

(2016) 08 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 267 of 2011

State of Himachal Pradesh

APPELLANT

Vs

Satish Kumar

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 181
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20
Penal Code, 1860 (IPC) — Section 279, Section 304A, Section 337

Citation : (2016) LatestHLJ(HP) 1414

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

Bench : Division Bench

Advocate : Mr. V.S. Chauhan, Addl. Advocate General with Mr. Vikram Thakur, Dy. Advocate General, for the Appellant; Mr. Anoop Chitkara, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J. - By way of the present appeal, the State has challenged the judgment passed by the Court of learned Special Judge (II), Kinnaur at Rampur, in Sessions Trial RBT No. 19-AR/3 of 2009/10 dated 27.04.2011, vide which judgment, the learned Trial Court has acquitted the present respondent for commission of offences punishable under Sections 20 of the Narcotic Drugs and Psychotropic Substances Act (in short "NDPS Act") Sections 279, 337 and 304-A of Indian Penal Code (in short "IPC") and Section 181 of the Motor Vehicle Act, 1988 (in short "M.V. Act").

2. The case of the prosecution in brief was that on 15.08.2009 at about 4:15 a.m. PW2 Shri Lachhi Ram gave information on telephone at Police Station Nirmand that a car had met with an accident at Khobar Gali Nalah, pursuant to which PW10 Inspector Vidya Chand along with other police officials left Police Station Nirmand and reached on the spot at 5:0 a.m. At the spot they found that car bearing registration No. HR-51Y-4488 had fallen 150 feet down from the

road. Accused Satish was found near the car in an injured condition who identified himself as owner-cum-driver of the said car. Search of the car was carried out in the presence of PW2 Lachhi Ram and PW3 Khub Ram. Two dead bodies were found lying near the car which were identified by the accused to be of Aman Maan and Arya Mittal, who according to him, were also traveling in the said car. The case of the prosecution further is that during the search of the car, one bag containing two kilograms of "Charas" in the shape of balls was recovered from the rear side pocket of the driver's seat. Accordingly, the said bag was packed into a parcel which was sealed with seal impression "T" and NCB form in triplicate was filled in and facsimile of the said seal was also affixed. The case property was taken into possession vide seizure memo Exhibit PW10/B which was signed by the witnesses and the accused and rukka was sent through PW9 HHC Mohan Dass for registration of the case. The case property along with NCB form and specimen of seal was deposited with H.C. Lal Chand in the Malkhana of Police Station Nirmand and the samples were subsequently sent for examination to FSL, Junga on 17.08.2009 through HHC Kehar Singh. The report of the laboratory Exhibit PW10/J tested the samples positive for "Charas". After the completion of investigation, challan was filed in the Court and as a prima-facie case was found against the accused, accordingly he was charged for commission of offences punishable under Section 20 of the NDPS Act, Sections 279, 337 and 304-A of IPC and Section 181 of M.V. Act, to which he pleaded not guilty and claimed trial.

3. Learned trial Court on the basis of material produced on record by the prosecution concluded that the prosecution has failed to prove recovery of "Charas" from the exclusive and conscious possession of the accused beyond reasonable doubt and it accordingly acquitted the accused.

4. We have heard the learned counsel for the parties and also gone through the records of the case.

5. In order to substantiate its case, the prosecution has examined 10 witnesses. It will be relevant at this stage to first refer to the testimony of PW2 Lachhi Ram and PW3 Khub Ram. PW2 Lachhi Ram stated in the Court that in the intervening night of 14.8.2009 and 15.08.2009, accused Satish Kumar came to his house at 3:35 a.m. and told him that his vehicle had met with an accident and he requested him to accompany him to the site of the incident. According to him, he refused to accompany accused on the ground that it was night time and it was also raining outside. He further deposed that accused person was not in good condition, therefore, he rang Police Station Nirmand and thereafter at about 5:00 a.m., he came from his house to the road along with accused Satish Kumar and the vehicle was found lying down the road in an accidental condition. He also stated that in the meanwhile police also reached the spot at around 5:30 a.m. and when he visited the spot along with police, one person who was identified as Aman was found dead on the steering of the vehicle. This witness was declared as hostile and was cross examined at length by the prosecution. In his cross

examination, he denied that the police had conducted the search of the car and during said search, one bag, black in colour, containing inscription "RCM Business" was recovered from the pocket of the back side of the driver's seat. He also denied the factum of NCB forms being filled in his presence by the police. He further stated that he saw "Charas" for the first time in the Panchayat Ghar which was in the form of balls. He further stated that police had shown him a parcel and obtained his signature over the cover of same in Police Station Nirmand. He also stated that he had put his signatures on three or four papers in the Police Station. He denied the factum of proceedings having been conducted in his presence.

