

(2016) 08 SHI CK 0062

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 250 of 2012.

State of Himachal Pradesh - Appellant @HASH Roshan Lal

Date of Decision : 03-08-2016

Acts Referred:

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

Citation : (2016) 3 SimLC 1668

Hon'ble Judges : Sanjay Karol and Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : Mr. V.S. Chauhan, Addl. A.G., with Mr. Vikram Thakur and Mr. Puneet Rajta, Dy. Advocate Generals, for the Appellant; Ms. Leena Guleria, Amicus Curiae, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J. - By way of present appeal, the State has challenged the judgment passed by learned Presiding Officer, Fast Track Court, Mandi in Sessions Trial No. 20/2011 dated 30.09.2011 vide which, learned trial Court has acquitted the accused for commission of offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution was that on 11.01.2010, HC Orinder Singh, Investigating Officer, Police Station Padhar along with HHC Param Dev, HHC Gopal Dass and HHG Parveen Kumar had gone for patrolling towards Jhatingari in a vehicle bearing No. HP-34-A-8047, which was being driven by Constable Ashwani Kumar. The police party set up a nakka at Kufardhar near Jhatingari. At about 8:30 a.m., a private bus bearing No. HP-65-1817 "Shyama Kali Bus Service" came from Lohardi side which was stopped by the police party for checking. The bus was being driven by Anjani Kumar and Kamlesh was the conductor of the said bus. These two persons were associated by the police party as witness in the course of checking of bus. The accused was found sitting on the bonnet of the bus and he had kept a pithu (raxine bag) of Khakhi colour on his lap. As soon as the accused saw the police party, he got frightened as a result of which the police party became suspicious. The bag of the accused was searched

in the presence of Anjani Kumar and Kamlesh Kumar and search of the same revealed that it contained one red colour cloth in the shape of a theli and search of the said that revealed that it contained red colour polythene, in which Charas was found in the shape of sticks. The recovered Charas weighed 1kg. 850 grams. The search, seizure and recovery of charas was carried out by the police party in accordance with law and the recovered charas along with pithu bag was taken in into possession by the police. A rukka was scribed and sent to Police Station through HHC Gopal Dass, on the basis of which FIR No. 06/2010 was recorded against the accused at Police Station, Padhar. The accused was arrested and he was communicated the grounds of his arrest. The case property was thereafter produced before SI/SHO Sohan Singh along with NCB form and the case property was resealed by the SHO with three seals "O", who also filled the relevant columns of NCB form. Case property was thereafter deposited along with NCB form and sample seal "A" and "O" with Incharge, Malakhana, who made an entry to this effect in the Malakhana register and special report of the same was sent to ASP. Case property was sent to the laboratory vide RC No. 10/10 through HHC Param Dev and the chemical examination of the case property revealed that the sample was that of charas. After completion of formalities, challan was presented in the Court and as a prima facie case was found against the accused, he was charged for commission of offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, to which the accused pleaded not guilty and claimed trial.

3. In order to substantiate its case, the prosecution examined 11 witnesses.

4. Anjani Kumar, i.e. the driver of the bus entered the witness box as PW-1. According to him, on 11.09.2010, the bus left Lohardhi at 6:15 a.m. for Mandi and the vehicle was stopped by police at Drang and one boy was near Police Station, but he did not knew as to what the boy was possessing. He further stated that police obtained his signatures by stating that some "Maal" had been recovered from the boy. As he did not support the case of the prosecution, Anjani Kumar was declared as a hostile witness.

5. Kamlesh Kumar, conductor of the said bus entered the witness box as PW-2 and he also deposed that on the relevant day, their vehicle was stopped at Darang Police Station between 1:15-1:20 p.m. and police called him and the driver to the Police Station, where a boy was sitting inside the Police Station. He further deposed that some material in the shape of wood in black colour was lying on the ground. He was not aware as to what said material was, but the police told him that the same was charas/bhang. He was also declared as a hostile witness by the prosecution.

6. Pawan Kumar entered the witness box as PW-3 and deposed that he was running a Tea stall-cum-karyana shop at Jhatingri. He further stated that he did not provide any weight and scale to the police. He was also declared as a hostile witness by the prosecution.

