
(2010) 03 P&H CK 0262
In the Punjab And Haryana At Chandigarh

Rinku @ Narender Kumar, Sandeep, Dariya Singh and Vinod Kumar APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 50

Citation : (2010) 03 P&H CK 0262

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—By this common order, all the four appeals are decided together. Criminal Appeal No. 1416-SB of 2003 has been preferred by Rinku @ Narender Kumar, Criminal Appeal No. 1523-SB of 2003 has been preferred by Sandeep, Criminal Appeal No. 1665-SB of 2003 has been preferred by Dariya Singh and Criminal Appeal No. 1779-SB of 2003 has been preferred by Vinod Kumar. All the four appellants have been convicted vide impugned judgment dated 16.7.2003 rendered by the Additional Sessions Judge, Sirsa. Vide order dated 17.7.2003, the appellants were sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/- each. In default of payment of fine, they were ordered to undergo further rigorous imprisonment for two years.

2. These four appellants were named as accused in case FIR No. 48 dated 18.6.2001 registered at Police Station Baragudha u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as, 'the Act'). Their co-accused Mukesh Kumar brother of Vinod Kumar appellant was acquitted. Another co-accused Shish Pal @ Pala Ram was declared as proclaimed offender. He was lateron apprehended and convicted vide separate judgment dated 14.8.2003.

3. Shish Pal @ Pala Ram filed Criminal Appeal No. 1548-SB of 2003. That shall be decided separately as the evidence in that appeal is different.

4. Facts of the case can be briefly noticed as under:

5. SI Tara Chand PW6 had sent a ruqa Ex.PG to the SHO, Police Station Baragudha for registration of the case. On the basis of this ruqa, a formal FIR Ex.PG/1 was registered. SI Tara Chand along with his companion officials was present near the petrol pump of Village Khairka for detection of crime, when a special informant supplied an information that Rinku @ Narender Kumar son of Ram Kumar, Sandeep son of Mewa Singh, Dariya Singh son of Yad Ram, Vinod Kumar and Mukesh Kumar sons of Amar Singh, Pala Ram son of Mam Raj have stored jute bags containing poppy husk in the house in the fields (Dhani) for selling the same. A jeep No. HR-24-0486 was also parked there for supplying the poppy husk. In case, immediately a raid was conducted, the persons could be apprehended at the spot along with the poppy husk. Considering the information to be reliable, a raiding party was constituted and the house of Vinod Kumar and Mukesh Kumar was raided. On seeing the police party, Mukesh Kumar co-accused, who was acquitted after trial and Pala Ram who was lateron declared as a proclaimed offender, succeeded in running away from the spot. The remaining four accused Rinku @ Narender Kumar, Sandeep, Dariya Singh and Vinod Kumar were found present in the room, sitting over the jute bags containing poppy husk. SI Tara Chand PW6 served a notice u/s 50 of the Act upon the accused to exercise option as to whether they intended to be searched in the presence of a Magistrate, or a Gazetted Officer or from the Investigating Officer. The accused gave their consent that they wanted to be searched by a Gazetted Officer. Accordingly, the services of DSP Rai Singh were requisitioned. On arrival of DSP Rai Singh PW5, a request was made to Birbal Sarpanch, Ram Swarup Lamberdar, Bahadur Panch, Prabhu Ram Ex. Panch and about 200 persons gathered at the spot to join the investigation and to become independent witnesses but the same was declined. On the instructions of DSP, 61 bags stored in the room were opened. Out of these 61 bags, 55 gunny bags contained 42 Kilograms each of poppy husk and 6 plastic bags contained 22 Kilograms each of poppy husk. From each of the bags, two samples of 200 grams were drawn and the jute bags of poppy husk were taken into possession vide recovery memo. Procedure for search, seizure and drawing of samples was undertaken.

6. The above said FIR was investigated. A report u/s 173 Cr.P.C. was submitted.

7. Vinod Kumar, Dariya Singh, Rinku alias Narender Kumar and Sandeep were charged by the Court of Additional Sessions Judge, Sirsa. The charge stated that on 18.6.2001 in the area of Village Fatehpuria, these accused along with Mukesh Kumar and Pala Ram were found in possession of 2332 Kilograms of poppy husk without any permit or licence.

8. Mukesh Kumar was apprehended lateron. A separate charge was drawn against him on 10.12.2006.

9. Prosecution examined Budh Ram, Registration Clerk as PW1. He stated that jeep No. HR-24-0486 belonged to Pala alias Shishpal and he was the registered owner.

