
(2016) 04 SHI CK 0131
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 534 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Santokh Singh alias Sukha

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18

Citation : (2016) ILRHP 1252

Hon'ble Judges : Rajiv Sharma and Chander Bhusan Barowalia, JJ.

Bench : Division Bench

Advocate : Mr. P.M. Negi, Dy. AG, for the Appellant; Mr. H.S. Rana, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is instituted at the instance of the State against the judgment dated 21.8.2012, rendered by the learned Special Judge (FTC), Una, H.P., in Sessions case No. 14/2011, whereby the respondent-accused (hereinafter referred to as the accused), who was charged with and tried for offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ND & PS Act), has been acquitted.

2. The case of the prosecution, in a nut shell, is that on 23.4.2011, SI Harjeet Singh in his car No. HP-12B-6069 along with HHC Purshotam Lal and HC Albel Singh was on patrolling duty. They were going from Mehatpur to Raipur Sahoran side. At around 10:15 PM, ahead of railway crossing, police officials found one person coming from Santokhgarh side wearing brown colour pants-shirt holding an envelope in his hand. On suspicion, SI Harjeet Singh stopped his vehicle. On seeing the police party, the person became perplexed. He disclosed his identity. The polythene envelope which he was carrying was checked which was containing another polythene envelope in it of red, white and blue colours. On checking, it was found containing opium of brown colour. Memo of identification

Ext. PW-8/A was signed by HC Albel Singh, HHC Purshotam Lal as well as by the accused. The charas weighed 3.200 kgms. The recovered contraband was put in blue colour polythene envelope and thereafter put in a cloth parcel and sealed with seven seals of impression "N" and specimen seal impression Ext. PW-8/D was also retained on a piece of cloth and seal after use was given to Purshotam Lal. IO filled in NCB form in triplicate vide Ext. PW-1/A and also put seal impression "N" on the same. No local witness was available on the spot. IO prepared the rukka Ext. PW-7/A and sent to the Police Station through HHC Purshotam Lal, on the basis of which FIR Ext. PW-7/B was registered. The case property was produced before SHO Una, who resealed the same with seal "A" by affixing five seals and he also filled in column Nos. 9 to 11 of NCB form. He handed over the case property to MHC Rajinder Kumar, who made entry in the malkhana register. The contraband was sent to FSL, Junga vide RC No. 70/2011. The investigation was completed and the challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 10 witnesses. The accused was also examined under Section 313 Cr.P.C. According to him, he was falsely implicated. He examined two witnesses in defence. The learned trial Court acquitted the accused, as noticed herein above. Hence, this appeal.

4. Mr. P.M. Negi, Dy. Advocate General for the State has vehemently argued that the prosecution has proved its case against the accused. On the other hand, Mr. H.S. Rana, Advocate for the accused has supported the judgment of the learned trial Court dated 21.8.2012.

5. We have heard the learned counsel for both the sides and have also gone through the judgment and records of the case carefully.

6. PW-1 HC Rajinder Singh deposed that he officiated as MHC of PS Una. SHO Ruldu Ram deposed with him sealed cloth parcel sealed with seal "A" affixing five seal impressions. The SHO also handed over to him two seals of samples "A" and "N", NCB forms in triplicate. He filled in column No. 12 of form Ext. PW-1/A. The parcels were stated to be containing opium weighing 3-200 Kgs. He deposited and entered the case property in malkhana register No. 19 vide Ext. PW-1/B. On 25.4.2011, he sent the case property vide RC No. 70/2011 through HHC Anand Sindhu to FSL, Junga.

7. PW-2 HHC Anand Sidhu testified that on 25.4.2011 PW-1 HC Rajinder Singh handed over to him one parcel sealed with seals of "A" and "N" for depositing in FSL, Junga. He deposited the same vide RC No. 70/2011 under receipt.

8. PW-4 HC Ajaib Singh deposed that he was posted at Police Station Una. On 25.5.2011, Const. Surinder Kumar handed over to him case property Ext. P-1, FSL report Ext. PW-4/A along with case property sealed with seal impression FSL. He deposited the same in malkhana and handed over report of FSL to I.O. Entry in this regard was made in the malkhana at Sr. No. 1181.

9. PW-7 Insp. R.R. Thakur, testified that on 24.4.2011 at about 3:25 AM, SI Harjeet Singh, I.O. produced before him case property charas 3-200 Kgms in a sealed parcel sealed with seal impression "N", NCB form, sample seal along with the accused. He resealed the same by affixing seal impression "A" at five places. He also filled in columns No. 9 to 11 of the NCB form. He also took sample seal impressions on separate white cloth in three numbers. He prepared certificate under Section 55 of the Act regarding resealing of the contraband. He handed over the case property to HC Rajinder Kumar who entered the same in the malkhana register.

