

(2012) 07 SHI CK 0184
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 303 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Surender Kumar, Manmohan Singh, Tikam Ram and Smt.
Lata Devi

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2012) 07 SHI CK 0184

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Vivek Singh Thakur, A.A.G., With Mr. Rajesh Mandhotra, Deputy A.G, for the Appellant; Sumit Raj Sharma, Advocate for Respondents No. 1 and 4, Mr. Manish Sharma, Advocate, vice and Mr. Shrawan Dogra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is directed against the judgment dated 29.07.2002, passed by the learned Sessions Judge, Kullu, H.P. in Sessions trial No. 05/2002, whereby the respondents, who were charged with and tried for an offence u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, have been acquitted. Case of the prosecution, in a nut-shell, is that a police party headed by ASI Hans Raj (PW-13), consisting of Constable Lal Singh (PW-12), Constable Birbal Dass (PW-1) and Head Constable Lal Singh, was present at Dhalpur Chowk. At 10:15 a.m., Hans Raj received a secret information that four occupants coming in a Car bearing No. PB-11-R/7458 from Patlikuhal side on way to Mandi side were bringing charas in the Car. Information Ex. PW-8/A was reduced into writing by PW-13 and was sent to the Additional Superintendent of Police, Kullu through Constable Birbal Dass (PW-1). PW-9, Shri Sonam Chhopal accompanied by Constable Birbal Dass (PW-1) also came on the spot. PW-4, Prem Singh and PW-5, Amar Chand were also associated during the course of

investigation. The Car bearing No. PB-11-R/7458 was stopped by ASI Hans Raj. Veena Kumari, Lady Constable (PW-6) was also called to conduct search of Lata accused. PW-13, ASI Hans Raj gave option of search to the accused either before a Magistrate or Gazetted Officer. Accused opted to be searched in the presence of Additional Superintendent of Police, Shri Sonam Chhopal (PW-9), who was present on the spot. PW-13 gave his personal search and prepared memo Ex. PW-4/F. Thereafter, he carried out the search of all the accused, except accused Lata. Search of Lata accused was carried out by PW-6 and memos Ex. PW-4/B to Ex. PW-4/E were prepared. The search of the vehicle was also carried out. During the course of search, from the cover of the back seat of the Car, charas was found concealed in seven packets. The weights and scales were procured from PW-3, Amar Nath. It weighed 3 kgs. Two samples of 10 grams were separated and packed in empty cigarette cartons, which individually were packed in cloth packets and sealed by putting three seal impressions of seal "A". The remaining charas in another cloth packet was sealed by putting three seals of same seal "A". The NCB form in triplicate was filled, sample seal Ex. PW-4/G was retained separately and the seal was entrusted to Prem Singh (PW-4). The recovered charas and sample packets alongwith documents of the vehicle were taken into possession vide seizure memo Ex. PW-4/F. The rukka, Ex. PW-13/A was sent through Constable Lal Singh (PW-12). In sequel thereto, FIR, Ex. PW-7/ A was registered. The case property alongwith NCB form was entrusted to SHO Kaur Singh (PW-2), who resealed the same with his seal bearing impression "T". He deposited the case property alongwith documents with MHC Bhagat Ram (PW-7). Bhagat Ram took the case property in malkhana custody by making entry in the malkhana register Ex. PW-7/C. He then through HHC Surat Ram (PW-11) sent the sealed sample alongwith documents to CTL, Kandaghat vide RC Ex. PW-7/D, where on analysis vide chemical report Ex. PW-10/A, the sample was opined to be that of charas. Thereafter, the challan was put up after completing all the codal formalities.

2. The prosecution has examined in all 13 witnesses. The statements of the accused were recorded u/s 313 of the Criminal Procedure Code. They pleaded innocence and claimed trial. The learned trial Court acquitted the respondents. Hence, this appeal by the State.

3. Mr. Vivek Singh Thakur, learned Additional Advocate General has strenuously argued that the prosecution has proved its case against the respondents. According to him, the learned trial Court has not correctly appreciated the evidence led by the prosecution.

4. Mr. Sumit Raj Sharma, Learned Counsel for respondents No. 1 and 4 and Mr. Manish Sharma, learned vice counsel for respondent No. 2 have supported the judgment dated 29.07.2002.

5. We have heard the Learned Counsel for the parties and gone through the records carefully.

6. The story of the prosecution is that police team headed by PW-13, ASI Hans Raj, consisting of Constable Lal Singh (PW-12), Constable Birbal Dass (PW-1) and Head Constable Lal Singh, was present for traffic checking at Dhalpur. The prior information was received by PW-13, Hans Raj. He reduced the information Ex. PW-8/A into writing and sent it to Additional Superintendent of Police through Constable Birbal Dass (PW-1). PW-9 also reached at the spot. According to the contents of Ex. PW-8/A, independent witnesses PW-4, Prem Singh and PW-5, Amar Chand were already on the spot. However, it has come in the statement of PW-1, Birbal Dass that when he carried the information letter Ex. PW-8/A to PW-9, PW-4, Prem Singh and PW-5 Amar Singh were not present on the spot. He found them on the spot when he came back alongwith Additional Superintendent of Police (PW-9). According to PW-12, Lal Singh, the witnesses Prem Singh and Amar Nath were already with ASI Hans Raj since 10-15 minutes prior to receipt of information. There is a flaw in the case of the prosecution. In case PW-4 and PW-5 were not on the spot, they could not be mentioned in Ex. PW-8/A. The writing of Ex. PW-8/A is doubtful. This apparently has been prepared to show presence of PW-9 on the spot.

7. According to PW-2, SI Kaur Singh, ASI, Hans Raj (PW-13) has produced three sealed packets, which were sealed with seal "A" alongwith NCB form. He resealed the same with seal "T". However, in his cross-examination, he has admitted that the packet shown to him in the Court was also stitched with thread at two places. According to him, the packet might have been eaten by rats and then stitched. He could not explain about the overwriting made on the packet. He also admitted in cross-examination that white fluid was not present when the packet was resealed by him. PW-7, HC Bhagat Ram has stated in his cross-examination that packet Ex. P-1 at certain places was stitched by him because the packet was kept on rack of the malkhana in open and was damaged by rats. However, he admitted that no seal was put by him on the stitches of the packet. He also admitted no permission in writing was given to him for stitching the packet. Thus, the possibility of the sample being tampered with cannot be ruled out.

8. There are other contradictions in the statements made by the witnesses. According to PW-9, Sh. Sonam Chhopal, only two lots were weighed, whereas according to PW-12, Lal Singh, the contraband was weighed in one lot. According to PW 9, the consent memo was prepared on the spot, however, PW-12, Lal Singh has contradicted him by stating that all the memos, including consent memo, were prepared at the traffic checking post. PW-12 deposed that three samples were taken, however, PW-13, ASI Hans Raj has stated that only two samples were taken. According to PW-1, Birbal Dass, charas was weighed in the traffic checking post, however, according to PW-12, Lal Singh, PW-13, ASI Hans Raj and PW-9, Sh. Sonam Chhopal, the charas was weighed on the spot. According to PW-9, four consent memos were prepared, however, it has come on record that only one memo was prepared, i.e., Ex. PW-4/A. The quantity shown in NCB form is 10 grams, but as per Ex. PW-10/A, the charas when weighed at

the time of analysis was 19.7078. This discrepancy has also not been explained by the prosecution. Thus, the possibility of the samples being tampered with cannot be ruled out. In view of the abovesaid position, we see no reason to interfere with the judgment of the trial Court. Hence, the appeal is dismissed. Bail bonds are ordered to be discharged.