
(2016) 01 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : Criminal Appeals No. 479 of 2009

State of Himachal Pradesh

APPELLANT

Vs

Sukh Ram and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 313, Section 417, Section 418, Section 423

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, Section 29

Citation : (2016) 3 HimLR 1537 : (2016) ILRHP 249

Hon'ble Judges : Sanjay Karol and Piar Singh Rana, JJ.

Bench : Division Bench

Advocate : V.S. Chaudan, Additional Advocate General, Kush Sharma, Deputy Advocate General and J.S. Guleria, Assistant Advocate General, for the Appellant; N.K. Bhardwaj, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J.—1. State has appealed against the judgment dated 18.4.2009, passed by the learned Special Judge, Fast Track, Kullu, Himachal Pradesh, in Sessions Trial No. 28 of 2007, titled as State v. Sukh Ram and others, challenging the acquittal of accused-respondents Sukh Ram, Chhape Ram and Som Dutt, of the charged offences.

2. It is the case of prosecution that on 11.10.2006, Constable Hari Singh (not examined), informed SI Dorje Ram (PW-18) that one person, wearing green coloured jacket and red coloured T-shirt, carrying Charas, was present at Dhalpur Chowk. Entry of the information was made in the Rojnamcha (Ex. PL) and information sent to Dy.S.P. Shri Ahmad Sayeed (PW-2), through Constable Inder Singh (PW-16). SI Dorje Ram requested Gian Chand and Charanjit Singh, member of the community policing, to associate themselves as witnesses, to which they declined. Thereafter, by associating Kishori Lal (PW-1) and Amar Singh (not examined), as independent witnesses, SI Dorje Ram alongwith police

officials HC Upender (not examined), HC Narain Singh (not examined) and Constable Pritam Singh (PW-3) proceeded to the spot and apprehended accused Sukh Ram. This was at 7.10 p.m. For the purpose of questioning, accused was brought to the Office of the Traffic Police at Dhalpur. After apprising him of his statutory rights and obtaining his consent (Ex. PZ), he was searched. On search, it was found that he had tied the contraband substance around his body with cello tape. Upon weighment, it was found to be 1.900 kg. Two samples, each weighing 25 grams, were drawn. Thereafter, the samples and the bulk contraband substance were made into separate parcels and sealed separately with three seals of seal impression "T". NCB form, in triplicate, was filled up on the spot. Contraband substance was taken into possession vide Memo (Ex. PB). Ruka (Ex. PA/D), so carried by Constable Pritam Singh, led to registration of FIR No. 521/06, dated 11.10.2006 (Ex. PT), for commission of offence, punishable under the provisions of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act), at Police Station Kullu, Himachal Pradesh. Case property was produced before SHO Joginder Singh, who resealed the same with three seals of seal impression "A" and deposited the same in the Malkhana with MHC Rup Singh (PW-15). Sealed sample was sent for chemical analysis to the Forensic Science Laboratory through Constable Diwan Chand (PW-12) and report of the Laboratory (Ex. PY) taken on record.

3. During investigation, on 12.10.2006, accused Sukh Ram made a disclosure statement (Ex. PH) in the presence of independent witnesses Dhian Singh (PW-4) and Piare Lal (PW-7) to the effect that he had purchased the contraband substance from accused Chhape Ram, an employee of Sheep Farm, Garsa. SI Mahinder Kumar (PW-19) formed a raiding party by associating Yashwant Singh (PW-8) and Chaman Lal (PW-13) and searched the premises of co-accused Chhape Ram. Investigating further revealed that accused Som Dutt was also involved in the crime. Accused Chhape Ram and Som Dutt were carrying on the trade of contraband substance and as such had sold the same to accused Sukh Ram. Allegedly, the contraband substance was delivered to accused Sukh Ram by Gautam (PW-5). Accused were arrested. With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

4. Accused Sukh Ram was charged for having committed an offence punishable under the provisions of Section 20 of the Act; and accused Chhape Ram and Som Dutt were charged for having committed offence, punishable under the provisions of Section 20 read with Section 29 of the Act, to which all the accused did not plead guilty and claimed trial.

5. In order to establish its case, prosecution examined as many as 19 witnesses and statements of the accused, under the provisions of Section 313 of the Code of Criminal Procedure, were also recorded, in which they took the plea of innocence and false implication.

