
(2015) 12 SHI CK 0044
In the High Court Of Himachal Pradesh
Case No : Criminal MP(M) No. 1170 of 2015

State of Himachal Pradesh

APPELLANT

Vs

Laiq Ram and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 29

Citation : (2016) CriLJ 1065

Hon'ble Judges : Rajiv Sharma and Piar Singh Rana, JJ.

Bench : Division Bench

Advocate : J.S. Guleria, Assistant Advocate General, for the Appellant

Final Decision : Disposed Off

Judgement

Piar Singh Rana, J.

Order under Section 378(3) of Code of Criminal Procedure 1973:---

1. Present petition is filed under Section 378(3) of Code of Criminal Procedure for grant of leave to appeal against judgment of acquittal dated 31.3.2015 passed by learned Special Judge-I Shimla District Shimla in Sessions trial No. 15-S/7 of 2010 titled State of H.P. v. Laiq Ram and others under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act 1985.

Brief facts of the case

2. It is alleged by prosecution that on 14.2.2009 at about 5.15 PM at place Sandoha on Shimla Sunni Public road within the jurisdiction of P.S. Dhalli District Shimla police party headed by SI Keshav Singh and consisting of ASI Chet Ram, ASI Mohinder, HC Hemant, C. Dalip Kumar, C. Rajinder, C. Rajesh Kumar, C. Sushil Kumar and C. Govind Ram were on patrolling duty in government vehicle. It is alleged by prosecution that Max-pickup jeep bearing No. HP-09A-1315 came at the spot which was driven by accused namely Amar Chand and remaining

accused namely Laiq Ram, Amar Singh and Partap Singh were sitting inside the jeep. It is further alleged by prosecution that accused could not produce the documents of vehicle and accused persons became perplexed. It is alleged by prosecution that on suspicion the vehicle was searched and consent memo Ext. PW1/A was prepared. It is alleged by prosecution that after search one bag was found containing eight hides(skin) of leopard and one another polythene bag was found containing 500 grams of charas. It is alleged that two samples of charas 25 grams each were separated and thereafter recovered charas and sample of charas were sealed in two separate parcels Ext. P1 and Ext. P3 which were taken into possession vide seizure memo Ext. PW1/E and said memo Ext. PW1/E was signed by independent witnesses Narayan Singh and Tajinder Singh along with accused persons. It is further alleged that recovered hides (skin) of leopard were handed over to Forest Guard Hira Lal vide memo Ext. PW1/E. It is further alleged by prosecution that Investigating Officer clicked photographs of spot Ext. PW11/A to Ext. PW11/D and personal search of accused persons was conducted vide memos Ext. PW17/B to Ext. PW17/E and spot ruka Ext. PW17/F was sent to police station Dhalli and thereafter FIR Ext. PW1/G was registered against accused persons. It is alleged by prosecution that NCB form Ext. PW17/K was duly filled and sample of seal impression "C" was obtained on separate piece of cloth Ext. PW17/A. It is further alleged by prosecution that thereafter on 17.7.2009 PW10 HC Shiv Kumar handed over one sealed parcel to C. Parma Nand for carrying the same to FSL Junga vide RC No. 36 of 2009 Ext. PW10/B and thereafter on 24.4.2010 MHC PW10 Shiv Kumar also handed over two parcels to PW4 C. Anil Kumar for carrying the same to FSL Junga vide RC No. 70 of 2010 Ext. PW10/B. It is alleged by prosecution that reports of FSL Junga Ext. PW17/L-1 and Ext. PW17/L-2 were obtained and thereafter statements of prosecution witnesses recorded as per their versions. It is alleged by prosecution that thereafter police prepared separate challan regarding recovery of hides of leopard and presented the same in Court.

3. Charge was framed against accused persons vide order dated 10.5.2012 under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act 1985. Accused persons did not plead guilty and claimed trial.