6. PW3 Khub Ram stated that on 15.08.2009 at around 8: a.m. he came to Panchayat Ghar for unfurling the National Flag on the eve of Independence Day and when he reached there one dead body was lying near the Panchayat Ghar and another dead body was being brought to that place. This witness was also declared hostile. In his cross-examination by the learned Public Prosecutor, this witness denied that when he reached the spot, dead bodies were lying near the accidental car. He also denied that search of the car was conducted in his presence from which one black bag containing a plastic envelop was recovered in which "Charas" balls were found. He stated that police had put "Charas" balls in two plastic envelops, which were again put in a black bag and thereafter black bag was put in a cloth parcel which was then sealed but according to him all this was done in the Panchayat Ghar. He also stated that though he had put his signatures on the seizure memo but these signatures of his were obtained by the police in the Panchayat Ghar. He denied the filling of NCB form in triplicate in his presence. He further stated that police did not disclose to him that from where the "Charas" was recovered neither did he ask the police officials as to from where the same was recovered.

7. These two independent witnesses have not corroborated the case of the prosecution. They have denied the story of the prosecution because both of them in unison voice have stated that neither car was searched in their presence nor the contraband was recovered in their presence. In our considered view, the version of the prosecution not being supported by these two independent witnesses casts a doubt over the story of the prosecution that as to whether "Charas" was actually recovered and seized from the car in the mode and manner in which the prosecution wants this Court to believe. We are not oblivious of the fact that the case of the prosecution is not to be rejected solely on the ground that these witnesses have turned hostile, but the fact still remains that when the independent witnesses do not support the case of the prosecution, then other evidence which has been produced by the prosecution and which mainly comprises the testimony of police officials has to be scrutinised very-very minutely in order to conclude as to whether the same inspires confidence or not.

8. Other three relevant witnesses in this regard are PW1 HC Piare Lal, PW9 HC Mohas Dass and PW10 Inspector Vidya Chand.

9. PW1 HC Piare Lal stated that on 15.08.2009, he along with ASI Jagat Singh, ASI Kanwar Singh, HHC Mohar Dass, HHG Bhim Sain and HHG Duni Chand visited Galli Nalah for verification of rapat No. 5 dated 5.8.2009 under the supervision of S.I. Vidya Chand. According to this witness, they reached at the spot at 5:30 a.m. As per him, one vehicle bearing registration No. HR-51Y- 4488 had met with an accident and it had rolled about 150 feet down the road. He also stated that one injured person was also found on the spot, who on inquiry, disclosed his name as Satish Kumar s/o Ram Chand. As per this witness, Satish Kumar claimed himself to be owner-cum-driver of the car. According to PW1, search of the accidental vehicle was conducted in the presence of witnesses Lachhi Ram and Khub Ram. As per him, two dead bodies were found near the vehicle, which were identified by accused Satish Kumar. He further stated that during the search of the vehicle which had met with the accident, in the presence of local witnesses, one bag, black in colour, on which "RCM business" was inscribed was recovered from the rear side pocket of driver's seat. He further stated that when said bag was opened, one polythene envelop on which "Monte Carlo" was inscribed, was found in the same. When this polythene envelop was checked, "Charas" balls of different size were found inside. He further stated that the "Charas" when weighed was found to be two kilograms. As per this witness, the "Charas" balls which were recovered from the polythene, were put back in the same and thereafter this polythene envelop was put in the black bag which was further put in a cloth parcel and parcel was sealed with six seals bearing impression "T". The specimen of seal Ext. PW1/A was taken and seal was handed over to Lachhi Ram. He also stated that NCB forms in triplicate were filled by the SHO and thereafter the accidental car as well as "Charas" were taken into possession. He also stated that SHO scribed rukka which was sent to Police Station Nirmand through HHC Mohar Dass.