10. PW-8 HHC Purshotam Lal deposed that on 23.4.2011 at about 10:15 PM, he along with SI Harjeet Singh, and HC Albel Singh were on patrolling. When they were going from Mehatpur Bazar on the road to Santokhgarh, 100 meters ahead from railway crossing, one man was seen coming from Santokhgarh side. He was wearing brown colour pants and shirt. He was holding a polythene envelope in his hand. Harjeet Singh stopped the vehicle. The accused got perplexed. He disclosed his identity. He was carrying polythene envelope of blue colour was found containing another polythene envelope. The charas was recovered. It weighed 3.200 Kgs. The sampling proceedings were completed on the spot. The place of recovery was isolated, therefore, the independent witnesses could not be associated. The I.O. prepared rukka Ext. PW-7/A for registration of case. He took the same to the Police Station, on the basis of which FIR Ext. PW-7/B was registered. In his cross-examination, he admitted that the railway crossing was at a distance of 1 km. from Mehatpur bazaar. He admitted that another road leads to village Charatgarh from the railway crossing. There is Indane Gas filling plant near railway crossing. The distance of plant is 200 meters towards Santokhgarh side. He admitted that persons used to reside and sit in the dump during night hours. Accused did not try to run away from the spot.

11. PW-10 SI Harjeet Singh also testified the manner in which the accused was apprehended, search, seizure and sealing proceedings were completed on the spot. He prepared rukka Ext. PW-7/A on the basis of which FIR Ext. PW-7/B was registered. He handed over the case property to SHO, who resealed the same with seal impression "A". He recorded the statements of the witnesses. In his cross-examination, he admitted that at a distance from the spot towards village Santokhgarh, there is Indane dump where employees remain present 24 hours. The Indane dump is about 200-250 km from the railway crossing. There were no houses opposite to Indane dump across the road. He had parked his car 100 meters away from the railway crossing. There is no abadi within the radius of 100 meters. He did not try to associate independent witnesses. The proceedings were conducted in the Indane dump light as well as with the help of car light and emergency light. He admitted in his cross-examination that the press notes are given on the basis of FIR by superior officers to the correspondents. He admitted that superior officers release press notes after verification from the I.Os. He admitted that in this case, news was also published in the Amar Ujala newspaper. He did not remember if he had read this news.

12. The prosecution has not examined any independent witness at the time the accused was apprehended, search, seizure and sealing proceedings were completed on the spot. PW-8 HHC Purshotam Lal, as noticed herein above, has categorically admitted in his cross-examination that there are residential houses between Mehatpur bazaar and railway crossing. The accused was apprehended 100 meters ahead of railway crossing. He also admitted that there is Indane Gas filling plant near railway crossing. He admitted that persons used to reside and sit in the dump during night hours. PW-10 SI Harjeet Singh admitted in his cross-examination that at a distance from the spot towards village Santokhgarh, there is Indane dump where employees remain present 24 hours. It was neither secluded nor isolated place. The prosecution ought to have examined independent witnesses. PW-8 HHC Purshotam Lal has testified that the I.O. tried to arrange independent witnesses but PW-10 SI Harjeet Singh, I.O. has categorically stated that he did not try to associate independent witnesses. DW-2 Puran Singh has also deposed that there is old brick kiln opposite to Indian Oil dump. There is abadi opposite to Indian Oil dump of Mohan Lal, Kaku's cowshed as well as his greasing business. There are shops of Telu Ram and Seeta Ram. There is also shop of Ganju. There is house of son of Faquir Chand and Badri Nath. However, the fact of the matter is that despite the availability of witnesses, the prosecution has not associated any independent witnesses.

13. The case of the prosecution, precisely, is that accused was apprehended 100 meters ahead of railway crossing. News item published in the newspaper is Ext. DW-1/A. DW-1 Pawan Kumar has proved Ext. DW-1/A. He has admitted that this news item was published in the Amar Ujala. The news was published after due verification.

14. PW-10 SI Harjeet Singh in his cross-examination has admitted that the press notes are given on the basis of FIR by superior officers to the correspondents. He admitted that superior officers release press notes after verification from the I.Os. He also admitted that in this case, news was also published in the Amar Ujala newspaper. He did not remember if he had read this news. It is reiterated that there is variance in the version of the prosecution whether the contraband was recovered from the railway crossing or from the shop of accused.

15. Thus, the prosecution has failed to prove the case against the accused under Sections 18 of the ND & PS Act that the charas was recovered from the accused. This Court has no occasion to interfere with the well reasoned judgment of the learned trial Court dated 21.8.2012.

16. Accordingly, there is no merit in this appeal and the same is dismissed.