
(2011) 12 SHI CK 0221
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 556 of 2010

Shri Joginder Singh and Shri Sita Ram APPELLANT
Vs
State of H.P. RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

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

Citation : (2011) 12 SHI CK 0221

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surinder Singh, J.—The challenge in this appeal is laid by the convicts hereinafter referred as "the accused" to their conviction and sentence passed by the learned trial Court in Case No. 1-S/7/2009 decided on 6.12.2010 whereby they were sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 25,000/- each with the default clauses, u/s 20(b)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in short the Act, for allegedly keeping in possession 750 grams of charas.

2. Brief facts giving rise to the present appeal are that on 21.2.2008, accused persons were traveling in HRTC Bus, bearing registration No. HP-06-2830 enroute Chandigarh. Police party headed by PW7 Inspector SHO Brijesh Sood, Police Station Dharampur was on Naka near the gate of police station Dharampur, on the National Highway-22. During the intervening night of 20/21-2-2008 around 3.20 a.m., the aforesaid bus was stopped for checking. During the checking of the luggage of the passengers, lying on the over-head rack, police inquired about the ownership of a bag. It is alleged that Accused Sita Ram who was occupying seat No. 32 and another accused Joginder Singh seating over seat No. 26 claimed the bag. Accused Sita Ram was working as driver at Ludhiana and Joginder Singh conductor. Police included driver Shri Ashok Kumar

and conductor PW1 Raj Kumar crews of the bus wherein accused were traveling, as the independent witnesses. The identity of the accused persons was asked. There was less space and no proper light inside the bus, therefore, accused persons along with the bag having contraband along with aforesaid witnesses were taken to the room of the Police Station where the contents of the bag were checked and police recovered 750 grams of charas. From the recovered quantity, two samples of 50 grams each were separated and sealed with seal impression "A" and were marked as S-1. The remaining bulk was sealed separately with 9 seals of seal impression "A" and marked R-1. Sample of seal Ext. PW1/D was taken separately on a piece of cloth. NCB forms in triplicate were filled in on the spot. Seal after its use was handed over to bus driver Ashok Kumar. The recovered articles were taken into possession vide memo Ext. PW1/A which was signed by the independent witnesses aforesaid. Its copy was given free of costs to the accused. Bus tickets Ext. PW1/B and Ext. PW1/C against which the accused persons were traveling, were taken into possession vide memo Ext. PW7/A. FIR Ext. PW4/C was also registered against accused persons.

3. Ext. PW3/B is the list of vehicles number checked during the naka prior to the alleged recovery. Police also prepared the site plan Ext. PW7/B of the place of incident. Accused persons were arrested and grounds of arrest were informed to each of them in writing. The statements of the witnesses were also recorded.

4. Police had also taken photographs Ext. P1 to Ext. P3 after its recovery.

5. Special report Ext. PW2/A was prepared and sent to the Superintendent of Police Solan for information.

6. Case property along with sample of seal and NCB forms were deposited with PW4 MHC Bhagirath. He made its entry in the Rojnamcha on 22.2.2008. The photocopies whereof are Ext. PW4/A and PW4/B. On 22.2.2008, sample parcel S-1 along with same seals, NCB forms, police docket and other documents were sent for chemical analysis to FSL Junga through PW3 Constable Rajesh Kumar vide road certificate No. 152/07-08. The examination report of the Laboratory is Ext. PX. The sample was examined and it was opined to be sample of charas.

7. After completing investigation, challan was presented in the Court for the trial of the accused persons. They were accordingly charge- sheeted for the offences aforesaid to which they denied and claimed trial.

8. To prove its case, prosecution examined its witnesses and accused persons were also examined u/s 313 of the Code of Criminal Procedure.

9. Both the accused persons belonged to the same village and admitted that they were traveling together in the bag but denied the possession of the bus in question which led to the recovery of the charas.

10. The learned trial Court believed the prosecution evidence, convicted and sentenced both of them, as aforesaid hence the present appeal.

11. Shri Ajay Kochhar, learned counsel for the accused persons vehemently argued that there is no cogent evidence to link the accused persons with the bag in question. No one had seen them handling the bag. The story projected by the prosecution that both the accused persons claimed the bag is wrong and contradictory. Hence the prosecution evidence is not confidence inspiring and the learned trial Court conveniently ignored the above facts.

12. Contra Shri A.K. Bansal, learned Additional Advocate General supported the impugned judgment of conviction and sentence and further ventilated that the recovery from the accused persons stands proved and the link evidence is complete. Therefore, there is no error in the impugned judgment.

13. I have given my thoughtful consideration to the respective contentions raised by the parties and have carefully and cautiously re-appraised the evidence on record.

14. The prosecution relies on the oral testimonies of the witnesses regarding the claim of bag staked by the accused persons which ultimately led to the recovery of 750 grams of charas. Out of two independent witnesses, prosecution only examined PW1 Raj Kumar bus conductor. The another witness, who was entrusted with the seal used at the time of sampling was the driver of the bus, was not examined.