4. Prosecution examined seventeen witnesses as mentioned in annexed Form-A with judgment and also tendered documentary evidence as mentioned in annexed Form-B with judgment. Statements of accused under Section 313 Cr.P.C. recorded. Accused persons examined one witness in defence.

5. Learned Special Judge Shimla acquitted the accused persons qua offences under Sections 20 and 29 of NDPS Act 1985 after giving them benefit of doubt.

6. Feeling aggrieved against the judgment passed by learned trial Court State of H.P. filed present appeal against acquittal and sought permission for grant of leave to appeal.

7. We have heard learned Assistant Advocate General appearing on behalf of the

petitioner and also perused the record.

8. Following points arise for determination in present petition:---

"1. Whether it is expedient in the ends of justice to grant leave to appeal under Section 378(3) of Code of Criminal Procedure 1973 against judgment of acquittal dated 31.3.2015 passed by learned Special Judge Shimla in Sessions trial No. 15-S/7 of 2010 titled State of H.P. v. Laiq Ram and others as alleged in memorandum of grounds of petition?

2. Final Order."

Findings on Point No. 1 with reasons

9. We have carefully perused the judgment passed by learned Special Judge Shimla placed on record. It is the case of prosecution that charas measuring 500 grams was found from exclusive and conscious possession of accused. Seizure memo of charas was prepared in presence of independent witnesses namely Narayan Singh and Tajinder Singh. We are of the opinion that seizure memo of contraband is a substantial document of evidence in NDPS cases. In present case independent witness namely PW15 Narayan Singh did not support the prosecution story as alleged by prosecution. PW15 independent witness has stated in positive manner that no incriminating substance i.e. charas was recovered from possession of accused in his presence. On contrary police officials have stated that charas was recovered from conscious and exclusive possession of accused in their presence. Learned Special Judge Shimla has acquitted the accused on the ground of two views theory. It is well settled law that when two contradictory views are possible as per testimonies of eye witnesses then view favourable to accused should be adopted by Court. Learned trial Court has specifically held in judgment that there is material improvement and contradiction in testimonies of police officials. It is well settled law that if two views have emerged in the prosecution case then view favourable to the accused has to be taken into consideration. See: 1998(2) SLJ 1408 , titled Shashi Pal and others v. State of H.P. See: State of H.P. Vs. Sudarshan Singh, . Also see Mulak Raj and others Vs. State of Haryana, . It was held in case reported in Latest HLJ 2004 HP 642 (DB) titled State of H.P. v. Hanchoo alias Stewart that if in NDPS case independent witness did not support prosecution then benefit of doubt should be given to accused.

10. In view of the fact that learned Special Judge Shimla has acquitted the accused persons on the concept of two views theory and in view of the fact that PW15 Narayan Singh independent witness of seizure memo did not support the prosecution and did not incriminate the accused persons and in view of the fact that learned Special Judge has relied upon rulings reported in Latest HLJ 2010 (HP) 705 titled State of H.P. v. Manohar Lal, Latest HLJ 2009 (HP) 774 titled State of H.P. v. Man Singh, Latest HLJ 2009(HP) 835 titled State of H.P. v. Bhangi Ram, 2014(3) Him.L.R. (DB) 1391 titled Mohammad Rafik v. State of H.P., State of H.P. Vs. Deen Mohammad, , State of Himachal Pradesh Vs. Sangat Ram and

Another, and Latest HLJ 2006(HP) 256 titled Sonu v. State of H.P. we are of the opinion that it is not expedient in the ends of justice to grant leave to appeal against judgment of acquittal passed by learned Special Judge Shimla. Point No. 1 is answered in negative.

Point No. 2 (Final Order)

11. In view of our findings on point No. 1 petition filed under Section 378(3) of Code of Criminal Procedure 1973 against the judgment of acquittal is dismissed and it is held that there are no sufficient grounds for grant of leave to appeal against judgment of acquittal. Cr.MP(M) No. 1170 of 2015 is disposed of.