10. Satbir Singh HC PW2 tendered into evidence his affidavit Ex.PA. In the affidavit, it was stated that this witness was posted as Moharrir Head Constable and was in-charge of the Malkhana. On 18.6.2001 SI Tara Chand PW6 had produced 122 sample parcels of poppy husk each containing 200 grams of poppy husk and these samples were handed over to Constable Dharamvir for taking the same to Forensic Science Laboratory, Madhuban. The samples were entrusted to Constable Dharamvir on 2.7.2001. On the same day, he deposited the same in Forensic Science Laboratory, Madhuban and on 3.7.2001 he handed over the receipt to Moharrir Head Constable. In cross-examination this witness stated that SI Jagdish Chander was the S.H.O. Case property was deposited with this witness on 18.6.2001 at 11.00 P.M. On 2.7.2001 he had handed over the sample parcels to Constable Dharamvir at about 6.15 A.M.

11. Dharamvir Singh Constable PW3 tendered into evidence his affidavit Ex.PB. In cross-examination, he stated that on 2.7.2001 the sample parcels were handed over to him at about 9.00 A.M. for taking the same to Forensic Science Laboratory, Madhuban.

12. Jagdish Chander SI/SHO appeared as PW4. He stated that on receipt of a ruqa Ex.PC, he had recorded formal FIR Ex.PC/1. On the same day, the accused, case property, jeep, two mobile phones and a stitching machine were produced before him. The bags containing 41 Kgs. and 600 grams of poppy husk were exhibited as Exs.P1 to P55, small bags containing 21 Kgs. and 600 grams of poppy husk were exhibited as Exs.P56 to P61, mobile phones Exs.P62 and P63, second samples Exs.P64 to P124, the stitching machine Ex.P125, the weighing scale Ex.P126 and the weight of 5 Kg. as Ex.P127. This witness in cross-examination stated that the accused were produced before him at 10.15 or 10.30 P.M. It was further admitted that he had mentioned in his report about the production of mobile phones, a stitching machine, a weighing scale and the weights. His cross-examination further states that three seals of `TC" and one seal of `RS" were affixed on each of the parcels and the bags. He had not made any writing on any of the parcels. The ruqa was received by him at about 8.30 P.M. He had not made any writing that he had also weighed the bags. This witness had not examined the papers of the jeep. Tara Chand SI PW6 took the accused to CIA Staff, Sirsa for interrogation. The witness further stated that he cannot identify any of the accused individually.

13. Rai Singh DSP appeared as PW5. He stated that on his arrival search was conducted. The bags of poppy husk were taken into possession. The samples were drawn. The parcels containing the samples and the bags were sealed with the seals of `JC" and `RS". The seal of `TC" after use was handed over to SI Jagdish Chander. He retained the seal of `RS". In cross-examination this witness stated that he reached at the spot at 5.15 or 5.30 P.M. The Sarpanch

along with 150 persons was already present there in the Dhani when he reached there. No notice in writing to join the investigation was served on any of the villager. When he reached, the accused were standing in the compound of the Dhani. One or two ladies were also present. No revenue official was called in his presence to ascertain the ownership of the Dhani. This witness stated that he cannot say as to whether the accused were owners of the Dhani or not. It was further stated by this witness that he had not initiated any legal action against the persons who refused to become the witnesses.

14. SI Tara Chand appeared as PW6. He was the Investigating Officer. He deposed regarding various facets of investigation. He also stated that while reaching at the village, he joined Brij Lal, Ex-Sarpanch as an independent witness. In his presence, accused Mukesh and Pala Ram ran away after scaling the boundary wall. Both the accused were known to the Investigating Officer and Brij Lal. After the accused had exercised the option, DSP Rai Singh was requested to arrive at the spot. In his presence, search was carried out, recovery was effected and the samples were drawn. In cross-examination this witness stated that he had left CIA Staff, Sirsa at 1.40 P.M. Secret information was received at 3.30 P.M. Brij Lal had met them at 4.50 P.M. and they reached the spot at 5.00 P.M. This witness further stated that he had prepared the rough site plan of the place of recovery but the same was not available either on the judicial file or on the police file. This witness stated that he had given a note in the case diary about the preparation of the site plan. This witness further stated that he neither noted khasra numbers of the land in which the Dhani (farm house) was existing nor had verified from the Patwari about its ownership. It was further stated that Balbir Singh Ex-Sarpanch was present at the time of recovery but he refused to become the witness. He stated that he got his seal back after about 10 days. This witness denied the suggestion that Amar Singh was a supporter of Congress and contested the election against Brij Lal who was a candidate of Indian National Lok Dal.