7. HHC Gopal Dass entered the witness box as PW-4 and deposed that on 11.01.2010, he along with other police officials was present at Jhatingri and a nakka was set up there. He further stated that at 8:30 a.m., a bus with registration No. HP-65-1817 came from Lohardi side, which was stopped by the police party and while the bus was being checked, the accused was found sitting on the bonnet of the bus and there was a bag on his lap which was of khakhi colour. The search of the bag revealed that the same contained bhang, which was checked in the presence of driver and conductor of the bus at Kufferdhar. He further deposed that bhang recovered from the accused weighed 1 kg. 800 grams. He also stated that Rukka was given to him for being taken to the Police Station and he had handed over the same to MHC at Police Station, Padhar, on the basis of which FIR was registered.

8. HC Sant Ram entered the witness box as PW-5 and deposed that on 12.01.2010, ASP Abhishek Duller handed over the special report of the case to him for being kept on the record and he made an entry in the special report to this effect.

9. PW-6 HC Prem Singh has deposed that on 11.01.2010, SI/SHO Sohan Singh deposited one pithu bag of Khakhi colour, one parcel stated to contain charas weighed 1 kg. 850 grams which was sealed with three seals along with NCB form and sample seals with him and he made an entry to this effect in the Malkhana register at Sr. No. 230 dated 11.01.2010. He also deposed that the case property was sent for examination to FSL, Junga through HHC Param Dev.

10. HHC Param Dev entered the witness box as PW-7 and stated that he deposited the case property at Junga vide RC No. 10/10 and he handed over the RC along with receipt to MHC.

11. PW-8 HC Orinder Singh has stated that on 11.01.2010, he along with other police officials had set up a Nakka at Kufferdhar near Jhatingri. At around 8:30 a.m., a private bus was stopped for checking and during the course of checking of the said bus, the accused was found sitting on the bonnet of the bus, who got frightened after he saw the police party. This witness has further deposed that the accused was having a Pithu bag of khakhi colour on his lap, search of which revealed that it contained a Theli in which charas was found in the presence of bus driver Anjani Kumar and bus conductor Kamlesh Kumar. He also deposed with regard to the mode and manner in which the search took place, the recovery was made and the seizure was effected by the police party. He also stated that rukka Ex. PW-8/E was scribed and sent to the Police Station through HHC Gopal Dass, on the basis of which, FIR was registered at Police Station, Padhar. He also mentioned that he recorded the statements of the witnesses as per their version.

12. Constable Ashwani Kumar entered the witness box as PW-9 and stated that he was a part of the police party when the accused was apprehended with the charas. He also stated that he was sent to bring weight and scale and he brought

the same from the shop of one Pawan Kumar at Jhatingri.

13. Sohan Singh has entered the witness box as PW-10 and he stated that on 11.01.2010 at about 12:20 p.m., Gopal Dass handed over a rukka to him, on the basis of which FIR Ex. PW8/F was registered in the Police Station. He further deposed that at 4:00 p.m. on that very day, HC Orinder Singh had produced one khakhi bag along with NCB form in triplicate, one sealed parcel with seal impression "A" at three places stated to be containing 1kg. 850 grams charas in the shape of sticks. He has further stated that he resealed the parcel with seal "O" and also filled the relevant columns of NCB form.

14. PW-11 Constable Roshal Lal produced the rapat in the Court.

15. Before proceeding further, it is pertinent to take note of the fact that there is no independent witness who has supported the case of the prosecution. PW-1 Anjani Kumar and PW-2 Kamlesh Kumar, in whose presence allegedly the search, seizure and recovery took place have not supported the case of the prosecution. Both these witnesses have been subjected to lengthy cross-examination by the learned Public Prosecutor, but nothing could be elucidated from their cross-examinations from which it could be inferred that there was substance in the case as had been put forth by the prosecution.

16. PW-3 Pawan Kumar from whose shop the weight and scale were allegedly brought by the police has also not supported the case of the prosecution. His cross-examination has also not revealed anything from which any positive conclusion can be drawn in favour of the prosecution.

17. Not only this, there are material contradictions even in the depositions which have been made by the police witnesses. PW-4 HHC Gopal Dass had stated that on 11.01.2010, he along with HC Orinder, HHC Param Dev, Constable Ashwani and HHC Parveen were present at Jhatingri and they set up a nakka there. However, HC Orinder Singh (PW-8) stated that on 11.01.2010, Nakka was set up at Kufferdhar near Jhatingri.

