
(2002) 03 GUJ CK 0037
In the Gujarat High Court
Case No : Criminal Appeal No. 1026 of 1998

Vinodbhai Manilal Sathwara

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 17, 8

Citation : (2003) 85 ECC 136 : (2002) 2 GLR 1762

Hon'ble Judges : R.R. Tripathi, J;K.R. Vyas, J

Bench : Division Bench

Advocate : M.J. Buddhbhatti, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.R. Vyas, J.—The appellant-Vinodbhai Manilal Sathwara has challenged the judgment and order dated 7-11-1998 passed in N.D.P.S. Case No. 6 of 1997 by the learned Additional Sessions Judge, Sabarkantha, Himatnagar. The appellant was convicted for the offences punishable u/s 8(c) read with Section 17 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the "N.D.P.S. Act") and sentenced to suffer R. I. for 10 years and to pay a fine of Rs. 1 lakh, in default, to undergo further R. I. for one year.

2. The complainant-Ranvirshingh Vadanshingh Puwar P.W. 8 Exh. 38, was at the relevant time serving as Police Inspector, Narcotic Cell, C.I.D. Crime, at Ahmedabad. On 30-9-1997, he received information from informant at about 12-10 p.m. that the appellant, the resident of Kumbharvas, Prantij, district Sabarkantha had kept illegal opium below his kitchen staircase near the wall. The complainant wrote down the said information and informed his superior officer i.e. Supdt. of Police. He also entered the said information in the register for the said purpose. He, thereafter, proceeded for Prantij with the other police officers namely Sub-Inspector Mr. Khopade, Head Constable Mr. Popatlal and Head

Constable Mr. Bhurabhai, Police Constable Mr. Natubhai and two persons of S.R.P. They took a halt near Prantij at Sabar Hotel for the purpose of making arrangement for calling panchas. Police Constable Natubhai called one Hareshbhai Barot P.W. 1 Exh. 12 and Samirbhai Chauhan P.W. 2 Exh. 19 to act as panchas.

A preliminary panchnama was prepared, and thereafter, the raiding party entered Prantij town and reached the house of the appellant. They introduced themselves to the appellant and informed regarding the purpose for which they had come. Before carrying out such formalities, the appellant was asked as to whether he would like to keep present the Gazetted Officer or a Magistrate at the time of search. On being said "no" by the appellant, he was further asked as to whether he would like to search the person of the raiding party in presence of panchas. To that also, the appellant said "no" and stated that raiding party may carry out the search of his premises. The raiding party thereafter started search of the ground floor as well as the first floor of the house. However, nothing was recovered. On being asked about the kitchen, the appellant showed the kitchen situated in the southern side and in the western side of the kitchen, there was a wooden stair and behind this wooden stair, a plastic kerba was lying and between the kerba and the wall, the raiding party found a substance covered by a parrot green colour of paper kept in a white plastic bag. Taking out some substance from the white bag, and smelling the same, they noticed to be of opium smell. Thereafter, the substance was weighed by the raiding party and it weighed 350 grams, Head Constable Popatlal was sent to bring three tin boxes from the pan shop. He brought three boxes of tobacco. 100 gms. out of 350 grams was kept in one box and the box was thereafter covered with a paper and slip duly signed by the panchas was affixed on the said box. Thereafter, a seal of the Police Inspector and Divisional Police Supdt., Gujarat State was affixed. In the second box, 100 grams opium was kept and in the third box 150 grams opium was kept. The same procedure was carried out in respect of remaining boxes. A. B. C., mark was given to all the boxes respectively. Thereafter, memo was issued by the Mamlatdar after giving a copy to the appellant, and thereafter, memo duly signed by the panchas was given to the appellant and the appellant thereafter was arrested. Necessary panchnama to that effect Exh. 32 was recorded on the spot. A complaint was thereafter registered against the appellant before the Prantij Police Station, which was registered as CR No. III 169 of 1997. The complainant also informed the superior officer regarding the raid and arrest of the appellant.

3. Jyotindra Upadhyay, P.W. 11, who was at the relevant time serving as Police Inspector, Prantij took over the investigation and after completing the same, filed charge-sheet against the appellant. The charge Exh. 9 was framed against the appellant to which he denied and claimed to be tried in his further statement u/s 313 of the Criminal Procedure Code. While denying involvement in the offence as alleged by the prosecution, he has stated that he is against prohibition and gambling activities, he totally denied his involvement. He has stated that his nephew is a bootlegger and because of the same, both are not in good terms. He

has further stated that his nephew had given false information to the police and got him arrested at his (nephew) instance by the rival politician.

4. As stated above, the learned trial Judge after appreciating the evidence as well as the further statement of the appellant, accepted the criminal case and convicted the appellant. The appellant has challenged the said judgment and order of conviction in this appeal.

