
(2012) 01 SHI CK 0160
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 104 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Mr. Steven Fredrick Reed

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

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

Citation : (2012) 01 SHI CK 0160

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the State is directed against the judgment dated 3.12.2002 passed by the learned Sessions Judge, Bilaspur, in Sessions trial No. 75 of 2002 whereby he acquitted the accused of having committed an offence punishable u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act).

2. The prosecution story, in brief, is that on 26.2.2002 PW-12 ASI Parma Nand alongwith Head Constable Sarvan Kumar, PW-2 Sunder Singh, PW-7 Constable Mohinder Pal, PW-8 Constable Om Prakash, HHG Narain Singh and HHC Mohinder Dev were present near Naggar bridge for routine checking. At about 1.00 a.m. one person was spotted coming from Naggar side towards the bridge. This man had one bag in his hand and another on his back. On seeing the police officials he looked to be perplexed. This aroused the suspicion of the police officials, who apprehended the said person. This person was a foreigner and disclosed his name to be Steven Fredrick (the accused). The officials suspected that the accused may be in a possession of some contraband and therefore an option was given to him whether he would like to be searched before a Magistrate or a Gazetted Officer vide memo Ext.PW-6/A. The accused consented to be searched by the police. Thereafter, the search of the bag, being carried by the accused, was conducted and charas was recovered which on weighment was found to

weigh 3 kg. 500 grams. Out of this charas two samples of 25 grams each were drawn and thereafter these samples and the remaining charas were sealed in three separate parcels and sealed with seal bearing impression "T". The seal impression was also taken on Ext.PW-12/C. Thereafter the NCB form was filled up and other codal formalities were completed at the spot. The case property was taken into possession vide memo Ext.PW-6/C. A Ruqua Ex.PW-12/A was sent for registration of the case through constable Ishwar Dass on the basis of which F.I.R. Ext.PW-5/A was registered.

3. Thereafter PW-12 deposited the case property at about 8 a.m. with PW-5 Inspector Roshan Lal, who resealed the same with seal bearing impression "H" and deposited the case property with MHC PW-4 Khem Chand who has entered the same in the Malkhana register vide memo Ext.PW-4/A. On 27.2.2002 one sealed sample alongwith NCB form, sample seal and copy of seizure memo were sent to the CTL Kandaghat through Constable PW-2 Sunder Singh vide RC, copy of which is Ext.PW-4/B.

4. According to the prosecution special report Ext.PW-10/A was sent to the Dy. Superintendent of Police, Kullu and during investigation, PW-5 SHO Roshan Lal made an application Ext.PW-5/E alongwith inventory Ext.PW-1/B to the Judicial Magistrate, Manali for taking sample out of the remaining charas. The learned Judicial Magistrate passed order Ext.PW-1/A and issued certificate Ext.PW-1/C. The Chemical Analyst vide his report Ext.PW-5/F opined that the sample was of charas having resin content of 39.90%. On this basis the accused was charged with having committed the aforesaid offence. The accused pleaded not guilty and claimed trial. The learned trial Court found that the prosecution has failed to prove that the charas had been recovered from the exclusive and conscious possession of the accused in view of the fact that there are serious contradictions in the statements of the witnesses with regard to the timing as well as the manner in which the recovery was made.

5. According to the prosecution PW-11 Bhuvneshwar Singh was an independent witness. At the outset it may be stated that PW-11 has not at all supported the prosecution case and was declared hostile. When examined in Court PW-11 stated that he was working in a liquor vend at Katrain and on 26.2.2002 one foreigner was brought down from a bus at Patlikuhhal and taken to the police post at Patlikuhhal where some documents were prepared and he signed these documents. He has denied that he was present with the police at Naggar bridge or that the accused was apprehended in his presence at Naggar bridge. According to him the accused was apprehended at about 6.30 p.m from a bus. Here it would be pertinent to mention that PW-12 ASI Parma Nand while appearing in the witness box does not name PW-11 Bhuvneshwar Singh as a person being present at Naggar bridge alongwith police party. According to PW-12 they started from the police post at 11.10 p.m and the bridge where the accused was apprehended was only at a distance of 300 meter from Police Post Patlikuhhal. According to him they had reached at the spot at 12.00 mid night.

There is no explanation as to why it would take police officials as many as 50 minutes to travel a distance of only 300 meter. PW-12 who was the Investigating Officer has also not stated that PW-11 was present at the spot. Once PW-11 had denied his presence and not supported the prosecution version PW-12 who was the head of the party should have made some statement in this regard but he remained totally silent.

6. No doubt, the law is well settled that even if the independent witness does not support the prosecution case an accused can be convicted even on the statements of the official witnesses. However, if the independent witness does not support the prosecution case the testimony of the prosecution witness should be scrutinized with great care and caution and in case there are contradictions in the statements of the official witnesses then it would be highly risky to convict the accused.

7. There are four official witnesses whose evidence is relevant for our purpose. These are PW-6 Head Constable Prakash Chand, PW-7 Constable Mohinder Pal, PW-8 Constable Om Prakash, PW-12 I.O. Parma Nand. As already noted above Parma Nand does not even mention the name of independent witness. However, PW-6 has stated that the independent witness Bhuvneshwar Singh @ Dinesh was present at the spot. There is no explanation why Bhuvneshwar was present at the spot at 1.00 a.m. in the morning. It is not the case of the prosecution that he was called from his house. PW-6 Head Constable Prakash Chand, PW-7 Constable Mohinder Pal and PW-8 Constable Om Prakash do not name Bhuvneshwar Singh at all in their statements. Out of these four official witnesses only one has stated that Bhuvneshwar Singh was present at the spot. This is the first contradiction in the statement of the witnesses.

8. The second contradiction is that PW-7 stated that the ruqua Ext.PW-12/A, consent memo Ext.PW-6/A, search memo Ext.PW-6/B and seizure memo Ext.PW-6/C were prepared at the Police Post, Patlikuhal whereas ASI Parma Nand PW-12 has stated that the proceedings were conducted on the spot by sitting on a parapet. The statement of PW-12 appears to be incorrect because he himself admitted that it was raining at the relevant time and it was dark and there was no provision of light and shelter. Since there was no light how could these documents be prepared at the spot.

9. Another contradiction in the statements of the witnesses is that whereas PW-7, PW-8 and PW-12 state that the charas was recovered from a bag being carried by the accused, according to independent witness PW-11 it was an unclaimed bag. In these circumstances the learned trial Court held that the prosecution had failed to prove beyond reasonable doubt that the charas was recovered from the exclusive and conscious possession of the accused. The finding of the learned Sessions Judge is justified and the same cannot be said to be perverse calling for interference in an appeal against acquittal. We, therefore, find no merit in the appeal which is accordingly dismissed. The bail bonds are discharged.