

(2016) 08 SHI CK 0035
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 149 of 2011

State of Himachal Pradesh	Vs	APPELLANT
Tek Chand		RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:

Citation : (2016) 168 AIC 413

Hon'ble Judges : Mr. Sanjay Karol and Mr. Vivek Singh Thakur, JJ.

Bench : Division Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Respondent; Mr. V.S. Chauhan, Additional Advocate General, Mr. Vikram Thakur and Mr. Puneet Rajta, Deputy Advocates General, for the Appellant

Final Decision : Disposed Off

Judgement

Sanjay Karol, J. - In this appeal, filed under the provisions of Section 378 of the Code of Criminal Procedure (hereinafter referred to as the Code), we are called upon to decide the correctness of judgment dated 10.12.2010, passed by the learned Special Judge, Chamba Division, Chamba, Himachal Pradesh, in Sessions Trial No.13 of 2010, titled as State of Himachal Pradesh v. Tek Chand, whereby respondent Tek Chand (hereinafter referred to as the accused), stands acquitted.

2. In relation to FIR No.22, dated 31.1.2010 (Ex.PW-5/C), registered at Police Station, Sadar Chamba, Himachal Pradesh, accused was charged to face trial for having committed an offence, punishable under the provisions of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act).

3. On 31.1.2010 at about 12.10 a.m., 2.5 kgs of Charas was recovered from the bag carried by the accused. To establish such charge, prosecution seeks reliance upon the testimonies of independent witnesses Hamid Beg (PW-1) and Om Parkash (PW-2), who have not supported the prosecution, as also police officials HC Virender Singh (PW-3), Constable Mohd. Aslam (PW-4) and HC Kartar Singh

(PW-11).

4. Careful perusal of testimonies of these witnesses would only establish that despite the independent witnesses admitting their signatures on the Memo of recovery (Ex.PW-1/C), two versions of as to what transpired on the spot have emerged on record, rendering the prosecution version to be absolutely doubtful.

5. According to HC Virender Singh, Constable Mohd. Aslam and HC Kartar Singh, on 30.1.2010, the police party had set up a naka at a place known as Koti Chowk and at about 12.10 a.m., they stopped one vehicle (Bolero), driven by Hamid Beg, in which Om Parkash was also sitting. While the vehicle was being searched, they noticed the accused who, on seeing the police party, tried to flee away. On suspicion, he was apprehended and after informing him of his statutory right (Section 50 of the Act) vide Memo (Ex.PW-1/A) and obtaining his consent, was searched and from the bag carried by him, Charas weighing 2.5 kgs was recovered. Contraband substance was weighed with the scales kept in the Kit carried by the Investigating Officer. NCB form (Ex.PW- 7/B), in triplicate, was filled up on the spot. Where after the contraband substance was sealed and specimen of the seal handed over to Om Parkash. Constable Mohd. Aslam carried Ruka (Ex.PW-7/A) to the Police Station, which led to the registration of FIR (Ex.PW-5/C). Accused was arrested. Thereafter, case property was handed over to SHO Santosh Kumar (PW-7), who resealed the same. Special Report (Ex.PW-10/B) was also sent to the Superior Officer.

6. Now, when we examine the cross-examination part of their testimonies, we find their presence on the spot to be doubtful. HC Virender Singh and Constable Mohd. Aslam are categorical that in the middle of the night, police party had searched other vehicles also, but when we peruse the testimony of HC Kartar Singh, though he is categorical that only one vehicle, i.e. Bolero, being driven by Hamid Beg (PW-1) was searched, but feigns ignorance as to whether any other vehicle was checked. The incident is of 31.1.2010 and the statement of the Investigating Officer was recorded on 9.2.2010. He was heading the police party. He could not have forgotten as to whether any other vehicle was checked or not. Version of this witness of having checked the vehicle driven by Hamid Beg appears to be absolutely doubtful, in view of the fact that Hamid Beg is a close relative of Constable Mohd. Aslam, apart from the fact that he is a stock witness, as is so admitted by the police officials.

7. That apart, police officials admit that at Koti Chowk there were shops. No doubt, they state that they were closed, but then no endeavour was made to associate any other independent person, for it is not the proven case of the prosecution that none, at that time, was available or that the place was not inhabited.

8. According to the police officials, vehicle, i.e. Bolero, was checked and while it was being so done, they saw the accused come from Tissa side. Now, this version of the vehicle having been searched, stands absolutely falsified by

independent witnesses Hamid Beg and Om Parkash, according to whom, police signaled the vehicle to be stopped and thereafter took lift and while they were travelling together, disclosed that the Charas came to be recovered from the accused. They are categorical that accused was not present at that time. No doubt, these witnesses were cross-examined by the learned Public Prosecutor and admit their signatures on the search memo, but then one cannot forget the fact that both the witnesses are stock witnesses. Two views, with regard to the occurrence of events on the spot, have thus emerged from the testimony of the prosecution witnesses.

9. There is yet another contradiction, which has emerged on record, which we find it to be material. Police officials admit that they were not possessed of any torch. It is not the case of the police that search and seizure operations were carried out in the light of the vehicle. In fact, it is their specific case that all proceedings were conducted in the light which was coming from the street light placed outside one of the shops. But, according to Om Parkash, no street light was there at Koti Chowk.

10. From the material placed on record, prosecution has failed to establish that the accused is guilty of having committed the offence, he has 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. 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.

11. 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 the accused was found in conscious and exclusive possession of Charas.

12. 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.

13. The accused has 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 v. 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.

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