10. Mohar Dass entered the witness box as PW9 and stated that on 15.08.2009, he along with other police officials was accompanying SI Vidya Chand in two vehicles in connection with rapat No. 5 and visited Khobar Gali Nalah in this regard. He further stated that they reached the spot at about 5:30 a.m. where one Maruti WagonR car, bearing registration No. HR-Y-4488, was lying in an accidental condition about 150 feet below the road. He also stated that one injured person was present there who had injury above his right eye. On inquiry, that person disclosed his name as Satish Kumar. According to him, Lachhi Ram and Khub Ram were present there and thereafter police reached there. He stated that during the search of the accidental vehicle, two dead bodies were recovered. He also deposed about the factum of recovery of vehicle and in the said process two kilograms "Charas" being recovered from the polythene bag which was found inside one black coloured bag which was lying in the pocket of rear side of the driver's seat. He also stated that ruka was handed over to him which he delivered to MHC at Police Station.

11. Inspector Vidya Chand entered the witness box as PW10. He stated that on 15.08.2009 at about 4:15 a.m. one Lachhi Ram informed Police Station Nirmand

that one car had met with an accident at Khobar Gali Nalah. This witness further stated that on the receipt of this information, he along with other police officials left for the spot and reached Khobar Gali Nalah at 5:30 a.m. This witness further stated about the factum of the car being found in an accidental condition, 150 feet below from the road and Satish Kumar being found in an injured condition and also with regard to recovery of two dead bodies at the site. This witness also stated that thereafter search was conducted in the presence of Lachhi Ram and Khub Ram and during search, one black coloured bag was found in rear side pocket of the driver's seat, inside which another polythene bag was found from which "Charas" was recovered. This witness further stated the mode and manner in which the recovery and seizure took place. This witness has also deposed that the "Charas" and the vehicle which had met with accident were taken into possession vide seizure memo Exhibit PW1/B in the presence of witnesses PW1 to PW3. He also stated that he scribed rukka Ext. PW8/A which was sent to the Police Station. He also stated that photographs Exhibit P-6 to Exhibit P-9 were taken by him and he also prepared the site plan.

12. In addition to these witnesses, prosecution has also examined PW4 Dr. Ghanshyam Verma who conducted the postmortem of dead bodies of Aman Maan and Arya Mittar. He had also medically examined the accused Satish Kumar, who according to him had suffered injuries which were simple in nature.

13. PW5 Naval Kishore deposed that he had mechanically examined the vehicle bearing registration No. HR-Y-4488 and Exhibit PW5/A was the mechanical report prepared by him.

14. PW6 Kehar Singh deposed about the depositing of case property at FSL, Junga on 18.08.2009.

15. PW7 ASI Sohan Lal stated that on 16.08.2009 HHC Mohar Dass had brought the special report which was handed over to Dy. S.P. Manohar Dass in the office at 5:10 p.m. Dy. S.P. perused the special report and put his endorsement on the same which was signed by him. He also stated that thereafter Dy. S.P. handed over the special report to him which was duly entered by him in the receipt register.

16. PW8 HC Lal Chand deposed with regard to receipt of case property and its entry in the Malkhana register and also regarding sending the case property to FSL, Junga through PW6 Kehar Singh.

17. As we have already discussed above, independent witnesses PW2 and PW3 have not supported the case of the prosecution. Now in this background, it is to be seen as to whether the testimony of the police officials who entered the witness box as PW1, PW7, PW9 and PW10 proves the case of the prosecution or whether the judgment of acquittal returned by the learned trial Court is sustainable on the basis of the findings returned in it.