6. Based on the testimonies of witnesses and the material on record, trial Court

acquitted all the accused persons of the charged offence. Hence, the present appeal by the State.

7. We have heard Mr. V.S. Chauhan, learned Additional Advocate General; Mr. Kush Sharma, learned Deputy Advocate General; and Mr. J.S. Guleria, Assistant Advocate General, on behalf of the State as also Mr. N.K. Bhardwa & Mr. Ajay Chandel, Advocates, on behalf of accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/ infirmity nor any perversity with the same, resulting into miscarriage of justice.

8. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offence.

9. In *Prandas v. The State*, , AIR 1954 SC 36, Constitution Bench of the apex Court, has held as under:

"(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.C., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.C. in an appeal from an order of acquittal has been stated in - "*Sheo Swarup v. Emperor*", , AIR 1934 PC 227 (2) at pp. 229, 230(A), in these words:

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."

10. We find that independent witnesses, Kishore Lal (PW-1), Yashwant Singh (PW-8), Chaman Lal (PW-13) and Piare Lal (PW-7) have not supported the prosecution case at all. They were declared hostile and despite their extensive cross-examination, nothing fruitful could be elicited from their testimonies.

11. It is a settled proposition of law that merely because a witness has turned hostile, his entire evidence cannot be termed to be unworthy of credence. It is for the Court to consider, whether as a result of contradiction, witness stands fully discredited or part of his testimony can still be believed. If the credit of a witness is not fully shaken, Court can rely upon that part of the testimony which appears to be creditworthy.

12. It is a settled position of law that conviction can be based on the evidence of police officials, provided their statements are reliable and trustworthy in nature. It is neither rule of law nor rule of prudence that conviction cannot be based on the evidence of police officials, but, at the same time, it has to be borne in mind that the evidence of police officials must be reliable and confidence inspiring.

13. SI Dorje Ram furnished secret information to Shri Ahmad Sayeed (PW-2), Deputy Superintendent of Police, who questioned accused Sukh Ram (apprehended on the spot). In his presence, the contraband substance, which was tied around the body of the accused, was recovered. We do not find the version of the witness to be inspiring in confidence, for there are embellishments, exaggerations and improbabilities, rendering the same to be doubtful. He appears to have not prepared any memo of questioning this accused. Now, if the Dy. S.P. had questioned the accused on 11.10.2006 and undisputedly nothing was disclosed to him, where was the question of the accused disclosing identity of co-accused Chhape Ram and Som Dutt.

14. Be that as it may, we find this witnesses to have been confronted with his previous statement Mark "C", so recorded under the provisions of Section 161 of the Code of Criminal Procedure, wherein it is not so recorded that SI Dorje Ram had disclosed his apprehension of the accused carrying the contraband substance or the accused being informed of his statutory right of being searched before a Magistrate or a Gazetted Officer. Witness to the memo of search has not supported the prosecution case at all. Dy. S.P. Ahmad Sayeed ought to have prepared some documents of search, for we do not find his name to have been recorded in the documents.

15. As already observed, independent witnesses Kishori Lal has given a different version of the accused not being searched in his presence and also that nothing was recovered from the accused. All that he states is that the contraband substance was weighed in his presence and that he was called to the Chowki at Dhalpur and no proceedings of search and seizure took place in his presence. We do not find the version of the police officials, who conducted the search and seizure operations, to be inspiring in confidence.

16. With regard to the complicity of the other co-accused on the basis of alleged

disclosure statement (Ex. PH), we find that both the independent witnesses Dhian Singh and Piare Lal have only deposed that accused informed the police of having purchased the Charas from an "employee of Sheep Farm, Garsa". Both the witnesses were declared hostile and despite extensive cross-examination, nothing fruitful could be elicited from their testimony. Who is the person, from whom the contraband substance was purchased, was not disclosed. In fact, Dhian Singh is categorical that no name was disclosed.

17. Be that as it may, we find the witnesses not to be local residents. Dhian Singh resides at a distance of 55 kms from the Police Station. From the testimony of Piare Lal, it is apparent that the Judicial Complex, Tehsil Office and Sub-Jail are just next to the Police Station. Why was not accused produced before the Magistrate or disclosure statement recorded in his presence? remains unexplained.