15. Brij Lal PW was given up as won over by the accused. Report of Forensic Science Laboratory, Madhuban Ex.PK was tendered in evidence and thereafter the prosecution closed its evidence.

16. Statements of the accused were recorded u/s 313 Cr.P.C. They denied all incriminating circumstances put to them and pleaded innocence.

17. In defence, accused examined four witnesses.

18. DW1 Bhagwan Dass, Complaint Clerk from the office of Superintendent of Police, Sirsa produced the summoned file of enquiry regarding Sandeep accused.

19. Jagat Singh, DSP appeared as PW2 and stated that he had recorded the statements of various persons, including Brij Lal Ex-Sarpanch and came to a conclusion that they were not present at the time of alleged recovery. He also stated that since the challan had been presented, he had not drawn any final conclusion.

20. DW 3 Prabhu Ram, Panch of the village stated that no recovery was effected on the alleged day of occurrence.

21. DW4 Brij Lal who was joined as an independent witness by the prosecution has stated that in his presence no recovery was effected. In cross-examination, he stated that his signatures were obtained on blank papers.

22. I have heard learned Counsel for the parties.

23. Mr. J.V. Yadav, counsel appearing for appellant Vinod Kumar has submitted that the prosecution has miserably failed to connect the place of recovery with appellant Vinod Kumar. He has submitted that as per prosecution case, the Dhani (house in the fields) belonged to appellant Vinod Kumar and Mukesh Kumar. Prosecution case has not been believed qua Mukesh Kumar. DSP Rai Singh PW5 has stated that he had not examined any revenue official to ascertain ownership and possession of the Dhani. SI Tara Chand PW6 has stated that he had not noted the Khasra numbers of the land in which the Dhani existed. He has also not verified from the Patwari about ownership of the land. Therefore, no inference can be drawn against Vinod Kumar that he was owner in possession of the Dhani from where recovery was effected.

24. The learned Counsel also contended that samples were drawn and case property was deposited in the Malkhana. It is SI Tara Chand PW6 who had affixed his seal of `TC" on all the samples and contraband articles. The seal was not handed over to Brij Lal, an independent witness who later- on appeared as DW4 but the seal was handed over to SI Jagdish Chander PW4. Counsel has stated that samples were drawn on 18.6.2001. The samples were taken out of the Malkhana on 2.7.2001 for depositing the same in Forensic Science Laboratory, Madhuban. Counsel has read cross- examination of SI Tara Chand PW6 to say that SI Jagdish Chander PW4 had returned the seal after ten days. Therefore, it is submitted that the seal was with SI Jagdish Chander PW4 on 28.6.2001 and before the despatch of samples, possibility of the samples having been tampered and sealed again cannot be ruled out as the seal of `TC" can be affixed lateron. It is further submitted that samples of the case property were not produced before the Illaqa Magistrate. There is no evidence to this effect. It is also submitted that there is no justification as to why the Investigating Officer had not sent the samples to the Forensic Science Laboratory on the date when they were taken into possession by the Moharrir Head Constable. It is stated that an unusual delay took place in sending the samples to the Forensic Science Laboratory.

25. It is further contended by the learned Counsel that an independent witness Brij Lal has not supported the prosecution case. Rather, he appeared in defence to say that no recovery was effected and testimony of DW4 Brij Lal has been duly corroborated by DW3 Prabhu Ram who had also deposed that no recovery was effected from the accused. It is further urged that DW2 Jagat Singh DSP stated that after the occurrence, an enquiry was conducted and Brij Lal had deposed

before him that no recovery was effected. It is stated that it was mandatory for the Investigating Officer to comply with the provisions of Section 100 of the Act to join two independent witnesses. It is urged by the learned Counsel that a false excuse has been concocted by the prosecution to say that independent persons who were available at the spot had refused to participate at the time of recovery. It is further submitted that no action was initiated by the police against the witnesses who had refused to join the raiding party.