18. Therefore, in the present case whereas PW-1 Anjani Kumar and PW-2 Kamlesh Kumar have not at all supported the case of the prosecution, there are material contradictions in the statements of PW-4 Gopal Dass and PW-8 Orinder Singh as to where actually the nakka was set up by the police party. Incidentally, the prosecution has not been able to prove that PW-1 and PW-2 had any motive to depose falsely in the Court or that they were related etc. to the accused and that they had resiled from their earlier statements to help the accused. Even PW-9 Ashwani Kumar has stated that the nakka was set up by the police at Kuffer Dhar. Kufferdhar and Jhatingri are at a distance of about one and half kilometers which is apparent from the cross-examination of PW-8 itself.

19. There are other major contradictions in the statements of prosecution witnesses, which also renders the story of the prosecution shrouded with suspicion. As per PW-4 HHC Gopal Dass, after registration of the case, case file

was given to him for delivering the same to the Investigating Officer and he handed over the case file to the Investigating Officer on the spot. However, PW-8 has stated that PW-4 handed over the file to the Investigating Officer at Ghatasani. This is also a major contradiction because the spot where the alleged recovery of charas was made from the accused is not Ghatasani, but is Jhatingri.

20. Another major contradiction in the deposition of PW-4 and PW-8 is that HHC Gopal Dass has stated that checking of the bag of the accused revealed that it contained bhang in a polythene bag. However, according to PW-8, from inside the bag of the accused one theli of red colour was found and the search of the said theli revealed that there was a polythene bag in the same in which charas was found. From this, the factum of the recovery of the charas from the accused in the mode and manner as has been put forth by the prosecution becomes doubtful. This is more so when the independent witnesses associated with the search and seizure by the prosecution have not supported the version of the prosecution.

21. Further contradictions in the testimonies of the witnesses are as under:

(a) While Pawan Kumar (PW-3) has denied that he provided any weight and scale to the police for weighing the alleged charas recovered from the accused, PW-9 Constable Ashwani Kumar has deposed that he was sent to bring weight and scale and he brought the weight and scale from the shop of one Pawan Kumar at Jhatingri.

(b) According to PW-4, the bag allegedly carried by the accused was having only one pocket on the front side, whereas according to PW-8, the said bag was having three-four pockets.

(c) According to PW-4, the scale which was used by the police party for weighing charas was traditional one, i.e. taraju, however, according to PW-8, the scale was a table scale and was not a taraju.

(d) In the site plan, which is Ex. PW8/H, the vehicle used by the police is referred to as Police Jeep Bullero Camper No. HP-34A-8047, whereas according to PW-9 on the day in issue, police party was not having any vehicle Bullero Camper with them.

22. From what has been discussed above, it is apparently clear that there are too many discrepancies and contradictions in the statements of the prosecution witnesses, from which it cannot be inferred that the events had actually taken place in the mode and manner in which prosecution wanted it to be believed. On the other hand, all these contradictions and discrepancies raise serious doubt about the truthfulness of the case put forth by the prosecution. Besides, in the present case, the prosecution has not placed on record any cogent and convincing evidence to prove that the NCB form was deposited in the Malkhana along with case property and thereafter it was sent to the laboratory along with the case property. A perusal of Ex. PW6/A which is abstract of Malakhana register

demonstrates that it is nowhere mentioned in the same that NCB form was deposited in the Maalakhana along with case property. Further, Ex. PW6/B, which is abstract of RC also demonstrates that it is not mentioned therein that NCB form was sent to the laboratory along with case property. In view of this, it cannot be said that the prosecution was able to prove with certainty that parcel containing contraband which was examined in the laboratory was the same which was allegedly recovered from the accused. Besides this, as is evident from the discussion made herein above, the testimonies of the prosecution witnesses in the absence of any independent witness having supported its case neither seems to be trustworthy nor it can be said that on the basis of the material produced on record by the prosecution, it was able to establish beyond reasonable doubt the guilt of the accused.

23. Learned trial Court has gone into all these aspects of the matter. A perusal of the judgment passed by learned trial Court demonstrates that learned trial Court has taken into consideration the factum of their being inconsistencies and contradictions in the statements of the prosecution witnesses and it has also taken into consideration the fact that the material which has been placed on record by the prosecution is not so cogent so as to nail the guilt of the accused.

24. Therefore, in our considered view, there is no infirmity with the judgment passed by learned trial Court vide which it has acquitted the accused for commission of offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985. We accordingly uphold the judgment of acquittal passed by learned trial Court and dismiss the appeal being devoid of any merit.