18. Incidentally, a perusal of the testimony of PW1, PW9 and PW10 demonstrate

that according to them when they reached the spot, accused Satish Kumar was present in an injured condition who was accompanied by PW2 and PW3 i.e. the independent witnesses. However, PW2 Lachhi Ram in his deposition has stated that he visited the spot along with police whereas PW3 Khub Ram had denied the factum of his being present at the spot of incident. As per Khub Ram, on 15.08.2009 at around 8:00 a.m. he came to Panchayat Ghar for unfurling the flag on the eve of Independence Day and he saw that a dead body was lying there and the other dead body was being brought to that place. Keeping in view the fact that the case of the prosecution was that recovery of "Charas" was made in the presence of PW2 and PW3 and these two witnesses have not supported the case of the prosecution, the factum of recovery of "Charas" from the vehicle in issue in the mode and manner as has been put forth by the prosecution becomes highly suspicious. Not only this, it is further the common case of PW1, PW9 and PW10 that when they reached the spot, after they received the information that an accident had taken place, the search of the vehicle was carried out to recover the documents of the vehicle. In other words, it is not the version of these witnesses that they had suspected the presence of some contraband inside the car which had met with the accident. It is evident from the case put forth by the prosecution that the search of the vehicle purportedly was done to recover the documents of the vehicle after police party had already found two dead bodies. In our considered view, the version of the prosecution as to why the search of the accidental vehicle was done by the police party, is highly suspicious. It is the admitted case of the prosecution that Satish Kumar who was found in an injured condition, claimed himself to be the owner as well as the driver of the vehicle. Nothing has been put forth by the prosecution as to what steps the police party took to recover the documents of the vehicle from its owner-cum-driver. The version of the police party that after the recovery of the dead bodies, they conducted the search of the vehicle to recover the documents of the same, seems to be highly improbable. Though it has been categorically stated by PW10 that he had taken photographs of the spot but the prosecution has not placed any photographs on record from which it can be deciphered as to whether the bag from which the "Charas" has been allegedly recovered by the police party, could have been concealed in the rear pocket of the driver's seat. Not only this, the bag in issue Exhibit P-1 has been found to be having holes and tear marks. Besides, broken pieces of window screen were also found in the outer pocket of this bag. PW9 has categorically stated that pocket on the rear side of the driver's seat, from which the bag was recovered, was having a zip. If that is so, then the prosecution has failed to demonstrate as to how the bag which was concealed in a zipped pocket on the rear side of driver's seat was found with holes, tear marks and broken pieces of window screen. These facts when taken together, only lead to one conclusion that the version of recovery of the contraband as has been put forth by the prosecution is not trustworthy.

19. Another important aspect of the matter is that whereas on the one hand PW3

has categorically denied that he was present on the spot of the accident and that the recovery of contraband took place in his presence at the spot, the prosecution has otherwise failed to prove as to what this witness would have been doing at such early hours at the site where accident took place. His presence at the spot, in our considered view, is not natural. Both PW2 and PW3 have stated that the documents etc. were got signed by the police party from them at the Panchayat Ghar. Both these witnesses have been subjected to lengthy cross-examination by the prosecution but nothing could be elucidated from these two witnesses in their cross examination from which the version of the prosecution could be fortified.

20. Another very important aspect of the matter is that admittedly in the accident which took place, two persons died whereas accused received minor injuries. In our considered view, nothing prevented the accused to get rid of the contraband before the police arrived at the scene, had he been aware that there is contraband in the car. This would have been the natural conduct and reaction of a person. Further, it is the case of the prosecution also that before police reached the spot, PW2 and PW3 were also already present at the spot. Not only this, as per the prosecution after the accident took place, accused Satish Kumar went to the house of PW2 and he remained absent from the spot till he reached back with PW2 after which the police reached the spot. In our considered view, taking all these facts and circumstances together, it cannot be said that the prosecution on the basis of evidence produced on record was able to demonstrate and substantiate that "Charas" had been recovered from exclusive and conscious possession of the accused beyond reasonable doubt.

A perusal of the judgment passed by the learned trial Court will demonstrate that it has also gone into all these aspects of the matter very minutely and on the basis of appreciation of material produced on record by the prosecution, it has returned the findings of acquittal in favour of accused. We do not see any reason to interfere with the findings so returned by the learned trial Court. We are also on the opinion that on the basis of material produced on record by the prosecution it has not been able to nail the guilt of the accused. Accordingly, while upholding the judgment of acquittal passed by the learned trial Court, the present appeal is dismissed being devoid of any merit. Bail bonds, if any, furnished by the accused are discharged. Pending application(s), if any, also stands disposed of.