26. Mr. B.R. Gupta, learned Counsel appearing for appellant Rinku @ Narender Kumar has urged that it has come in the statement of PW6 SI Tara Chand that he had prepared a rough site plan but the same is not available either in the judicial record or on the police file. Mr. Gupta has submitted that by not examining the Draftsman who had prepared the scaled site plan and withholding the rough site plan prepared by the Investigating Officer, the Court has been denied the visual observation regarding the house, where-from the recovery was effected. It is submitted that in case a Patwari would have been examined, he may have disclosed to the Court regarding ownership and possession of the house in question.

27. Mr. Gupta has further submitted that a perusal of notice Ex.PG served u/s 50 of the Act reveals that a joint notice was served upon all the four accused and in reply to the notice, consent memo Ex.PE/1 was also jointly prepared. Counsel stated that it is the requirement of law that each accused should have been acquainted with such a valuable right independently and separately. It is stated that joint notice, as a matter of abundant caution, should not been taken into consideration.

28. Mr. Gupta has urged that there are contradictions in the testimonies of PW6 SI Tara Chand and PW4 Jagdish Chander. Counsel stated that SI Tara Chand PW6 to satisfy himself had weighed only one bag, whereas SI Jagdish Chander PW4 had weighed all the bags.

29. Ms. Monica Jalota, amicus curiae appearing for appellant Sandeep has stated that it has come in the testimony of DW2 Jagat Singh, DSP that during the course of enquiry, 20 witnesses were examined and they all stated that at the time of recovery Sandeep appellant was not present.

30. I have given a thoughtful consideration to the arguments advanced by learned Counsel for the parties.

31. This Court cannot become oblivious of the fact that in the present case a very heavy recovery of 2332 Kilograms of poppy husk had been effected and all the appellants were apprehended at the spot from a room where the same was stored. In the ruqa Ex.PC which was immediately sent, it was noticed that when the raid was conducted Birbal Sarpanch, Ram Swarup Lamberdar, Bahadur Panch, Prabhu Ram Ex-Sarpanch and about 200 people gathered at the spot. In the presence of such a large number of persons, foisting of such a heavy recovery becomes difficult and the accused cannot be falsely implicated. It is in

this context, that the arguments advanced are to be examined by this Court.

32. A star argument has been advanced that Brij Lal DW4 who was joined as an independent witness by the prosecution was dropped from the list of witnesses on the pretext that he was won over by the accused and was examined in the defence. Earlier, a suggestion was given to the witnesses that accused were falsely implicated as Brij Lal had contested the election against Amar Singh father of Mukesh Kumar and Vinod Kumar accused. The alleged hostility withered as he had appeared in defence to absolve the accused. Except this allegation, no other suggestion was advanced to impeach the credibility of official witnesses who had conducted the raid and effected the recovery. These witnesses had no animus against the accused.

33. Another argument advanced is that seals after use were not handed over to the independent witness but the same were handed over to SI Jagdish Chander PW4 and that too he returned the same to PW6 Tara Chand SI after ten days of the occurrence. Therefore, a doubt has been raised regarding genuineness of the samples. DSP Rai Singh PW5 stated that samples were sealed with the seals of 'JC' and 'RS'. The seal of 'TC' after use was handed over to SI Jagdish Chander PW4. If the seal of 'TC' could have been tampered with as alleged, the seals of 'JC' and 'RS' could have also been tampered with. These seals were intact. Therefore, this argument has also lost its sting.

34. A lot has been said that prosecution has failed to prove ownership and possession of the Dhani. This argument will pale into insignificance, as the accused were apprehended at the spot along with the contraband articles. They were sitting on the jute bags. Taking into consideration the totality of circumstances, this Court is of the view that there is no merit in the contention raised, as the implicit reliance has been placed on the testimonies of SI Tara Chand PW6 and DSP Rai Singh PW5 and they are free from blemish. Consequently, the present appeals being devoid of any merit are dismissed.

35. At this stage, Mr. D.N. Ganeriwala, counsel appearing for appellant Dariya Singh has submitted that the trial Court has pronounced the sentence of two years rigorous imprisonment in default of payment of fine. He has relied upon a judgment of Hon"ble Apex Court in Shanti Lal v. State of M.P. 2007(4) RCC 617 to say that awarding of sentence of two years rigorous imprisonment in default of payment of fine is harsh. Therefore, the sentence awarded in default of payment of fine be reduced. This prayer can be accepted. Accordingly, the sentence of ten years rigorous imprisonment and a fine of Rs. One lac is maintained. However, the default clause is modified and it is ordered that in case the amount of fine is not paid, the appellants shall undergo further rigorous imprisonment for six months.