5. We have heard the learned Advocates appearing for the respective parties at length. We have also gone through the record. Since we have narrated the facts from the deposition of the complainant, it is not necessary to renarrate the same.

6. The complainant Mr. Puwar was cross-examined at length. However, nothing substantial has been brought out by the defence from his evidence. The complainant has stood the test of cross-examination by remaining consistent with his examination in chief. Reading the evidence of the complainant, it is clear that he has followed the procedure under the provisions of the Act by entering the information given by the informant in the register maintained by the department. He also informed his superior officer about the said information. It is clear from Exhs. 39 and 40 that before carrying out search in the premises, he also inquired from the appellant as to whether he would like to carry out the search in presence of Gazetted Officer or the Magistrate. Not only that, but he also gave an option to the appellant to search the person of the raiding party as well as the panchas. On getting appropriate answer from the appellant, the complainant carried out the search of the premises of the appellant. The complainant also seized muddamal articles after following the proper procedure and kept the same in tin boxes and placed slips duly signed by the complainant as well as by the panchas and also affixed the official seal on tin boxes. The said fact is duly recorded in the panchnama Exh. 13 on the same day. It is true that both the panchas examined by the prosecution have not supported the prosecution, and therefore, they were declared hostile. However, the say of the complainant is duly corroborated by the said evidence namely P.W. 6 Popatlal Exh. 35, P.W. 10 Abbaskhan Exh. 15, P.S.I of Narcotic Cell, Prantij District, P.W. 11 Jyotindra Upadhyaya Exh. 52. From the aforesaid evidence, it is clear that the raid was carried out by the complainant and other members of the raiding party and muddamal opium was in fact recovered from the kitchen of the appellant.

7. Maheshchandra Champaneria P.W. 4/A, Exh. 26 is the Scientific Officer, serving in Forensic Science Laboratory at Ahmedabad. He has in his evidence clearly stated that he received a parcel containing muddamal sent by the Prantij Police Station with a forwarding letter dated 1-10-1997 with seal intact. According to this witness the seal of PINDPS C.I.D. CRIME J.S., was there and after carrying out the chemical and botanical analysis of the muddamal, opined that the muddamal was opium. He sent the said report Exh. 22 to the said Sub-Inspector, Narcotic Cell, C.I.D., Ahmedabad. From the evidence of this witness, it is clear beyond any manner of doubt that the muddamal article seized from the kitchen of the appellant was opium.

8. Mr. M. J. Buddhbhatti, learned Counsel appearing for the appellant submitted that merely because the opium was recovered from the house of the appellant that fact by itself is not sufficient to convict the appellant. The submission of the learned Counsel is that it being a case of planting which is really established from the material on record, the appellant deserves lenient view in the matter. The learned Counsel invited our attention to the further statement of the appellant as well as the documents produced by the appellant in this case.

9. Before we appreciate the material on record, we may point out the importance of further statement of the accused. u/s 313 of the Code of Criminal Procedure, the Court is under obligation to question the accused on the circumstances appearing against him in evidence given so as to enable him to explain the same. The answers given by the accused have to be taken into consideration. Thus, examination of accused u/s 313 is not a mere formality. Apart from affording an opportunity to the accused to explain exonerating circumstances against him, they would help the Court in appreciating the entire evidence adduced in the Court during trial.

10. In the present case, as stated above, the appellant in his further statement recorded u/s 313 of the Criminal Procedure Code has come out with the case that he is against the prohibition as well as gambling activities and that his nephew is a bootlegger, and his political rivals have made use of his nephew by falsely involving the appellant in the present offence. Had it been a simple averment of the appellant, we could have not given much importance. However, considering the material produced by the appellant in the instant case, which will be referred to hereinafter, we do feel that there is some substance in the say of the appellant. The appellant on 20-1-1997, has addressed a letter to the D.S.P., Sabarkantha inviting his attention that liquor den was going on in the area near bus stand, Prantij. He has also pointed out that his political rivals are making use of his nephew by involving him in the said activity to destroy his political career. He has therefore requested him to take appropriate action to curb the said illegal activity. Again on 4-12-1996 he addressed a letter to D.S.P., Sabarkantha inviting his attention to liquor den and worli-matka gambling going on in the place stated in the said letter. The appellant in the capacity of the Member Executive, R.J.P. Sabarkantha and in the capacity of the Director, Gujarat Rastriya Seeds Corporation addressed a letter to Chief Minister on 1-9-1997 inviting his attention to the corrupt practice committed by the President as well as the Councillors of Pratinj Municipality. On 22-6-1996 the appellant addressed a letter to the Chief Minister to take action against the persons who had damaged the statue of Sardar Patel. The Special Officer of the office of the Chief Minister in the letter 30-6-1997 informed the D.S.P., Himatnagar to inquire regarding said allegation of the appellant, the copy whereof was also sent to the appellant. Again on 4-11-1996, the appellant in the capacity of the Member of Prantij Taluka Panchayat and in the capacity of Member of Sabarkantha District Rastriya Janta Party addressed a letter to the Minister, Panchayat Department inviting his attention to the corruption having taken place in the matter of purchase of

