triplicate at the spot. The seal was handed over to witness ASI Het Ram after the use. Rukka Ex. PW-9/A was prepared, which was handed over to HHC Amar Singh. He on the basis of rukka Ex. PW-9/A recorded FIR Ex. PW-7/A. Statements of witnesses were recorded. The case property, sample seal, NCB-1 form in triplicate and other documents were produced before the Station House Officer Narain Singh in the Police Station for resealing. S.H.O. Narain Singh resealed the parcel with six impressions of seal "T". Seal impression Ex. PW-3/A was taken separately on a piece of cloth. Column Nos. 9 to 11 of NCB-1 form were filled and seal impression was obtained on the NCB-1 form. Case property was handed over to PW-4 MHC Kartar Singh alongwith NCB-1 form, sample seals "P" and "T" and other documents on 22.11.2009. MHC Kartar Singh made an entry at Sr. No. 180 in the Malkhana register vide Ex. PW-4/A. HC Kartar Singh handed over the parcels, sample seals "P" and "T", NCB-1 form in triplicate; copies of seizure memo, FIR and docket to PW-5 HHC Mast Ram on 22.11.2009 with the direction to carry these to Forensic Science Laboratory, Junga vide RC No. 165 of 09. HHC Mast Ram deposited these articles at Forensic Science Laboratory, Junga on 23.11.2009. Special report Ex. PW-6/A was handed over to HHC Amar Singh on 23.11.2009 with the direction to carry it to the Superintendent of Police. HHC Amar Singh handed over the special report to Superintendent of Police, Kullu. After chemical analysis, result of analysis Ex. PW-3/C was obtained. Investigation was completed and the challan was put up in the Court after completing all the codal formalities.

3. Prosecution examined as many as ten witnesses in all to prove its case against the accused. Statement of accused u/s 313 Cr.P.C. was recorded. He denied the case of the prosecution in entirety. Accused examined DW-1 Sonam Singh Chaudhary and DW-2 Nimi Devi in his defence. Learned trial Court convicted and sentenced the accused, as noticed hereinabove.

4. Mr. Ajay Mohan Goel has vehemently argued that the prosecution has miserably failed to prove its case against the accused.

5. Mr. Ramesh Thakur, learned Assistant Advocate General has supported the judgment passed by the trial Court.
6. We have heard the learned counsel for the parties and have gone through the judgment and record carefully.
7. PW-1 Sita Ram was declared hostile. However, he has admitted his signatures Ex. PW-1/A, Ex. PW-1/B, Ex. PW-1/C and Ex. PW-1/D.
8. PW-2 ASI Het Ram has deposed that on 21.11.2009 at about 6.30 P.M. accused came from Pahnnullah side towards them. He started going backwards. He was apprehended. Accused revealed his name. Amar Singh was sent to call the independent person. He did not find any independent person. One person was coming from Mohal. He revealed his name as Sita Ram. He was cited as a witness. Police told the accused that he has a right to be searched before a Magistrate or Gazetted Officer. Accused gave his consent to be searched vide memo Ex. PW-1/A. HC Paras Ram gave his personal search to the accused. Nothing was found in his possession. Backpack was opened. It contained charas. It weighed 5 kgs. Sample seal was taken separately on a piece of cloth. NCB-1 form was filled in triplicate. Cannabis was seized vide seizure memo Ex. PW-1/D.
9. PW-3 Narain Singh has deposed that HC Paras Ram handed over the case property, sample seal "P", NCB-1 form to him in the Police Station for the purpose of resealing. He resealed the parcel with six impressions of seal "T". Seal impression Ex. PW-3/A was taken separately on a piece of cloth. Thereafter, he filled column Nos. 9 to 11 of NCB-1 form. He obtained the seal impression on NCB-1 form Ex. PW-3/B. Case property was handed over to MHC Kartar Singh.
10. PW-4 MHC Kartar Singh has deposed that SHO Narain Singh handed over one parcel, which was sealed with ten impressions of seal "P" and six impressions of seal "T", sample seals "P" and "T", NCB-1 form and copy of seizure memo to him on 22.11.2009. He made necessary entries in the Malkhana register vide Ex. PW-4/A.
11. PW-5 Mast Ram has deposed that MHC Kartar Chand handed over one parcel sealed with ten impressions of seal "P" and six impressions of seal "T", sample seals "P" and "T", NCB-1 form and other documents to him on 22.11.2009. He has deposited the same at Forensic Science Laboratory, Junga on 23.11.2009.
12. Statements of PW-6 Saraswati, PW-7 Jaspal Singh and PW-8 Lal Singh are formal in nature.
13. PW-9 Paras Ram has deposed the manner in which accused was apprehended on 21.11.2009, search and seizure process was completed on the spot. Rukka Ex. PW-9/A was prepared. It was handed over to HHC Amar Singh. NCB-1 form was also filled in triplicate. Charas was seized vide memo Ex. PW-1/D. Parcel, sample seal and NCB-1 form were produced before SHO Narain Singh in the Police Station. He resealed the same.

14. PW-10 Amar Singh has deposed the manner in which accused was apprehended and the sampling, search and seizure process was completed on the spot. He was asked to bring independent persons. There were two houses near the bridge. He found one Sharda Devi in one house. She revealed that she was alone in the house and was unable to become a witness. Another woman, namely, Bimla Devi was found in the other house. She also declined to become a witness. One person was found coming from Mohal towards police party. He revealed his name as Sita Ram. He was associated as a witness.

15. Mr. Ajay Mohan Goel has vehemently argued that PW-1 Sita Ram has not supported the case of the prosecution. However, fact of the matter is that we have already noticed that PW-1 Sita Ram has admitted his signatures Ex. PW-1/A, Ex. PW-1/B, Ex. PW-1/C and Ex. PW-1/D. He has also argued that other independent witnesses though available were not associated. The fact of the matter is that PW-2 Het Ram has deposed that Amar Singh was sent to call independent persons. However, he could not find independent persons. It is in these circumstances, PW-1 Sita Ram was associated as independent witness. PW-9 Paras Ram has admitted that he had sent Amar Singh to bring independent witness. Amar Singh came back and told that he could not find any independent witness. PW-10 Amar Singh has deposed that he was sent to bring independent persons. There were two houses near the bridge. Neither Sharda nor Bimla agreed to become witness.

16. It is settled that the statements of official witnesses can be relied if these are consistent and inspire confidence. In the case in hand, statements of all the official witnesses are consistent and inspire confidence. All of them have unequivocally deposed the manner in which accused was apprehended and the charas was found from the bag of the accused. Rukka was sent on the basis of which FIR was registered. NCB-1 form was filled in triplicate. Resealing was done. Case property alongwith NCB-1 form, sample seals "P" and "T" and other documents were handed over to PW-4 Kartar Singh. PW-4 Kartar Singh made an entry at Sr. No. 180 in the Malkhana register vide Ex. PW-4/A. He handed over the parcels, sample seals "P" and "T", NCB-1 form in triplicate; copies of seizure memo, FIR and docket to PW-5 HHC Mast Ram on 22.11.2009. According to the report of Forensic Science Laboratory, Juna, the contraband was found to be cannabis. Charas was recovered from the exclusive and conscious possession of the accused.

17. Accordingly, in view of the analysis and discussion made hereinabove, the prosecution has proved its case to the hilt that the accused was found in conscious possession of 5 kgs of cannabis at the time when he was arrested. The Special Judge, Fast Track Court, Kullu has rightly convicted and sentenced the accused vide judgment dated 4.10.2010 and the judgment passed by the Special Judge does not warrant any interference.

18. Consequently, the appeal is dismissed.