

(2009) 03 SC CK 0005

In the Supreme Court Of India

Case No : Criminal Appeal No. 939 of 2007

State of Punjab

APPELLANT

Vs

Gurnam Kaur and Others

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Constitution of India, 1950 — Article 136

Evidence Act, 1872 — Section 27

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 20, 42(2), 50, 50(4)

Citation : (2009) AIRSCW 3955 : (2009) 3 JT 373 : (2009) 1 OLR 706 : (2009) 4 SCALE 343 : (2009) 11 SCC 225 : (2009) 4 SCR 1195 : (2009) 3 Supreme 847

Hon'ble Judges : S. B. Sinha, J;Mukundakam Sharma, J

Bench : Division Bench

Advocate : Kuldeep Singh, for the Appellant; Gagandeep Sharma, Nikhil Jain, Umed Singh Walia and D. Mahesh Babu, for the Respondent

Final Decision : Disposed Of

Judgement

S.B. Sinha, J.—State of Punjab is in appeal before us aggrieved by and dissatisfied with a Judgment and Order of acquittal dated 17th July, 2006 passed by the High Court of Punjab & Haryana in Criminal Appeal No. 157-DB of 2004.

2. Respondents herein are three ladies, viz., Gurnam Kaur, Ranjit Kaur and Gurjit Kaur. Gurnam Kaur is wife of Pargat Singh. Paramjit Singh @ Pamma, Amolak Singh and Hira Singh are sons of Pargat Singh. Respondent Nos. 2 & 3, namely, Ranjit Kaur and Gurjit Kaur are wives of Hira Singh and Paramjit Singh respectively.

3. On or about 16-06-2000 one Shri S.S. Mand, DSP (D), Kapurthala purported to have received a secret information. He, pursuant to the direction of SSP, Kapurthala, was standing at the turning of Dhilwan Road, Dhussi Bundh in connection with a 'nakabandi' arranged on the basis of the said secret information. Inspector Gurmukh Singh, SI Nirmal Singh, ASI Jaswinder Pal

Singh, ASI Paramjit Singh, Head Constable Manohar Singh, Head Constable Surinder Kumar, Head Constable Gurmail Singh, Head Constable Swaran Singh, Constable Harjit Singh, Constable Malkiat Singh, Constable Raj Kumar, Constable Swaran Singh, Constable Surinder Pal Singh, Constable Lakhwinder Singh, Constable Baljinder Singh were with him. One U.P. Bhatt, Intelligence Officer of Narcotics Control Bureau (NCB) was also present.

4. At about 7:30 a.m., one Maruti Car bearing registration No. HR03A- 2642 was found coming from the side of Amritsar town. Allegedly on seeing the police party, the driver of the car stopped the vehicle at a distance of about 50 yards from them and made an attempt to turn the car backwards. Three persons came out of the car and ran towards the fields. The driver of the car was, however, apprehended. He disclosed his name as Gurlal Singh @ Lalli. He was taken in custody. He alleged that other three persons who had fled away were Paramjit Singh @ Pamma, Amolak Singh and Hira Singh.

5. He was allegedly asked as to whether he would like to get his car searched by a Gazetted Officer or a Magistrate, he expressed no objection to the searched by the officer himself. On search narcotics were recovered from the said car.

Five packets of heroin marked `333' were recovered from a gunny bag. Each packet weighed one kg. Samples therefrom were taken. Some narcotics were also found in the car, total being 55 Kgs. of heroin and 22 Kgs. of opium.

A First Information Report was lodged. Gurlal Singh allegedly made a statement that if the houses of Hira Singh and Pargat Singh are raided, a large quantity of contraband would be recovered. Pursuant thereto a raid was arranged. DSP Baldev Singh, PW3 and other police officials went to village Thatha. They met DSP Ashutosh, PW8, of Amritsar district in the said village itself.

6. All the respondents were said to have been found sitting in one of the rooms of the said house. From the box which was in the back of the bed in the room where respondents were sitting, opium wrapped in a glazed paper and two packets of heroin were recovered. Sample thereof was said to have been taken.

7. A First Information Report was lodged at about 5:15 p.m. on 16-06- 2000. Indisputably, Parmajit Singh by that time was already arrested and in the custody of the investigating officer.