materials as well as giving illegal contracts by the President of the Prantij Municipality. On 27-4-1997 the appellant filed a complaint against his nephew Brijesh Vrajilal Kadia making allegation against him that he has made illegal encroachment for which the Mamlatdar has given him a notice to remove encroachment. His nephew, thereafter, given him a threat to kill him or his son or to destroy his political career. In his said complaint, he alleged that he remained in drunken condition and was detained under P.A.S.A. as a bootlegger two years prior to the complaint and he is a head-strong person, and therefore, he is likely to commit the murder of the appellant. On 17-7-1997, one more letter was addressed to the Chief Minister Prantij Municipality inviting attention to an illegal purchase of the medicines. Again on 25-6-1998, the appellant addressed a letter to the Collector, Sabarkantha pointing out that the members of Prantij Nagar Panchayat though send trucks belonging to the Panchayat, the amounts were not credited in the account of the Panchayat. On 25-6-1995 he wrote a letter to the concerned Minister to keep police bandobast and a watch over the road-side Romeos who were teasing school-going girls.

11. From the aforesaid communications addressed by the appellant to various authorities, it is clear that the appellant is an active social worker and is also active in the politics. These correspondence are all prior to the date of the incident i.e. 30-9-1997. From the correspondence, it is clear that he invited attention of the various authorities towards instances of corruption, liquor den and gambling places in the Prantij town. He requested the authorities to curb the said activities. He is a Councillor and also possesses a reputation in the political circle. Under the circumstances, it can be inferred that he is bound to have more enemies than friends. He has also filed a criminal complaint against his own nephew Brijesh Vrajilal Kadiya and in his further statement, he has specifically alleged that his nephew is being used by his political rivals to falsely involve him in the present offence.

12. The complainant P.W. 8 Exh 38, in his evidence has admitted that the house of the Vrajilal (father of Brijesh) is situated near the house of the appellant and the house of Hasmukhbhai (another brother of the appellant) is adjacent to the house of the appellant. He has further admitted that one can reach to the place where the muddamal was recovered by jumping from the house of the Vrajilal. He has also admitted that Stairs in the house of the appellant are between the terrace and the kitchen. The complainant has also admitted that if one enters the house of the appellant from the terrace, the members of the family who are in other rooms will not know the said act. He has stated that no lock was applied at the door of the kitchen. From the aforesaid evidence of the complainant, it is clear that one can safely and easily enter the kitchen from the terrace by using the wooden stairs as the same portion is open. The name of the informant whose information was taken down by the complainant obviously has not come on record but by pin-pointing Brijesh, the appellant has clearly alleged against him that his political rivals have made use of him by falsely involving the appellant in the present case. In view of the fact that the house of the Brijesh is just opposite

the house of the appellant, one can reach the house of the appellant by jumping the terrace. We find substance in the say of the appellant. In view of the fact that the informant has clearly given information to the place where the muddamal substance was kept i.e., below the stairs in the kitchen, is indicative of the fact that the said fact was within the knowledge of the informant. Normally, information with such minor details is not given. When one gives such minor details, doubt regarding the case of planting will certainly arise. Considering the fact that appellant who has throughout fought against illegal sale of liquor and curbing illegal activities of gambling, it is difficult for us to believe that the appellant would keep muddamal opium at his house. On the contrary, the possibility of falsely involving the appellant in the serious offence under N.D.P.S. Act by his rival cannot be ruled out. From the record, it appears that 29 leading persons of Prantij town by their representation addressed dated 17-10-1997 to the D.S.P., Sabarkantha pointed out that the appellant had been made scape-goat in the case and had been falsely involved in the offence registered against him. They had requested the authorities to make appropriate inquiry in the case to find out the truth. Thus, defence put forward by the appellant is consistent supported with sufficient material. After appreciating the evidence on record we are of the opinion that the appellant has become the victim of the circumstances. If we accept the theory of planting of the muddamal of opium in the kitchen of the appellant, which appears to be more probable, there is no option but to acquit the appellant for the offence for which he is convicted.

13. In view of the above discussion, "we allow this appeal. We quash and set aside the Judgment and Order dated 7-11-1998 passed in N.D.P.S. Case No. 6 of 1997 by the learned Addl. Sessions Judge, Sabarkantha at Himatnagar convicting the appellant for offence punishable u/s 8(c) read with Section 17 of the N.D.P.S. Act and sentencing him to suffer R. I. For 10 years and to pay fine of Rs. 1 lakh in default to undergo R. I. for one year. We hereby acquit the appellant of the said offence and direct the Jail Authorities to set the appellant at liberty forthwith, if not required in any other case. Fine if paid be returned to him."