
(2004) 05 MP CK 0055

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1501 of 2001

Roshan Singh and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

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

Citation : (2005) 1 MPLJ 292

Hon'ble Judges : Sugandhi Lal Jain, J

Bench : Single Bench

Advocate : Vijay Naik, for the Appellant; Dinesh Joshi for State, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Jain, J.

Appellant Roshan Singh, Radheshyam and Ram Singh stand convicted u/s 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "Act") and sentenced to R.I. for ten years and fine of Rs. 1,00,000.00 each, in default where of, to further undergo R.I. for three years each, vide impugned judgment and order dated 1-9-2001 passed by the Special Judge, Bhopal, in Special Case No. 14/2001.

The facts of the case lie within a narrow compass. On 26-2-2001 at about 11 P.M. Sub Inspector Dinesh Mishra of Police Station, T.T. Nagar, Bhopal along with head constable Ram Singh, constable Devendra Singh and driver of mobile unit left the police station for patrolling. An entry to the effect was made in Rojnamcha Sanha No. 1849. During patrolling, they were checking the vehicles and suspected robust and scoundrels. At about 5 AM the police party saw the appellants coming from the side of Dayanand Chowk along with bags in their hands. They were accosted and interrogated and were asked to give the search of their bags. At the time of search, Panch witnesses were also called. During

search, it was found that each of the three bags contained two packets of some powder having smell of brown sugar. An information to this effect was given to the senior officer. Dr. Harsh Sharma, a Forensic Scientist was called at the spot. Dr. Sharma also examined all the above packets and on preliminary examination, he opined that there is brown sugar in each packet.

Chhote Lai (PW-3) was called along with a balance to weigh the contents of the article found in the bags. The brown sugar was seized from Roshan Singh, Radhe Shyam and Ram Singh as per Ex. P-4, Ex. P-5 and Ex. P-6, respectively. On being weighed, the weight of the brown sugar recovered from Roshan Singh, Radhe Shyam and Ram Singh was found to be 1103 grams, 1051 and 1051 grams respectively. Five grams of brown sugar from each packet was separately seized. The appellants were arrested. Along with the seized articles they were brought to the police station and crime was registered. Seized brown sugar was handed over to Malkhana Incharge for its safe custody and full report mentioning arrest and seizure of articles were sent to S.D.O.P. The aforesaid samples were sent to F.S.L., Sagar. On analysis the seized article was found to be Brown Sugar.

After completion of investigation, a charge sheet was filed against the appellants for the aforesaid offence for which a charge was framed against the appellants.

Appellants abjured their guilt and pleaded that they have been falsely implicated. They are labourers and in search of work they were standing at Azad Chowk Market where police personnel asked them to sit in their vehicles as they required at police station for some works.

I have heard Shri Vijay Naik, learned counsel appearing for the appellants and Shri Dinesh Joshi, learned counsel for the State/respondent, and gone through the record of the case.

Shri Naik led me through the record and contended that the learned trial Judge erred in holding the appellants guilty of the offence charged. He submitted that the conviction and sentence of appellants is bad, improper and illegal. As against this learned counsel for the State has supported the judgment of the trial Court.

S.I. Dinesh Mishra (PW-11) has stated that on 25-2-2001 at about 11.40 P.M. he, along with head constables Devendra Tripathi, Ram Singh and driver of the mobile unit vehicle, Roop Singh left the police station T.T. Nagar for patrolling duty. This fact was recorded in Rojnamcha Sanha No. 1849 dated 25-2-2001. The police party was checking the vehicles and the suspected rogues and scoundrels. On 26-2-2001 at about 5 A.M., they saw the appellants coming from the side of Dayanand Chowk in suspicious manner. They were accosted and interrogated by them and were also called upon to give the search of their bags. They tried to avoid the same on some pretext or the other. Thereupon, the Panch witnesses were called and bags were checked in their presence. It was found that each bag contained two polythene packets giving the smell of brown sugar. Panchnama Ex. P-2 was prepared. The senior officers of the department were informed.

The witness has also stated that Dr. Harsh Sharma, Forensic Science expert was called. On a preliminary examination of the contents of packets, it was found that the same was brown sugar. Constable Dhruv Singh was sent to call some person along with a balance who brought Chhote Babu along with balance. On being weighed the weight of the brown sugar recovered from Roshan Singh, Radhe Shyam and Ram Singh was found to be 1213 grams, 1051 grams and 1051 grams respectively. The Panchnama of weighing was prepared as per Ex. P-3. Articles were seized from the appellants Roshan Singh, Radhe Shyam and Ram Singh as per Ex. P-4, 5 and 6 respectively. Specimen of the seal used was prepared as per Ex. P-7. Appellants were arrested and were brought to the police station along with the seized articles.

10-11. The evidence of this witness is corroborated by Devendra Kumar Tripathi (PW-2) who has stated that on 26-2-2001, at about 5 A.M. when the police party was checking the suspicious persons, the appellants were coming from the side of old Kabadkhana. When their bags were checked in presence of Panch witnesses, they were found in possession of two packets each of brown sugar.

Inspector Kulwant Singh (PW-12) has stated that Sub Inspector D.K. Mishra along with the appellants and brown sugar recovered from the appellants came to the police station and lodged the report Ex. P-25. Seized brown sugar was handed over to Malkhana Incharge.

Panch witnesses of the seizure Ashok Yadav (PW-1) and Kailash Chauhan (PW-8) have not supported Sub Inspector Dinesh Mishra.

Learned counsel for the appellants contended that when independent witnesses have not corroborated the statement of police officers, appellants could not have been convicted on uncorroborated testimony of the police officers.

