
(2010) 09 SHI CK 0177
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 84 of 2007

The State of H.P.

APPELLANT

Vs

Evboro

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2010) 09 SHI CK 0177

Hon'ble Judges : V.K. Sharma, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Mr. Vinay Thakur, Advocate, has been requested to assist this Court as Amicus Curiae and he has kindly agreed to the same. Accordingly, Mr. Vinay Thakur, Advocate, has assisted this Court in response to the submissions made on behalf by Mr. R.K. Sharma, Sr. Additional Advocate General, for the appellant-State.

2. The present criminal appeal has come up for consideration after leave to appeal u/s 378(3) of the Code of Criminal Procedure has been granted in reference to the impugned judgment and order dated 17.11.2006, passed by learned Special Judge (II), Mandi, District Mandi, Himachal Pradesh, in Sessions Trial No. 13 of 2005, acquitting the alleged accused u/s 20 of the NDPS Act.

3. Prosecution case in brief is that on 31.07.2005, ASI Ghanshyam Chand alongwith HHC Munshi Ram, Constable Malkeet Singh, HHC Murari Lal hired a taxi No. HP-I-K-4200 to Bagitar, where they had laid nakkabandi and Kuldip Singh, driver of the taxi was also with them. At about 5 a.m., the police party saw the accused coming from Aut side, carrying a Pithu bag. On seeing the police party, accused-respondent returned back and tried to run away, however, he was overpowered by the police. On inquiry, the accused-respondent disclosed his name and address of South Africa. ASI Ghanshyam Chand searched the bag of

the accused and found 6 kg charas in it, which was packed in a polythene paper. ASI separated two samples, 25 grams each, out of the recovered charas. The samples of charas were sealed in separate parcels, whereas the remaining charas was put in the same bag and sealed in separate parcel with seal impression "T". The ASI filled in NCB form and also took into possession sealed parcels. Recovery memo was prepared and rukka was sent to the Police Station, Aut. Accordingly, case was registered u/s 20 of the NDPS Act and accused was arrested. One sealed parcel, containing charas, was sent to Chemical Examiner Kandaghat and after investigation the accused-respondent was charged u/s 20 of the NDPS Act and the case was committed to the Sessions Court.

4. In order to prove its case, prosecution examined as many as nine witnesses, whereas, accused through his statement u/s 313 Cr.P.C. denied the prosecution case and has also stated that on 31.07.2005, he alongwith his wife, Lallian Sangi, was travelling in HRTC bus en-route from Kullu to Chandigarh. At 5 a.m., the bus was stopped by the police in traffic tunnel, Aut and he was asked to show his visa and passport. Both, accused-respondent and his wife were retained by the Kullu Police and he was taken to the Police Station. His wife, Lallian Sangi, insisted to accompany him, however, she was not allowed to accompany him by the police. His wife returned from Mandi and reached at Police Station, Aut at about 10 a.m. He asked his wife to make a complaint to S.P. Mandi for taking her husband in unlawful custody. According to the accused-respondent he had been falsely implicated and he further stated that Yadvender Gupta etc. had taken a lot of money from him at Manali and Kullu and they did not return the same. Accused-respondent was also harassed by the Kullu Police and accused in support of his defence examined five defence witnesses.

5. Learned Senior Additional Advocate General for the State has argued that the accused-respondent was apprehended and on search, 6 kg of charas was recovered from his possession. Samples of charas were taken and were sent for chemical examination and after fulfilling all formalities, in due discharge of official duties, the police officials have successfully conducted the search and made recovery of 6 kg of charas from the accused-respondent, as such, the officials witnesses, since have corroborated the prosecution case, therefore, the prosecution case is said to have been proved beyond reasonable doubt.

6. On the other hand, the defence has asserted that in view of the testimony of PW-4 Kuldip Singh and the statements of DW-1 to DW-3, which indicates that the accused-respondent on the fateful day, that is, 31.07.2005, alongwith his wife, DW-1 Lallian Sangi, was travelling from Kullu to Chandigarh in HRTC bus No. HP-34-7507, which was stopped by the police in the middle of traffic tunnel from Aut to Thalout and police, on entering into the bus, asked the accused-respondent to show his visa and passport, which they took in their possession. Thereafter, accused-respondent was alighted from the bus and was taken to the police station and the said case was fabricated against him.

7. On analysis of the prosecution witnesses and the material on record, we notice

that PW-4 Kuldip Singh, PW-5 Malkeet, PW-6 HHC Munshi Ram and PW-9 ASI Ghanshyam Singh were witnesses of occurrence. PW-9 Ghanshyam Singh in support of the prosecution case has endeavoured to state that while walking on foot, the accused-respondent was carrying pithu bag, Ex. P-4, and on checking of the same, 6 kg charas was recovered and procedural formalities were made.