15. Admittedly both the accused persons were traveling in the said bus. One was occupying seat No. 26 and another seat No. 32 in the aforesaid bus. PW1 aforesaid stated that on inquiry made by the police regarding ownership of the bag Ext. P7, lying on the overhead rack, the accused persons told that it belonged to them and accused Joginder Singh claimed that it contained his luggage/articles. He also proved tickets Ext. PW1/B and Ext. PW1/C issued by him to them. In cross examination he could not say which bag on the rack belonged to which of the passengers and from which station it was carried inside the bus. He stated that he did not personally know regarding ownership of the bag but he only came to know when the accused persons claimed it. Pertinently, he stated that with respect to claim raised by the accused persons, the SHO/ Incharge had recorded the statements of accused persons inside the bus itself which was signed by each of them and on the basis of that statement made by the accused persons inside the bus, he came to know that the bag belonged to them otherwise, he was not having any personal knowledge about it. Whereas PW3 Constable Rakesh Kumar who happened to be present at the time of recovery stated that during the checking of the bus by the police, the bag was found on the rack and on inquiry by the police, accused claimed it to be their own. In cross examination he stated that he did not ask from the conductor of the bus from where the bag was put in the bus and there was nothing inside the bag to identify the same belonging to the accused persons. He did not state about recording any statement of the accused owning the bag. Thus, he dislodges the version given by PW1 Raj Kumar that the statement with respect to the claim was recorded by the police, as aforesaid. However, he categorically

denied this fact and stated that no such proceedings were conducted inside the bus though they came to know regarding the contraband at the time of its recovery inside the bus. He also stated that the proceedings were conducted in the police station but could not say in whose possession the alleged bag remained from bus to Police station although it was picked-up by the SHO from the rack. He further stated that it was not clear in the entire proceeding as to who brought this bag along with him inside the bus and as to from what Station this bag was kept inside the bus on the rack and by whom.

16. Further, PW7 Dy. S. P. Brijesh Sood stated that he did not take any statement of any of the persons regarding ownership of the bag and from where the bag was brought inside the bus. According to him, it was not required as the accused persons had already claimed its ownership. He also stated that when the disclosure statement was recorded at that time accused persons were not in his custody as they were not arrested. With the same breath he stated that since the possession of the bag was not disputed therefore, he did not record the disclosure statement. He categorically stated that no written proceeding was conducted inside the bus which fact goes contrary to the version given by independent witness PW1 aforesaid.

17. Only the aforesaid witnesses were examined and are relevant so far as the claiming of ownership by the accused persons is concerned.

18. It is well settled that in criminal jurisprudence evidence has to be evaluated on the touch stone of consistency. Consistency is the key word for upholding the conviction of an accused. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses thereby satisfying the test of consistency in evidence amongst all the witnesses. [C. Magesh and others versus State of Karnataka (2010) 2 SCC (Cri) 1318.

19. Now examining the aforesaid statements of the witnesses, I do not find that these pass through the result of consistency as held by the apex court.

20. Statement of PW1 Raj Kumar is juxtaposite to the statements of other official witnesses with respect to the statement qua the bag belonging to them. The statement of PW1 is quite categorical that the police had recorded the statement which was signed by the accused persons in the bus itself whereas official witnesses denies this fact. Further, the statements of aforesaid witnesses also falls on the ground of probity that no one will claim the possession of the bag if they know fully well that it contained contraband. Further I also do not find any connecting evidence that the bag belonged to the accused persons or either of them. The above position apart, the report of analysis Ext. PX is also not

connected with the alleged recovery because as per report of examiner, one sealed parcel S-1 bearing 4 seals of "A" was examined by the Chemical Examiner in the Laboratory and after its examination, it was returned to the concerned police station. Ext. P4 is the remaining bulk which was exhibited and opened during the trial when PW1 Raj Kumar was examined. He identified other parcels Ext. P5 and Ext. P6 as the sample parcels. Even Ext. P5 sample parcel was allowed to be opened in his statement and contents thereof were exhibited as Ext. P16. The condition of the seals and seal impressions were not noted. After exhibiting it was re-sealed with the seal of the Court. Pertinently during the trial PW7 Dy. S.P. stated that sample Ext. P6 was sealed with seal impression "A" meaning thereby it was not the parcel examined by the Laboratory

21. Also I find that as per road Certificate Ext. PW4/A one of the samples parcel was deposited in the Laboratory along with sample of seals, NCB forms in triplicate, copy of FIR and the memos but there is no certification by the Chemical Examiner that seal found on the sample parcel tallies with the seal sent separately as alleged to have affixed on the NCB forms(s). Such an omission itself is fatal to the case of the prosecution as the tampering of the sample cannot be completely ruled out so as to inspire confidence in its case.

22. For the foregoing reasons, the appeal is allowed as the prosecution has failed to prove the case against the accused persons in accordance with law. Therefore, the conviction and sentence passed by the learned trial Court is hereby set aside.

23. Consequently accused persons are acquitted. Since accused persons are in Jail, serving out the sentence, they be released forthwith, if not required in any other case. Registry is directed to issue release warrants of the accused persons forthwith.

24. Send down the record forthwith.