
Jang Singh Vs State of Haryana

Criminal Appeal No. 681-SB of 1986

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 4, 1987

Citation: (1988) 1 RCR(Criminal) 344

Hon'ble Judges: S.S.Sodhi, J

Advocate: Rakesh Garg, I.S. Balhara, Advocates for appearing Parties

Judgement

S.S. Sodhi, J.

1. The challenge in appeal here is to the conviction of the appellant Jang Singh, for an offence under Section 15 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and the sentence of ten years" rigorous imprisonment and a fine of Rs.

one lakh imposed in respect thereof.

2. According to the prosecution, Assistant Sub inspector Om Parkash was out on patrol on November 24, 1985, along with Constables Ram

Avtar, Surat Singh and Azad Singh, when on reaching near the bus stop Jakhal, at about 1.00 p.m., the appellant Jang Singh was spotted coming

from the side of the Mandir. On seeing the police party Jang Singh tried to turn back and slip away. This aroused the suspicion of Assistant Sub

Inspector Om Parkash and his party, as a consequence of which Jang Singh was apprehended and on search, he was found to be carrying 6

kilograms of poppy husk in a bag. It is in respect of his matter that he has been sent up for trial and convicted and sentenced in the manner as

mentioned earlier.

3. To establish their case against the appellant, the prosecution examined P.W. 1 Head Constable Suraj Singh and P.W. 2 Assistant Sub Inspector

Om Parkash. No independent witness was associated either at the time of the search and recovery or at any time even during the completion of the

formalities of the investigation in this case. Counsel for the appellant at the very outset, attacked the prosecution case on this account. In dealing

with the point urged, it must be observed that it is no doubt well settled that the testimony of a witness is not to be doubted or discarded merely on

the ground that he happens to be an official, but it is an equally well recognized rule of caution that courts should look for independent

corroboration to the testimony of official witnesses in such cases. Relevant of course, in this context, is the time and opportunity available to the

police party to associate such independent witnesses.

4. It was sought to be contended on behalf of the prosecution that considering the fact that it was a chance encounter of the appellant Jang Singh

with the police party that led to his search and the consequent recovery of the poppy husk, nonassociation of any independent witness should not

be looked upon as an infirmity in the prosecution case.

5. The contention raised, though attractive on the face of it, cannot stand scrutiny in as much as the completion of the formalities of the investigation

of this case took a couple of hours and that too, at a place where many members of the public must undoubtedly have come and passed by. If the

police party was so minded, there was ample opportunity available for joining some member of the public, at any rate, to witness some of the

formalities of the investigation of this case. Had this been done, it would indeed have lent further assurance to the prosecution case.

6. Keeping in view the stringent punishment prescribed under the Act, interests of justice do indeed render it incumbent upon the Court to ensure

that before a conviction is recorded, no element of doubt creeps in. Corroboration of the search of and recovery from an accused person by some

independent respectable person would go a long way in dispelling such doubts.

7. Reference here must also be made to the safeguards provided by Section 50 of the Act for an accused person to be searched in the presence of

a Gazetted Officer or Magistrate. In the context, in which this right has been conferred, it must be taken as an imperative requirement on the part of

the officer intending the search, to inform the person to be searched of his right to be searched in the presence of a Gazetted Officer or Magistrate.

Failure to do so can be construed as prejudice to the accused, which may, in certain circumstances, warrant his acquittal in respect of the offence

charged merely on this ground particularly where the quantity of the article recorded is small or of a monetary value of little consequence. There is

no suggestion that the appellant here was apprised of any such right before any search.

8. Considered thus in their totality the circumstances clearly render the conviction of the appellant unsustainable. The conviction and sentence of the

appellant are accordingly hereby set aside and his appeal is thus accepted. The bail bonds of the appellant, who is on bail, shall stand discharged.