8. PW-5 Constable Malkeet Singh and PW-6 HHC Munshi Ram said to be members of the raiding party also endeavoured to support the prosecution case. PW-9 ASI Ghanshyam Singh has stated that charas was recovered from the accused-respondent. PW-5 Malkeet and PW-6 HHC Munshi Ram have specifically stated that nakabandi laid by the police party was just at the beginning of the traffic tunnel towards Aut side. They have further stated that they have not crossed the traffic tunnel when they came from the side of Police Station, Aut. PW-4 Kuldip Singh in support of the prosecution case stated that 3-4 policemen of police station, Aut, hired his taxi No. HP-01K-4200 and went from Aut towards Thalout and laid nakka in traffic tunnel situated in between Aut and Thalout, however, he left his taxi and police party intercepted one HRTC bus, which was coming from Manali side and after checking the bus, accused-respondent was taken into taxi to the Police Station and nothing was recovered from the possession of the accused. PW-4 was declared hostile for not supporting the prosecution case also through his statement in the cross-examination.

9. On analysis of the testimony of PW-5, PW-6 and PW-9 major contradictions about the place of occurrence have been revealed. As per the testimony of PW-9 ASI Ghanshyam Singh, police party laid nakka after crossing the traffic tunnel, towards Mandi side, whereas PW-5 and PW-6 categorically stated that nakkabandi was laid just at the beginning of the traffic tunnel, towards Aut side. Thus, there are major contradictions and discrepancies emanating from the testimony of PW-5, PW-6 and PW-9 about the place of occurrence, which renders the prosecution case doubtful.

10. PW-4 Kuldip Singh, an independent witness has stated that police laid nakka in the traffic tunnel situated in between Aut and Thalout, whereas, accused-respondent was taken to the Police Station Aut. As such, the versions of PW-5 and PW-6 are co-related by PW-4 Kuldip Singh, an independent witness, though he was declared hostile. PW-4 in his statement has stated that the accused-respondent alongwith his wife, Lallian Sangi, was travelling in HRTC bus No. HP-34-7507, en-route from Kullu to Delhi, and on interception by the police in the middle of the traffic tunnel the accused-respondent was asked to show his visa and passport and he was subsequently taken to the police station.

11. After scrutinizing the testimony of defence witness, namely, DW-1 Lallian Sangi, we notice that on 31.07.2005, DW-1 Lallian Sangi, wife of the accused-respondent, was travelling as co-passenger with the accused in the above said HRTC bus, en-route from Kullu to Chandigarh, and both were sitting on seats No. 15 and 16. The bus was stopped by the police at about 5 a.m. in traffic tunnel near Aut and the accused-respondent was asked to show his visa and passport

and the same were retained by Kullu Police. Thereafter, accused-respondent was taken to the Police Station and when DW-1 tried to accompany him, she was asked not to accompany, however, she approached S.P. Mandi and made a written complaint against the police officials.

12. DW-2 Padam Singh, Booking Clerk, HRTC Bus Adda, Kullu, stated that on 31.07.2005, bus No. HP-34-7507 was sent on route from Kullu to Delhi and he has produced copy of register, Ex. DW-2/A, and computer generated copy, Ex. DW-2/B, indicating that three tickets to the passengers from Bus Adda, Kullu, were issued and tickets of seats No. 15 and 16 were issued by him to the accused-respondent.

13. DW-3 Tek Chand, is driver of HRTC bus No. HP-34-7507, has stated that he was driving the said bus on 31.07.2005 from Kullu to Delhi. He further stated that at about 5 or 5:15 a.m. the bus was stopped by the police in the middle of the tunnel, near Aut and police demanded papers from the accused-respondent.

14. DW-4 Lady Constable, Padma Devi, stated that as per record of S.P. Officer, Mandi, Ex. DW-1/A is copy of complaint, which was sent by S.P. Mandi to SHO of Police Station, Aut for his comments. DW-5 Bhagat Ram, Record Keeper, District Court, Kullu, has stated that copies of passport and visa of the accused-respondent were retained.

15. On analysis of the testimony of DWs 1, 2, 3 and 4, it appears that Ms. Lallian Sangi, the wife of the accused-respondent was travelling in the aforesaid bus on the said date and both husband and wife were occupying seats No. 15 and 16. Police on stopping the said bus, made a search and took the accused-respondent to the police station. Therefore, it appears that on the fateful day accused-respondent was not coming on foot and carrying Pithu bag (Ex. P-4) on his shoulder and nothing was recovered from that bag.

16. The testimony of defence witnesses makes the defence story more reliable and creates doubt about the prosecution story. Prosecution case is not supported by PW-4 Kuldeep Singh, an independent witness and PW-5, PW-6 and PW-9 also cannot be said to have proved the case of the prosecution.

17. In the teeth of major contradictions, discrepancies about the place of occurrence, mode and modalities of search procedure and on analysis of entire facts and circumstances, prosecution witnesses and the materials on record, we notice that accused was travelling with his wife, DW-1 Lallian Sangi, in HRTC bus No. HP-34-7507 from Kullu to Chandigarh and the said bus was intercepted by police party and accused-respondent alongwith his visa and passport was taken to the police station and no recovery of charas was made at the alleged place of occurrence, therefore, the prosecution has completely failed to prove its case beyond reasonable doubt.

18. In these facts and circumstances, the prosecution has failed to bring home the guilt against the accused-respondent. In our considered view, the benefit of

doubt, given to the accused-respondent by Special Judge, Mandi, requires no interference.

19. After going through the impugned judgment, we do not find any scope of interference in the judgment of the trial court and appeal being devoid of merit is dismissed.

20. The Court appreciate the efforts made by Mr. Vinay Thakur, Advocate, in assisting the Court on behalf of accused-respondent as Amicus Curiae.