18. SI Dorje Ram and SI Mohinder Kumar, who conducted the investigation, want the Court to believe that pursuant to the disclosure statement, police party took the accused to the Garsa Farm, where he identified accused Chhape Ram. We do not find his version to be true. Tikkam Ram (PW-6), who produced the register, so maintained at the entrance of the Farm, states that no entry with regard to the police party having entered the Farm was recorded. Now, this totally belies the version of police officials, according to whom, entry was got recorded. This fact may or may not be significant or relevant for doubting the prosecution case, but then the independent witnesses Yashwant Singh and Chaman Lal, who were associated by the police, while conducting the search of the house of accused Chhape Ram, have not supported the prosecution. According to the witnesses, neither did accused Sukh Ram take the police to the residence of accused Chhape Ram nor did he identify the accused. Also, no recovery took place from the house of Chhape Ram, rendering the disclosure statement to be insignificant and inconsequential.

19. We find the version of SI Dorje Ram, or SI Mohinder Kumar to be uninspiring in confidence. SI Dorje Ram wants the Court to believe that the information was received from Constable Hari Singh, who has not been examined in Court. He states that the contraband substance was in the shape of sticks and balls, which is not so stated by SI Mohinder Kumar, according to whom, it was in the shape of sticks only. Further, SI Dorje Ram admits to have called Gian Chand to Dhalpur Chowk on his telephone. Gian Chand has not been examined nor has the police placed on record the record of the telephone call.

20. SI Mohinder Kumar wants the Court to believe that scales used by accused Chhape Ram for weighing the contraband substance were recovered, on the asking of the accused and Memo (Ex. PA/G) was prepared to such effect. But then, as we have already discussed, such version stands contradicted by independent witnesses.

21. Gautam (PW-5) himself was a suspect, as according to the prosecution, he

was a carrier. Why is it that he was not arrayed as an accused? has not been explained. Be that as it may, even this witness has not supported the prosecution and has categorically deposed that no Charas was recovered in his presence, which fact he disclosed to the police, but was subjected to beatings and kept in the Police Station for two days.

22. We find that even by way of corroborative evidence, prosecution has not proved its case beyond reasonable doubt. In the report of the FSL (Ex. PY), only one sealed parcel bearing three seals of seal impression "T" was examined. But, it is the case of prosecution that contraband substance was also resealed by the SHO with seal impression "A".

23. Version of SI Dorje Ram of having informed the Superior Officers about the incident is rendered doubtful from the testimony of Kashmi Ram (PW-11), according to whom no entry of such information was recorded in the Register (Ex. PL).

24. We further find that Diwan Chand did not promptly deposit the case property in the Laboratory. Whereas the same was entrusted to him on 11.10.2006, but he deposited it only on 13.10.2006. Where he remained in between, remains unexplained by him, which further renders the prosecution case to be doubtful.

25. MHC Rup Singh was also confronted with his previous statement, recorded under the provisions of Section 161 of the Code of Criminal Procedure (Mark "H"), wherein the factum of contraband substance having been handed over to him as also the parcel (containing scales), so recovered by the police, was not found to have been recorded therein.

26. Constable Pritam Singh has not corroborated the version of SI Dorje Ram to the effect that the information was received by him (SI Dorje Ram), by stating that on 11.10.2006, at 6.35 p.m., a telephonic message was received at Police Station, Kullu from Security Branch of S.P. Office and the said message was entered in the Rojnamcha. He has further clarified that the message was received by MHC.

27. From the material placed on record, prosecution has failed to establish that the accused are guilty of having committed the offence, they have been charged with. The circumstances cannot be said to have been proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused does not stand proved beyond reasonable doubt to the hilt. The chain of events does not stand conclusively established, leading only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered do not fully establish completion of chain of events, indicating to the guilt of the accused and no other hypothesis other than the same.

28. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so as to prove that accused Sukh Ram was found in conscious and exclusive possession of

Charas, and accused Chhape Ram and Som Dutt conspired with their co-accused Sukh Ram in committing the crime.

29. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence so placed on record by the parties.

30. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in Mohammed Ankoos and others versus Public Prosecutor, High Court of Andhra Pradesh, Hyderabad , (2010) 1 SCC 94, it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

Appeal stands disposed of, so also pending application(s), if any.