The contention is not acceptable. Sub Inspector of police or a constable cannot be considered absolutely as partisan witnesses. The evidence of police officials cannot be discredited merely because they are police officials. There is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of police officials even if found reliable unless corroborated by some independent evidence. After careful scrutiny of the evidence of Dinesh Mishra and Devendra Kumar Tripathi, the trial Court found it to be trustworthy and reliable. After carefully perusing the evidence of police officials I also feel that the same inspires confidence and is trustworthy and reliable.

Learned counsel appearing for the appellants submitted that u/s 43 of the Act, search and seizure must take place before a public witness and failure to involve such witness could render the proceedings invalid. The documents prepared by Sub Inspector Dinesh Mishra at the spot bear the signatures of the Panch witnesses. Sub Inspector Mishra and head constable Tripathi categorically stated that two Panch witnesses Ashok Yadav and Kailash were present at the time of search and seizure. Therefore, merely because the public witnesses were won over by the appellants and they have not supported the prosecution case, the

entire proceedings cannot be said to be invalid.

Learned counsel for the appellants also submitted that it is also doubtful that the contents of the packets were weighed by Chhote Babu (PW-9). The witness has categorically stated that one constable borrowed his balance for about two hours and thereafter, returned the same. Proceedings of weighing the contents of packets were not performed by him.

Panchnama of weighing was prepared as per Ex. P-3. The witness admits his signature on the document wherein it is stated that weighing was done by this witness. Therefore, simply because the witness turned hostile and did not support the prosecution, it cannot be said that the contents of the packets were not weighed.

Learned counsel for the appellants also submitted that defence witness Vishnu has stated that the appellants are residents of Jail Road, Bhopal. They are labourers. The police personnel lifted the appellants from Azad Chowk. Next morning, he learnt that the appellants have been implicated in a false case. This witness has admitted in cross-examination that he did not go to the police station and did not enquire as to why appellants have been arrested. He did not approach the higher authorities in this matter. The evidence of this witness does not inspire confidence.

Learned counsel for the appellants vehemently argued that document Ex. P-23 reveals that on 26-2-2001 at 7 A.M. the powder in the bags of the appellants was found to be brown sugar. In the preliminary inquiry at 7 A.M. when Sub Inspector Dubey learnt that the article was brown sugar why the same was not seized immediately and why the seizure memo Ex. P-4, 5 and 6 were prepared between 10 to 11 A.M., is a question which remains unreplied.

From the Panchanama Ex. P-3, it appears that the powder recovered from the possession of the appellants was weighed at about 9.30 A.M., therefore its seizure at 10 O'Clock does not raise any suspicion.

Learned counsel for the appellants also submitted that the seized articles were not handed over to the Malkhana Incharge on 26-2-2001. In support of the contention learned counsel for the appellant relied on Ex. P-12(c) which is a photo copy and which bears some overwriting in column 2. Merely because some over writing was made in Ex. P-12(c), the police personnel cannot be held responsible for that. Ex. P-12 by which Malkhana Incharge was directed to keep the seized articles in a safe custody in the Malkhana does not bear any overwriting, therefore, it cannot be doubted that seized article was handed over to the Malkhana incharge for its safe custody without any delay. A Rojnamcha entry to this effect has been proved as per Ex. P-14(c), therefore, this contention also cannot be accepted.

Learned counsel for the appellants also submitted that the seized article is a very costly item. The appellants are labourers. It was not possible for them to procure

such a valuable item. Learned counsel submits that in fact the articles were recovered from other persons but they were spared and appellants have been made scapegoats.

There is no material on record to substantiate this contention. There is no reason to believe that Sub Inspector Dinesh Mishra has falsely implicated appellants. It cannot be said that police officers were interested in falsely implicating the appellants.

Learned counsel for appellants also submitted that report of proceeding was not sent to Superior Officer within stipulated time and on this ground alone, appellants are entitled to acquittal. It is true that mandate of law as incorporated in the Act is required to be strictly complied with in view of the grave consequence which are likely to be followed on proof of possession of illicit article. The safeguards in various provisions of the Act must be proved to have been strictly followed. But on carefully perusing the evidence of Devendra Kumar Tripathi (PW-2), Ram Suresh Shukla (PW-4) and Kulwant Singh (PW-12) it is proved beyond any shadow of doubt that a detailed report of proceedings of arrest and seizure was sent to C.S.P., Kotwali on 26-2-2001 as per Ex. P-10. From the endorsement of Ex. P-10 and from the evidence of Ram Suresh Shukla (PW-4) it is also proved that the report was received in the office of C.S.P. on 26-2-2001 itself. Thus, the report was sent within 48 hours next after the arrest and seizure.

Where the police official conducted search and recovered brown sugar and affixed seal on sample taken and the said sample was not shown to be tampered with till it reached the laboratory and the chemical analysis also testified same as brown sugar and other mandatory requirements of the Act were complied with and the defence of all the accused is found to be hypothetical, mere fact that report of seizure was not sent to superior officer within time cannot justify an acquittal.

The evaluation made by the trial Court of the evidence of material witnesses does not suffer from any illegality, manifest error or perversity. The trial Court carefully wrote the judgment, exhaustively considered the evidence and on an analysis reached to the conclusions which in my opinion, are preminently reasonable and support the order of conviction.

I do not find any substance in any of the contentions raised by the learned counsel for the appellant. The trial Court has considered and appreciated the evidence on record in proper perspective and there is no reason for interference with the conviction of the appellants. So far as sentence, the question of taking lenient view of mandatory provision with regard to sentence, the question of taking lenient view does not arise. Where the minimum sentence is awarded by trial Court it cannot be interfered.

In view of what has been discussed above, I do not find any merit in this appeal and the same is dismissed. The conviction and sentence recorded by the trial

Court is hereby maintained.