No independent witness was examined by the prosecution.

Respondents herein were prosecuted for commission of offence under the said Narcotic Drugs and Psychotropic Substances Act (for short, `the Act').

8. The learned Trial Judge found the respondents guilty of commission of an Offence under Sections 18 and 20 of the Act and convicted them to undergo rigorous imprisonment for a period of twelve years and fine of Rs. 1,00,000/- (Rupees One Lakh only).

9. By reason of the impugned judgment, the High Court on appeal, however,

reversed the said findings. The High Court found that no independent witness was examined. Village Thatha is situated in the district of Amritsar. The raid was conducted by the police officers of another district, viz., Kapurthala. Admittedly, PW8 DSP Ashutosh had not been informed about the raid. He was in the said village accidentally.

10. The ladies were personally searched by the male officers in violation of Sub-section 4 of Section 50 of the Act.

Prosecution deliberately introduced ASI Rajwinder Kaur, Police Station Harike. Although according to DSP Ashutosh PW8, there was no lady police officer posted in the police station.

11. The police officers had to travel for more than eight hours over a distance of not less than 80 kms. and thus there was no reason as to why DSP Baldev Singh PW3 could not have sent an information to the officers of the police station, Thatha or police station, Harike for registering of a case as per information provided to him by Gurlal Singh @ Lalli.

12. Having been taken through the judgment of the High Court as also other materials on record, we are of the view that it is not a fit case where we should exercise our discretionary jurisdiction under Article 136 of the Constitution of India in interfering with the impugned judgment.

13. There are several infirmities in the prosecution case. Subject to just exceptions all offences are local. A statement in regard to the possibility of contraband articles likely to be found at the residence of Pargat Singh was disclosed by Gurlal Singh. His statement was not recorded in writing. Admittedly, Pargat Singh has also been arrested and in that view of the matter as to why they were not taken to their village is beyond any comprehension. The place of occurrence of the first incidence and the incident in question are situated at distance of 80 kms. whereas Gurlal Singh was arrested at about 7:30 p.m. on 16-06-2000. The second first information report was lodged at 4.00 p.m. and it was recorded as 5.15 p.m.

14. Respondent Gurnam Kaur admittedly is an old lady. Respondent Nos. 2 and 3 are her daughters-in-law. Curiously all of them were found sitting on the same bed beneath whereto the contraband had allegedly been kept. That by itself does not establish that all of them were in conscious possession of the narcotics. They were not even asked any question in regard thereto. Prior to lodging of the first information report, the respondents did not point out the place where the narcotics were found kept. How the raiding party found the same has not been disclosed. The ladies in natural course were in their house. No explanation has been furnished, nor the statement of the respondent was recorded. The investigating officer DSP Baldev Singh PW3 was to prove as to where contraband had been kept not the respondents.

15. If by a reason of statements made by an accused some facts have been

discovered, the same would be admissible against the person who had made the statement in terms of Section 27 of the Indian Evidence Act. Prosecution has not examined any independent witness. Why independent witnesses could not be found has not been explained.

16. ASI Rajinder Kaur who is said to have been present has not been examined. Who conducted the personal search of the ladies? It is not the case of the prosecution that she had searched the ladies. Sub-section 4 of Section 50 of the Act postulates that personal search of the ladies must be conducted by a lady police officer. Curiously PW8 in his evidence categorically stated that there was no lady constable or lady officer posted at the police station, Harike. If that be so why participation by ASI Rajinder Kaur was introduced is beyond anybody's comprehension. Personal search of the accused was conducted by DSP Baldev Singh which as indicated hereinbefore was violative of the provisions of Sub-section 4 of Section 50 of the Act.

17. It is a matter of great surprise that PW8 DSP Ashutosh, although was not informed by DSP Baldev Singh PW3, was present in the village. His presence in the village is highly doubtful. No explanation has been furnished as to why the first information report was lodged after 11 hours and why the mandatory provisions of Sub-section 2 of Section 42 of the Act had not been complied with.

18. The jurisdiction of this Court to interfere with a judgment of acquittal is limited. When two views are possible, a judgment of acquittal should not be interfered with. See Rangaiah Vs. State of Karnataka, .

19. For the reasons aforementioned we are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is dismissed.